

State Water Resources Control Board

June 1, 2017

Addressed to the Legally Responsible Person

WATER CODE SECTION 13383 ORDER TO SUBMIT METHOD TO COMPLY WITH STATEWIDE TRASH PROVISIONS; REQUIREMENTS FOR NON -TRADITIONAL SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMITTEES

Dear Small MS4 General Permit Discharger:

On April 7, 2015, the State Water Resources Control Board (State Water Board) adopted statewide Trash Provisions¹ to address the pervasive impacts trash has on the beneficial uses of our surface waters. Throughout the state, trash is typically generated on land and transported to surface water, predominantly through MS4 discharges. These discharges from Phase II MS4s are regulated through a statewide general permit (Phase II MS4 Permit)² pursuant to section 402(p) of the Federal Clean Water Act.

The Trash Provisions establish a statewide water quality objective for trash and a prohibition of trash discharge, or deposition where it may be discharged, to surface waters. For Phase II MS4 permittees that are regulated by the Phase II MS4 Permit, and have regulatory authority over Priority Land Uses,^{*3} the Trash Provisions require the State Water Board to initiate implementation of the prohibition by June 2, 2017, through requirements incorporated into the Phase II MS4 Permit or through monitoring and reporting orders. The State Water Board does not anticipate amending the existing Phase II MS4 Permit within the time frame specified by the Trash Provisions. Therefore, the initial steps in planning for the implementation of the Trash Provisions are being required through this Order in accordance with Water Code section 13383, as specified in the Trash Provisions⁴ and as further authorized by Clean Water Act section 308(a) and 40 Code of Federal Regulations part 122.41(h). The implementation plans submitted in response to this Order are subject to approval by the appropriate Regional Water Quality Control Board (Regional Water Board).

Priority Land Uses are defined as high density residential (10 developed dwelling units per acre), industrial, commercial, mixed urban, and public transportation stations. For traditional Phase II MS4 permittees, including cities, counties, and other census tract areas, Priority Land Uses can be readily identified. Non-traditional Phase II MS4 permittees, such as military bases,

¹ Amendment to the Water Quality Control Plan for Ocean Waters of California to Control Trash (Ocean Plan) and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, And Estuaries Of California (ISWEBE Plan) to be adopted by the State Water Board. Documents may be downloaded from our website at http://www.waterboards.ca.gov/water_issues/programs/trash_control/documentation.shtml.

² National Pollutant Discharge Elimination System (NPDES) General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), Order 2013-0001-DWQ, NPDES No. CAS000004.

³ All terms marked with an asterisk '*' are defined in the Enclosure to this letter titled *Trash Provision Glossary*.

⁴ Chapter IV.A.5.a(1)B of the ISWEBE Plan and Chapter III.L.4.a(1)B of the Ocean Plan.

hospitals, prisons, universities, and schools, may not have typical Priority Land Uses; therefore the application of the Priority Land Use definition is subject to interpretation for such permittees.

Non-traditional permittees may have land uses and locations that generate substantial amounts of trash, but do not clearly fit under the definition of Priority Land Use. The Trash Provisions allow interpretation as to how non-traditional permittees are to identify high density residential use, and whether a high rise dormitory, prison, army barracks, and/or hospital may or may not be a high density priority land use. In contrast, substantial amounts of trash may be generated at non-traditional permittee facilities that are not clearly defined as Priority Land Uses, such as parking lots and entrances at regulated parks, University on-campus student gathering areas, and recreation/sports areas.

To ensure that meaningful trash reduction is achieved at non-traditional facilities, and to ensure regulatory certainty with regard to what areas within non-traditional permittees' jurisdiction are regulated, the State Board is exercising its authority provided in the Trash Provisions that state:

“A Permitting Authority may determine that specific land uses or locations (e.g. parks, stadia, schools, campuses, or roads leading to landfills) generate substantial amounts of trash. In the event the Permitting Authority makes that determination, the Permitting Authority may require the MS4 to comply with the Track 1 or Track 2 trash treatment requirements, as determined by the Permitting Authority, with respect to such land uses or locations.”⁵

Through this Order, the State Water Board requires Phase II MS4 non-traditional permittees to determine and report to the State Water Board, locations and land uses within their jurisdiction that generate substantial amounts of trash. To comply with this Order, Phase II MS4 non-traditional permittees must submit an implementation plan for compliance with the trash prohibition as follows:

1. Select one of the two following compliance options provided in the Trash Provisions:⁵

Track 1: Install, operate, and maintain Full Capture Systems* for all storm drains that capture runoff from the Priority Land Uses in the jurisdiction;⁶ or

Track 2: Install, operate, and maintain any combination of Full Capture Systems, Multi-Benefit Projects,* other Treatment Controls,* and/or Institutional Controls* (equivalent Full Capture Systems Best Management Practices) within either: (1) their own jurisdiction, or (2) their own jurisdiction and the jurisdiction of contiguous MS4 permittees. The Phase II MS4 non-traditional permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls.

The State Water Board encourages MS4 permittees to install Full Capture Systems. Permittees selecting the Track 2 compliance option and not installing Full Capture Systems

⁵ See Chapter IV.A.4 of the ISWEBE and Chapter III.L.3 of the Ocean Plan.

⁶ Selection of Track 1 is appropriate only if a Phase II MS4 non-traditional permittee determines that all areas within its jurisdiction generating substantial amounts of trash fit within the definition of Priority Land Uses.

must demonstrate that the proposed implementation plan⁷ will achieve Full Capture System Equivalency.*

2. Develop preliminary and final jurisdictional maps identifying land uses and other locations that generate substantial amounts of trash and the corresponding storm drain network and associated drainage areas. The final jurisdictional maps must include the selected locations or land uses where certified Full Capture Systems, or a combination of controls achieving Full Capture System Equivalency, are proposed to be installed. The State Water Board recognizes that the MS4 permittee must gather information from field surveys and trash assessments to develop final jurisdictional maps.

The jurisdictional maps will assist the State and Regional Water Boards to identify land uses and locations that generate substantial amounts of trash for development of appropriate permit requirements in the future reissuance of the existing Phase II MS4 Permit.

3. If the Track 2 compliance option is selected, conduct and submit trash assessments to identify the land uses and locations that generate substantial amounts of trash and to identify the existing levels of trash generation. Information from the submitted trash assessment will be used by State Water Board staff to develop appropriate provisions in the Phase II MS4 Permit reissuance, including (1) a baseline for compliance tracking and determinations, and (2) interim milestones to demonstrate progress towards 100 percent compliance with the Trash Provisions within 10 years of the effective date of the implementing permit.⁸

The State and Regional Water Boards will rely on the information from the trash assessments in evaluating the permittees' planned implementation of Full Capture System Equivalency, and in approving the implementation plan.

The Trash Provisions provide two example assessment approaches for permittees to demonstrate Full Capture System Equivalency. The Trash Provisions also allow permittees to select, submit, and use other methods to demonstrate compliance. One method currently in use in the San Francisco Bay region relies on the use of on-land visual trash assessment methods to demonstrate compliance with trash reduction goals. An evaluation of the on-land assessment method was recently funded by the State Water Board via a Proposition 84 grant.⁹ This method, herein referred to as the Visual Trash Assessment Approach, is an acceptable methodology for reliably establishing baseline trash levels and detecting reductions in trash in MS4 discharges over time. A description of the Visual Trash Assessment Approach¹⁰ is enclosed in this Order and may be used by Phase II MS4 non-traditional permittees to meet the requirement for determining land uses and locations that generate substantial amounts of trash and for baseline trash generation rates. The State Water Board, in partnership with the California Stormwater Quality Association (CASQA), intends to develop and provide training to MS4 permittees on the

⁷ The MS4 permittee must determine which controls to implement to achieve compliance with the Full Capture System Equivalency, where such installation is not cost-prohibitive. (See Chapter IV.A.3.a.(2) of the ISWEBE Plan and Chapter III.L.2.a.(2) of the Ocean Plan.)

⁸ Chapter IV.A.5.a.(1) B.2 and 3 of the ISWEBE Plan or Chapter III.L.4.a.(1) B. 2 and 3 of the Ocean Plan.

⁹ The on-land visual assessment method was evaluated as part of the Tracking California's Trash project conducted by the Bay Area Stormwater Management Agencies Association (BASMAA). The evaluation concluded that if visual assessments were conducted consistent with the protocol, the method could reliably establish baseline trash levels and detect progress in reducing trash in MS4 discharges over time.

¹⁰ See Enclosure, *Recommended Trash Assessment Minimum Level of Effort*.

Visual Trash Assessment Approach to further assist in the assessment of trash within their jurisdictions.

This Order is issued to implement federal law. The water quality objective established by the Trash Provisions serves as a water quality standard federally mandated under Clean Water Act section 303(c) and the federal regulations. (33 U.S.C. § 1312, 40 C.F.R. § 131.) This water quality standard was specifically approved by U.S. EPA following adoption by the State Water Board and approval by the Office of Administrative Law. This Order requests information necessary for MS4s to plan for implementation of actions to achieve the water quality standard for trash. Further, achievement of the water quality standard pursuant to the Trash Provisions will:

- (1) allow water bodies impaired by trash to be removed from the Clean Water Act section 303(d) list, or
- (2) prevent water bodies subsequently determined to be impaired by trash from being placed on the list, obviating the need for the development of a total maximum daily load (TMDL) for trash for each of those water bodies. (33 U.S.C. § 1313(d); 40 C.F.R. § 130.7.)

The requirements of this Order serve as compliance actions that would otherwise be required consistent with any waste load allocations in a trash TMDL. (40 C.F.R. § 122.44, subd. (d)(1)(vii)(B).) Phase II MS4 non-traditional permittees have discretion in selecting the specific compliance actions to meet the requirements of the Order.

The implementation plan required by this Order in clause 4 below is subject to approval by the appropriate Regional Water Board's Executive Officer.¹¹

Pursuant to California Water Code section 13383, **IT IS HEREBY ORDERED THAT**, as a Permittee of the statewide Phase II MS4 permit, you shall:

1. By **September 1, 2017**, submit electronically via SMARTS:¹²
 - a. A letter to the State Water Board identifying the permittee's selected compliance option as defined in this Order:¹³
 - b. A preliminary jurisdictional map(s) identifying the following:
 - i. Land uses and locations discharging substantial amounts of trash to the MS4(s); and
 - ii. The corresponding MS4 network that conveys discharges from the land uses and locations.

¹¹ Chapter IV.A.5.a.(1)B of ISWEBE or Chapter III.L.4.a.(1)B.

¹² SMARTS stands for Storm Water Multiple Application and Report Tracking System and is an online database for dischargers to electronically file their permit documents. It can be accessed at: <https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.xhtml>

¹³ Selection of Track 1 is appropriate only if a non-traditional permittee determines that all areas within its jurisdiction generating substantial amounts of trash fit within the definition of Priority Land Uses.

2. By **December 1, 2018**, submit electronically via SMARTS the following:
 - a. An updated jurisdictional map(s) identifying the following:
 - i. All land uses and locations discharging substantial amounts of trash to the MS4 network;
 - ii. The corresponding MS4 network;
 - iii. Proposed locations of all certified Full Capture Systems and where any combination of controls will be implemented that will achieve Full Capture Equivalency;
 - iv. Trash levels, using the methodology described in the attached recommended Visual Trash Assessment Approach or other equivalent trash assessment methodology, for all land uses and locations discharging substantial amounts of trash to the MS4 network; and
 - b. An Implementation Plan that includes the following:
 - i. The rationale for how the selected combination of controls will achieve Full Capture System Equivalency;
 - ii. The rationale for how Full Capture System Equivalency will be demonstrated; and
 - iii. If using a methodology other than the attached recommended Visual Trash Assessment Approach to determine (1) land uses and locations that discharge substantial amounts of trash, and (2) trash levels, a description of the methodology used and a justification of how the alternative methodology is equivalent to the recommended Visual Trash Assessment Approach.
3. Ensure that all electronic submittals, including supporting documentation, required by this Order are signed, certified and submitted to SMARTS by the Legally Responsible Person.
4. Ensure that any person signing a letter, implementation plan, and supporting documentation required by this Order makes the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Failure to comply with this Order, or falsifying any information provided therein, may result in enforcement action, including civil liabilities for late or inadequate reports, consistent with Water Code section 13385.

Questions regarding this Order or any requests for assistance should be directed to Mr. Leo Cosentini at (916) 341-5524 or leo.cosentini@waterboards.ca.gov.

Sincerely,

/s/

Thomas Howard
Executive Director

Enclosures (3): Trash Policy Implementation Procedure Flowchart
Trash Provisions Glossary
Recommended Trash Assessment Minimum Level of Effort

cc: [via email]

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