



City of San Bernardino

Office of the City Manager | Andrea M. Miller, City Manager

August 30, 2017

Sent Via Email: santaana@waterboards.ca.gov

Hope Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

**RE: CITY OF SAN BERNARDINO PHASE I MS4 TO SUBMIT METHOD TO
COMPLY WITH TRASH PROVISIONS 13383 ORDER**

Dear Ms. Smythe:

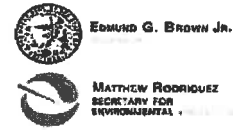
In response to the letter sent by the Santa Ana Regional Water Quality Control Board (SARWQCB) on June 2, 2017, requesting the City of San Bernardino to submit method of compliance for trash prohibition for the Phase I MS4; please be advised the City of San Bernardino has elected to comply by following Track 1 method of compliance as it is defined in the Order.

"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."

If you should have any questions, please feel free to contact Ken Watson, NPDES Coordinator at Watson_Ke@sbcity.org.

Sincerely,

Andrea Miller
City Manager



Santa Ana Regional Water Quality Control Board

June 2, 2017

Mark Scott
City Manager
City of San Bernardino
300 North "D" Street, 4th Floor
San Bernardino, CA 92418

WATER CODE SECTION 13383 ORDER TO SUBMIT METHOD TO COMPLY WITH STATEWIDE TRASH PROVISIONS; REQUIREMENTS FOR PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) CO-PERMITTEES WITHIN THE JURISDICTION OF THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

Dear Mr. Scott,

The Santa Ana Regional Water Quality Control Board (Santa Ana Regional Board) is charged with the protection of beneficial uses of surface water in parts of Orange, Riverside, and San Bernardino counties. On April 7, 2015, the State Water Resources Control Board (State Water Board) adopted statewide Trash Provisions¹ to address the impacts trash has on the beneficial uses of surface waters. Throughout the state, trash is typically generated on land and transported to surface water, predominantly through municipal separate storm sewer system (MS4) discharges. Within the jurisdiction of the Santa Ana Regional Board, these discharges from San Bernardino County's Phase I MS4s are regulated through the San Bernardino County MS4 Permit (Order No. R8-2010-0036 NPDES No. CAS618036) 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 I Co-permittees that have regulatory authority over Priority Land Uses,² the Trash Provisions require implementation of the prohibition through requirements incorporated into Phase I MS4 Permits and/or through monitoring and

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 Defined in Enclosure, *Trash Provision Glossary*.

reporting orders, by **June 2, 2017**.³ Since the Trash Provisions have not yet been implemented through the San Bernardino County MS4 Permit, the Santa Ana Regional Board is implementing the initial steps of the Trash Provisions 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 that are submitted in response to this Order are subject to approval by the Executive Officer.

The Trash Provisions require Phase I Co-permittees that have regulatory authority over Priority Land Uses to select either Track 1 or Track 2 as a method of compliance with the trash prohibition. Each method is summarized below. Through this Order, the Santa Ana Regional Board requires each Co-permittee to determine and report their selection:⁵

1. Track 1: Install, operate, and maintain Full Capture Systems⁶ for all storm drains that capture runoff from the Priority Land Uses in their jurisdictions; or
2. Track 2: Install, operate, and maintain any combination of Full Capture Systems, Multi-Benefit Projects⁷, other Treatment Controls⁷, and/or Institutional Controls⁷ within either the jurisdiction of the Co-permittee or within the jurisdiction of the Co-permittee and contiguous MS4 permittees. The Co-permittee may determine the locations or land uses within its jurisdiction to implement any combination of controls. The Co-permittee shall demonstrate that such combination achieves Full Capture System Equivalency⁷. The Co-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 Co-permittee will elect to install Full Capture Systems where such installation is not cost-prohibitive.

To ensure that each Co-permittee's selection is completed accurately, the Santa Ana Regional Board recommends each Co-permittee develop maps identifying Priority Land Use areas within their jurisdiction, the corresponding storm drain network and associated drainage areas, and proposed locations for certified Full Capture System installations. Co-permittees that select the Track 2 method are encouraged to identify on the maps the locations or land uses where a combination of controls, which are identified in Track 2 above, will be implemented to achieve Full Capture Systems Equivalency.

Co-permittees that select Track 1 may discover that there are locations where certified Full Capture Systems cannot be implemented, or are better implemented within another land use area. The Trash Provisions allow a Co-permittee to request substitution of one or more Priority Land Uses with alternate land uses within their jurisdiction.

³ If you believe that your agency is not subject to the Trash Provisions because your agency does not have regulatory authority over any Priority Land Use, please contact the Santa Ana Regional Board staff member identified below.

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

⁵ Chapter IV.A.3.a of the ISWEBE Plan and Chapter III.L.2.a of the Ocean Plan.

⁶ Defined in Enclosure, *Trash Provision Glossary*.

The Trash Provisions describe two examples of assessment approaches for Co-permittees to demonstrate Full Capture System Equivalency when they select the Track 2 compliance method. Co-permittees may use alternative methods to demonstrate Full Capture System Equivalency. One alternative method currently implemented in the San Francisco Bay region relies heavily on the use of on-land visual trash assessments. A description of the Visual Trash Assessment Approach⁷ is enclosed in this Order and may be used by Co-permittees to meet the requirement for a baseline trash assessment.

Co-permittees choosing Track 2 may determine the locations or land uses within their jurisdictions to implement any combination of controls that achieve Full Capture System Equivalency. The plan to implement these controls is subject to approval by the Santa Ana Regional Board Executive Officer.⁸

This Order directs MS4 Co-permittees selecting Track 2 to first assess trash levels of Priority Land Uses. Co-permittees selecting Track 2 must, at a minimum, assess 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 Co-permittees must 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.

The Trash Provisions provide the Santa Ana Regional Board with the authority to determine that specific land uses or locations generate substantial amounts of trash in addition to the priority land uses.⁹ In the event the Santa Ana Regional Board makes that determination, the Co-permittees will be required to comply with the requirements of the Trash Provisions with respect to such land uses or locations.

Although not yet incorporated into the San Bernardino County MS4 Permit, the Trash Provisions require that minimum Monitoring and Reporting requirements be implemented through an MS4 Permit. The Santa Ana Regional Board staff will recommend including monitoring and reporting requirements in the next iteration of the San Bernardino County MS4 Permit which are at least as stringent as those in the Trash Provisions below:

1. Co-permittees that elect to comply with Track 1 shall provide a report to the Santa Ana Regional Board demonstrating installation, operation, maintenance, and the Geographic Information System (GIS) mapped location and drainage area served by its Full Capture Systems on an annual basis.¹⁰

⁷ See Enclosure, *Recommended Trash Assessment Minimum Level of Effort*.

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

⁹ Chapter IV.A.3.d. of ISWEBE Plan or Chapter III.L.2.d of the Ocean Plan.

¹⁰ Chapter IV.A.6.a. of ISWEBE Plan or Chapter III.L.5.a. of the Ocean Plan.

2. Co-permittees that elect to comply with Track 2 shall develop and implement monitoring plans that demonstrate the effectiveness of the Full Capture Systems, Multi-Benefit Projects, other Treatment Controls, and/or Institutional Controls and compliance with Full Capture System Equivalency¹¹. Monitoring reports shall be provided to the Santa Ana Regional Board on an annual basis, and shall include GIS mapped locations and drainage area served for each of the Full Capture Systems, Multi-Benefit Projects, other Treatment Controls, and/or Institutional Controls installed or utilized by the Co-permittee. In developing the monitoring reports the Co-permittee should consider the following questions:
 - a. What type of and how many Treatment Controls, Institutional Controls, and/or Multi-Benefit Projects have been used and in what locations?
 - b. How many Full Capture Systems have been installed (if any), in what locations have they been installed, and what is the individual and cumulative area served by them?
 - c. What is the effectiveness of the total combination of Treatment Controls, Institutional Controls, and Multi-Benefit Projects employed by the Co-permittee?
 - d. Has the amount of Trash discharged from the MS4 decreased from the previous year? If so, by how much? If not, explain why.
 - e. Has the amount of Trash in the MS4's receiving water(s) decreased from the previous year? If so, by how much? If not, explain why.
3. Co-permittees will be required to demonstrate achievement of interim milestones such as average load reductions of 10% per year or other progress to full implementation. Full compliance with the Trash Provisions shall occur within ten (10) years of the effective date of the first implementing permit except as specified in Chapter III.L.4.a.5 of Ocean Plan and Chapter IV.A.5.a.5 of the ISWEBE Plan.¹² In no case may the final compliance date be later than fifteen (15) years from the effective date of the Trash Provisions (i.e. December 2, 2030).¹³

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

¹¹ Chapter IV.A.6.b. of ISWEBE Plan or Chapter III.L.5.b. of the Ocean Plan.

¹² The exception provides that, where the permitting agency, such as the Santa Ana Regional Board, makes a determination that a specific land use generates a substantial amount of Trash, the permitting agency has discretion to determine the time schedule for full compliance. In no case may the final compliance date be later than ten (10) years from the determination.

¹³ Chapter IV.A.5.a.(2) and (3) of ISWEBE Plan or Chapter III.L.4.a.(2) and (3) of the Ocean Plan.

adoption by the State Water Board and approval by the Office of Administrative Law. This Order requests information 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 any 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.

The implementation plan required by this Order in clause 2 below is subject to approval by the Santa Ana Regional Board's Executive Officer. A request for an equivalent alternative land use must be approved by the Santa Ana Regional Board's Executive Officer prior to installation and implementation of certified Full Capture Systems or Full Capture System Equivalency trash controls.

California Water Code Section 13383(a) states the following:

"The state board or a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, as authorized by Section 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters, any person who introduces pollutants into a publicly owned treatment works, any person who owns or operates, or proposes to own or operate, a publicly owned treatment works or other treatment works treating domestic sewage, or any person who uses or disposes, or proposes to use or dispose, of sewage sludge."

The reporting requirements of this Order are necessary to comply with the Trash Provisions in the ISWEBE Plan and the Ocean Plan. Pursuant to California Water Code section 13383, it is hereby ordered that the Co-permittee shall submit electronically the following items:

1. By **August 31, 2017**, submit electronically a letter to the Santa Ana Regional Board identifying the Co-permittee's selected method of compliance, (Track 1 or Track 2) as defined previously in this Order.
2. By **August 31, 2017**, submit electronically a letter to the Santa Ana Regional Board identifying the Co-permittee's selected method of compliance, (Track 1 or Track 2) as defined previously in this Order.

3. **Track 2 Permittees Only: By November 30, 2018** submit electronically to the Santa Ana Regional Board an implementation plan, subject to approval by the Executive Officer, that describes the following:
 - a. The combination of controls selected and the rationale for the selection;
 - b. How the combination of controls is designed to achieve Full Capture System Equivalency;
 - c. How Full Capture System Equivalency will be demonstrated;
 - d. If using a methodology other than the attached recommended Visual Trash Assessment Approach to determine trash levels, a description of the methodology used; and,
 - e. If proposing to select locations or land uses other than Priority Land Uses, a justification demonstrating that the alternative land uses generate trash at rates that are equivalent to or greater than the Priority Land Uses.
4. Sign, certify, and submit all letters and the implementation plan with supporting documentation required by this Order electronically to santaana@waterboards.ca.gov.
5. 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."

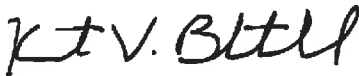
The issuance of this Order is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15262, Chapter 3, Title 14 of the California Code of Regulations because this Order only requires feasibility or planning studies for possible future actions which the Santa Ana Regional Board has not approved, adopted, or funded. The Santa Ana Regional Board did consider environmental factors associated with this Order and finds that the actions required in this Order will ensure future protection of water quality and those associated beneficial uses the Santa Ana Regional Board is charged to protect.

Any person aggrieved by this action of the Santa Ana Regional Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found at the following webpage or will be provided upon request.: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

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 Keith L. Elliott at (951) 782-4925 or keith.elliott@waterboards.ca.gov.

Sincerely,



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

Enclosures (2): 1. Trash Provisions Glossary
2. State Water Resources Control Board Recommended Trash Assessment
Minimum Level of Effort

cc: Co-permittee NPDES Coordinators by e-mail