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 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 Provisions[1] 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 of the State. For Phase II MS4 permittees that have regulatory authority over Priority Land Uses,*[3] the Trash Provisions require implementation of the prohibition through requirements incorporated into the Phase II MS4 Permit and/or through monitoring and reporting orders, by June 2, 2017. 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 required through this Order in accordance with Water Code section 13383, as specified in the Trash Provisions,[4] 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 State Water Board and appropriate Regional Water Quality Control Board (Regional Water Board).

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

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[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 No. 2013-0001-DWQ, NPDES No. CAS000004.

[3] All terms marked with an asterisk '*' are defined in Enclosure, *Trash Provisions 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.

necessary for municipal permittees to plan for implementation of actions to achieve the water quality standard for trash. Further, the water quality standard expected to be achieved pursuant to the Trash Provisions may allow each water body impaired by trash and already on the Clean Water Act section 303(d) list to be removed from the list, or each water body subsequently determined to be impaired by trash to not be 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.) In those cases, the specific actions that will be proposed by the municipal permittees in response to this Order substitute for some or all of the actions that would otherwise be required consistent with waste load allocations in a trash TMDL. (40 C.F.R. § 122.44, subd. (d)(1)(vii)(B).) This Order nevertheless allows municipal permittees to select specific proposed actions to meet the federal requirements.

Non-municipal MS4 permittees, referred to as non-traditional MS4 permittees, are not subject to this Order. Non-traditional MS4 permittees generally do not have significant areas of Priority Land Uses under their authority. Therefore, this Order is not being issued to non-traditional MS4 permittees. Non-traditional MS4 permittees that generate substantial amounts of trash[5] may be issued a separate Water Code section 13383 Order with requirements for Priority Land Uses and/or any additional specific land uses within their jurisdiction.

The Trash Provision requires Phase II MS4 permittees with regulatory authority over Priority Land Uses to select a method of compliance with the trash prohibition. Through this Order, the State Water Board requires Phase II traditional MS4 permittees to determine and report their selection of either the following Track 1 or Track 2 compliance methods:[6]

1. **Track 1:** Install, operate, and maintain Full Capture Systems* for the storm drain network that capture runoff from the Priority Land Uses in their jurisdiction.

   Phase II MS4 permittees that select the Track 1 compliance method may discover that there are locations within their storm drain network where full capture systems cannot be implemented, or are better implemented within another land use area. The Trash Provisions allow a Phase II MS4 permittee with regulatory authority over Priority Land Uses to request, from the appropriate Regional Water Board Executive Officer, to substitute one or more Priority Land Uses with equivalent alternate land uses*[7] within the MS4 permittee's jurisdiction.

2. **Track 2:** Install, operate, and maintain any combination of Full Capture Systems, Multi-Benefit Projects,* other Treatment Controls,* and/or Institutional Controls* within either the jurisdiction of the MS4 permittee or the jurisdiction of the MS4 permittee and contiguous MS4 permittees. The MS4 permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. Permittees choosing Track 2 must demonstrate that the approach[8] will achieve Full Capture System Equivalency.*

[5] Chapter IV.A.3.d of ISWEBE Plan or Chapter III.L.2.d of the Ocean Plan.

[6] Chapter IV.A.3.a. of the ISWEBE Plan and Chapter III.L.2.a. of the Ocean Plan.

[7] See definition of Priority Land Uses in enclosed *Trash Provisions Glossary*.

[8] The MS4 permittee may determine which controls to implement to achieve compliance with the Full Capture System Equivalency. It is, however, the State Water Board's expectation that the MS4 permittee will elect to install Full Capture Systems where such installation is not cost-prohibitive. (Chapter IV.A.3.a.(2) of the ISWEBE Plan and Chapter III.L.2.a.(2) of the Ocean Plan).

To ensure the compliance method selection is completed accurately, the State Water Board, through this Order, requires the traditional Phase II MS4 permittees to complete and submit the following:

1. **Jurisdictional Maps.** Traditional Phase II MS4 permittees must develop jurisdictional maps identifying Priority Land Use areas, the corresponding storm drain network and associated drainage areas, and proposed locations for certified Full Capture System installations.

   Permittees selecting the Track 1 compliance method and are proposing alternative land uses shall identify the alternative land uses on the jurisdictional map and the corresponding priority land uses being substituted.

   Permittees selecting the Track 2 compliance method may determine the locations or land uses within their jurisdictions to implement any combination of controls that achieve Full Capture System Equivalency. Therefore, the permittee shall also identify on the jurisdictional maps the selected locations or land uses where a combination of controls, which are identified in Track 2 above, will be implemented to achieve Full Capture System Equivalency.

   The State Water Board recognizes that field surveys may be necessary to ensure the accuracy of jurisdictional map development. Therefore, this Order requires Phase II MS4 permittees to provide preliminary jurisdictional maps within three months from the date of this Order, and final jurisdictional maps within eighteen months from the date of this Order.

   These jurisdictional maps will assist review of the compliance method selection by the State Water Board and Regional Water Boards and also support development of appropriate permit requirements in a future Phase II MS4 permit reissuance.

2. **Trash Assessments.** Traditional Phase II MS4 permittees that elect the Track 2 compliance method must conduct and submit trash assessments to identify existing levels of trash generation.

   Through this Order, the State Water Board directs Traditional Phase II MS4 permittees selecting Track 2, at a minimum, to conduct a trash assessment of the Priority Land Use areas, even if they subsequently select other locations or land uses within their jurisdiction to implement any combination of controls that meet Full Capture System Equivalency. If proposing to select locations or land uses other than Priority Land Uses, the permittee must also assess trash levels at those locations or land uses and provide a justification demonstrating that the selected locations or land uses generate trash at rates that are equivalent to or greater than the Priority Land Uses. State or Regional Water Board approval may be based on the proposed trash assessments and corresponding justification.[9]

   The Trash Provisions provide two example trash assessment approaches for permittees to demonstrate Full Capture System Equivalency when a permittee selects the Track 2 compliance method. Phase II MS4 permittees may use alternative methods to demonstrate

[9] In accordance with Permitting Authority's discretional authority under Chapter IV.A.3.d. of the ISWEBE Plan or Chapter III.L.2.d. of the Ocean Plan.

Full Capture System Equivalency. One alternative method currently implemented in the San Francisco Bay region is the Visual Trash Assessment Approach, an accepted assessment approach based on on-land visual trash assessments.[10] A description of the Visual Trash Assessment Approach[11] is enclosed in this Order and may be used by Phase II MS4 permittees to meet the requirement for a baseline assessment.

Information resulting from the trash assessments is necessary to develop appropriate requirements and provisions in the future Phase II MS4 Permit reissuance, including:
(1) Establishing a baseline for compliance tracking and determinations,
(2) Establishing interim milestones to demonstrate progress towards 100 percent compliance with the Trash Provisions within 10 years of the effective date of the implementing permit,[12]
(3) Evaluating the permittees' planned implementation of Full Capture System Equivalency, and in
(4) Approving the implementation plan.

Permittees that select the Track 1 compliance method through implementation of certified Full Capture Systems in all storm drains that capture runoff from all Priority Land Use areas are not required to conduct trash assessments. Through the Track 1 compliance method, the State Water Board provides a streamlined compliance pathway with annual progress reporting of Full Capture System installation.

3. **Implementation Plan.** The implementation plan required by this Order in clause 3 below is subject to approval by the State Water Board Executive Director and/or the corresponding Regional Water Board Executive Officer.[13] A request for an equivalent alternative land use identified on the jurisdictional map, section 1 above, must be submitted within the implementation plan and approved by the Regional Water Board Executive Officer prior to installation and implementation of certified Full Capture Systems or Full Capture System Equivalency trash controls.

[10] The State Water Board-funded an evaluation (through Proposition 84 grant funds) of the on-land visual trash assessment method 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.

[11] See Enclosure, *Recommended Trash Assessment Minimum Level of Effort.*

[12] Chapter IV.A.5.a.(2) and (3) of ISWEBE Plan or Chapter III.L.4.a.(2) and (3) of the Ocean Plan.

[13] Chapter IV.A.5.a.(1)B of the ISWEBE Plan or Chapter III.L.4.a.(1)B of the Ocean Plan

Pursuant to 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:[14]
    a. A letter to State Water Board identifying the permittee's selected compliance option, (Track 1 or Track 2) as defined in this Order; and

    b. A preliminary jurisdictional map(s) identifying the following:

        i. Priority Land Use areas discharging to the storm drain network ; and
        ii. The corresponding storm drain network that receives discharges from Priority Land Use areas.

2. Permittees Selecting Track 1: By **December 1, 2018**, submit electronically via SMARTS, an updated jurisdictional map(s) identifying the following:

    i. All Priority Land Use areas discharging to the storm drain network;
    ii. The corresponding storm drain network;
    iii. Proposed locations of all certified Full Capture Systems[15] and,
    iv. Proposed equivalent alternative land uses, documentation demonstrating that the substitution of equivalent alternative land uses has been approved by the appropriate Regional Water Board Executive Officer, and corresponding storm drainage network, if applicable.

3. Permittees Selecting Track 2: By **December 1, 2018,** submit electronically via SMARTS, the following:

    i. An updated jurisdictional map(s) identifying the following:
        a) All Priority Land Use areas and selected locations and land uses, other than the Priority Land Uses area, discharging to the storm drain network;
        b) The corresponding storm drain network; and
        c) Proposed locations of all certified Full Capture Systems and where any combination of controls will be implemented that will achieve Full Capture System Equivalency;
        d) Trash levels, using the methodology described in the attached recommended Visual Trash Assessment Approach or other equivalent trash assessment methodology, for all Priority Land Uses, and for other selected locations or land uses within the MS4s jurisdiction if proposing to implement any combination of controls in locations other than Priority Land Uses; **and**

[14] 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

[15] A list of Certified Full Capture Systems is located at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/municipal.shtml

ii. An Implementation Plan that includes the following:

a) The rationale for how the selected combination of controls will achieve Full Capture System Equivalency;
b) The rationale for how Full Capture System Equivalency will be demonstrated;
c) If using a methodology other than the attached recommended Visual Trash Assessment Approach to determine trash levels, a description of the methodology used and rationale of how the alternative methodology is equivalent to the recommended Visual Trash Assessment Approach; and
d) If proposing to select locations or land uses other than Priority Land Uses, a rationale demonstrating that the alternative land uses generate trash at rates that are equivalent to or greater than the Priority Land Uses.

The Legally Responsible Person identified in SMARTS must sign and certify all submittals required by this Order, with 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 of the Division of Water Quality 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: [see next page]

cc: [via email]

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