



RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

December 14, 2016

Sent via email: sandiego@waterboards.ca.gov

Ms. Christina Arias
RWQCB – San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Dear Ms. Arias:

Re: Comment – Tentative Order
No. R9-2016-0205 (786088 C. Arias)

The Riverside County Flood Control and Water Conservation District (District) appreciates this opportunity to provide comment on the draft investigative order to address State Water Board Resolution No. 2015-0019 (the Trash Amendments), Tentative Order No. R9-2016-0205 (Draft IO). Comments set forth herein are specific to the District. The County of Riverside and the Cities of Murrieta, Temecula, and Wildomar (the "upper Santa Margarita Co-Permittees") will submit a separate joint comment letter. Without waiving the District's position that it should not be included within the Draft IO, the District concurs with each of the comments of the upper Santa Margarita Co-Permittees, and incorporates those comments herein by reference. The City of Menifee will also submit a separate comment letter to address its unique concerns. The San Diego Regional Water Quality Control Board's (Regional Board) careful consideration of each of these comments is appreciated.

The District's comments pertain to Draft IO Section 4, Persons Responsible for the Discharge of Trash, and Section 13, Water Quality Improvement Plans (WQIPs). Specifically, we request the following modifications:

- Remove the District as a "Person Responsible for the Discharge of Trash" under Finding 4 of the Draft IO, as the District does not have regulatory authority over priority land uses and modify the language of Provision A.1 to set forth that "Each MS4 permittee *listed in Finding 4* must, etc."; and
- Revise Draft IO Finding 13 to allow flexibility for Co-Permittees to address the Trash Amendments either within a WQIP or in their respective Jurisdictional Runoff Management Programs (JRMPs).

These modifications are requested to ensure that, upon adoption, the requirements of the Draft IO are consistent with the State Board's Trash Amendments.

COMMENT # 1 – REMOVE THE DISTRICT AS A "PERSON RESPONSIBLE FOR THE DISCHARGE OF TRASH" UNDER FINDING 4 OF THE DRAFT IO, AS THE DISTRICT DOES NOT HAVE REGULATORY AUTHORITY OVER PRIORITY LAND USES

Chapters IV.A.3.a and IV.A.5.a of the Trash Amendments require that in implementing the Trash Amendments, Regional Water Boards must place requirements into NPDES permits for "MS4 permittees *with regulatory authority over PRIORITY LAND USES*" (emphasis added). This language highlights the State Board's decision to implement a land-use based approach toward addressing trash, and its recognition that Co-Permittees can vary significantly in their structure and function. Vital to the Amendments' land-use based approach is the need for land use authority to condition development projects and require retrofit of street-level drainage structures to capture trash (i.e., implement Track 1 controls), and utilize police powers to create trash control ordinances, inspect property, and enforce those ordinances (i.e., implement Track 2 controls). The Riverside County Flood Control and Water Conservation District Act (Act 6642 of State Legislature) does not afford it with land use authority or police powers to control new or existing development. Additionally, the District does not maintain street-level drainage and flow collection structures, such as street catch basins, which most typically collect trash from high priority land use areas.

Therefore, to recognize the District's unique function and to remain consistent with the Trash Amendments, we recommend that the Draft IO remove the District from Draft IO Finding 4 and modify Provision A. 1 to read as follows (recommended revision in *italics*):

1. **Written Notices.** Each MS4 permittee *listed in Finding 4* must submit to the San Diego Regional Water Quality Control Board, a written notice stating whether the MS4 permittee will implement Track 1 or Track 2 to comply with the trash discharge prohibition in the Ocean Plan and ISWEBE Plan.

COMMENT # 2 - REVISE DRAFT IO FINDING 13 TO ALLOW FLEXIBILITY FOR CO-PERMITTEES TO ADDRESS THE TRASH AMENDMENTS WITHIN THE WQIP, OR RESPECTIVE JRMPS

The upper Santa Margarita Co-Permittee's comment letter, as filed concurrently on this matter, sets forth in Comment #1 how the Regional Board's proposal to require that Co-Permittees address trash in WQIPs would be inconsistent with the intent of the State Board in adopting the Trash Amendments, and the wrong policy choice for addressing trash. The District concurs with each of these comments. However, while the District submits that it is not a jurisdiction "with regulatory authority over priority land uses" and thus should not be covered under the Draft IO, because the District is a Co-Permittee under the Regional MS4 Permit and is subject to WQIP requirements under that permit, it has specific concerns regarding Draft IO Finding 13.

Regional MS4 Permit Provision B.3.a requires that any priority water quality conditions listed in the WQIP include watershed-based interim and final goals; if the Trash Amendment requirements are incorporated into a WQIP, such watershed-based goals would need to be developed for trash. This is of concern to the District, because the Regional MS4 Permit requires periodic assessment of attainment of interim and final watershed goals, and adaptation of strategies as a watershed to meet those goals, when necessary. These requirements could result in the District having to implement such strategies when, as previously noted, the Trash Amendments are not applicable to the District. Moreover, the

District is concerned that pursuant to Trash Amendments Chapters IV.A.3.a(1)-(2), compliance with the trash discharge prohibition can only be achieved through implementation of Track 1 or 2. If watershed assessments revealed that more rigorous watershed strategies were necessary to meet interim or final watershed goals for trash, the District might be required to implement strategies beyond its authority, but without being afforded compliance with the Trash Amendment's discharge prohibition.

The Trash Amendments do not require development of watershed goals for trash. Therefore, because development of such watershed goals would exceed Trash Amendment requirements, and because the intent of the State Board in adopting the Trash Amendments was that they be addressed at the jurisdictional level, and to avoid the regulatory complexity and confusion noted above, the District joins with the upper Santa Margarita Co-Permittees in requesting that the Regional Board revise the last sentence of Draft IO Finding 13 as follows:

Through the issuance of this Order pursuant to Water Code section 13267, the San Diego Water Board intends the MS4 permittees *either* to incorporate the requirements of the Trash Amendments into the Water Quality Improvement Plans *or into their Jurisdictional Runoff Management Plans* after renewal of the Regional MS4 Permit.

The District is committed to water quality in the Santa Margarita Watershed Management Area, and looks forward to the continued collaboration with Regional Board staff. Thank you for your consideration of these comments. If you have any questions, please contact me at smckibbi@rcflood.org or 951.955.1273.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stuart E. Mckibbin". The signature is written in a cursive, somewhat stylized font.

STUART E. MCKIBBIN
Chief of Watershed Protection Division

SEB:cw
P8/209567