



GAIL FARBER, Director

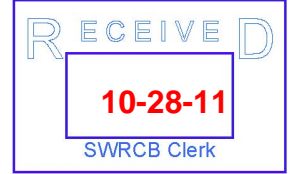
COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

Public Comment
Dominguez Channel/LA/Long Beach
Waters Toxic Pollutants TMDL
Deadline: 10/28/11 by 12:00 noon



ADDRESS P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE

REFER TO FILE: WM-9

October 27, 2011

Ms Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Dear Ms Townsend:

COMMENT LETTER – DOMINGUEZ CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS TOXIC POLLUTANTS TOTAL MAXIMUM DAILY LOAD

Thank you for the opportunity to comment on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Load. Enclosed are comments submitted on behalf of the Los Angeles County Flood Control District.

We look forward to your consideration of our comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

EI:jtz

P:\wmpub\Secretarial\2011 Documents\Letters\LACFCD DC-Harbors Toxics TMDL.docx\C11350

Enc.

**COMMENTS OF LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ON THE
PROPOSED TOTAL MAXIMUM DAILY LOAD FOR TOXIC POLLUTANTS IN DOMINGUEZ
CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS**

1. The Los Angeles County Flood Control District Cannot be Named a Responsible Party for the Dominguez Channel and the Greater Los Angeles and Long Beach Harbors as Such Action Would Conflict with the Amended Consent Decree Entered by the Federal District Court

The designation of responsible parties under the proposed TMDL for Toxic Pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor conflicts with an Amended Consent Decree entered by the federal district court in Los Angeles. Pursuant to the terms of the Amended Consent Decree, the proposed TMDL should be modified to delete the Los Angeles County Flood Control District (LACFCD) as a responsible party for the Dominguez Channel, including the Torrance Lateral and Dominguez Channel Estuary, and the Los Angeles and Long Beach Harbors.

In 1999 the United States and the State of California settled a lawsuit with local governmental entities over the environmental condition of the Dominguez Channel and the Los Angeles and Long Beach Harbors. The lawsuit was brought by the United States on behalf of the United States Environmental Protection Agency, the Department of the Interior and the National Oceanic and Atmospheric Agency, and by the State of California on behalf of the State Lands Commission, the Department of Fish & Game, the Department of Parks and Recreation, the Department of Toxic Substances Control and the Regional Board.

The settlement is set forth in an Amended Consent Decree entered by the federal district court on August 24, 1999. The LACFCD was one of the parties to this settlement. The Regional Board also was a party, with the Executive Officer signing the Amended Consent Decree on behalf of the Regional Board.

The Amended Consent Decree resolved all liability of the settling local governmental entities for all natural resource damages with respect to the "Montrose NRD Area" and all response costs incurred in connection with the "Montrose NPL Site" (Amended Consent Decree, p. 19). The Montrose NRD Area was defined to include the Los Angeles and Long Beach Harbors (Amended Consent Decree, ¶ 6.J). The Montrose NPL Site was defined to include the Torrance Lateral, the Dominguez Channel from Laguna Dominguez to the Consolidated Slip, and that portion of the Los Angeles Harbor known as the Consolidated Slip (Amended Consent Decree, ¶ 6.I.).

Under the Amended Consent Decree, the Regional Board explicitly agreed that, except for certain circumstances not applicable here, the Regional Board would not take any civil or administrative action against any of the settling local governmental entities, including the LACFCD, for any civil or administrative liability for natural resource damages (Amended Consent Decree, ¶ 11). Natural resource damages were defined to include loss of use, restoration costs and resource replacement costs, among other costs (Amended Consent Decree, ¶ 6.L).

The Regional Board also agreed that, except for certain circumstances not applicable here, the Regional Board would not take any civil or administrative action against any of the settling local governmental entities, including the LACFCD, to compel response activities or to recover response costs in connection with the Montrose NPL site (Amended Consent Decree, ¶ 17). Response costs were defined to include all costs of response as provided in 42 U.S.C § 9607(a)(1-4)(A) and as defined by 42 U.S.C § 9601(25). (Amended Consent Decree, ¶ 6.M). These response activities and costs included activities to remove hazardous substances from the environment, to monitor, assess, and evaluate the release or threat of release of hazardous substances (see 42 U.S.C. §9601(23)), and actions consistent with a permanent remedy such as diversions, dredging and excavations (see 42 U.S.C. §9601(24)).

The proposed TMDL's assignment of responsibility to the LACFCD for the Dominguez Channel and the Los Angeles and Long Beach Harbors violates this Amended Consent Decree. The obligations imposed by the proposed TMDL, such as preparing monitoring plans and implementation plans, monitoring, dredging of sediments and diverting stormwater, clearly fall within the definition of natural resource damages and response activities under the Amended Consent Decree. (See Amended Consent Decree, ¶¶ 6.L and M.) By naming the LACFCD as a responsible party for the Dominguez Channel and the Greater Los Angeles and Long Beach Harbors, the Regional Board is requiring the LACFCD to take these or related actions. Under the Amended Consent Decree, however, the Regional Board has explicitly agreed that it will not require the LACFCD to take these and other actions (Amended Consent Decree, ¶¶ 11 and 17).

In response to comments, the Regional Board staff contended that there was no conflict between the Consent Decree and the proposed TMDL, that the Consent Decree does not preclude Regional Board staff from adopting the TMDL, and that the TMDL is not a removal or remedial action under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. Regional Board staff recognized, however, that the TMDL forms the basis for further administrative actions that will address the pollutants that are the subject of the TMDL, including administrative action through amendment of the Los Angeles County MS4 permit.

The LACFCD disagrees with the Regional Board staff's assertion that the TMDL is not covered by the Consent Decree. The Consent Decree explicitly states that the Regional Board will not take any civil or administrative action against any of the settling local governmental entities, including the LACFCD for natural resources damages or to compel response activities (Amended Consent Decree, ¶¶ 11 and 17). The TMDL is an administrative action relating to natural resources damages and, as recognized in the response to comments, is an administrative action that is the foundation for future administrative actions.

Moreover, even if the TMDL is viewed as not being an administrative action in violation of the Consent Decree, implementation of the TMDL through Los Angeles County MS4 permit definitely would be such an administrative act. It does not benefit to any party to set forth in the TMDL an administrative approach to remediation of the harbor sediments and waters, including assignment of wasteload allocations, where that approach and assignment of WLAs cannot be implemented without violating the Consent Decree. If the pollutants in the

harbor sediments and waters are to be addressed pursuant to this TMDL, then the TMDL should set forth an approach and assign WLAs that realistically can be implemented. The TMDL should be consistent with the Consent Decree, not contrary to it.

Accordingly, the proposed TMDL must be modified to delete the LACFCD as a responsible party for the Dominguez Channel, including the Torrance Lateral and Dominguez Channel Estuary, and the Los Angeles and Long Beach Harbors. Under the Amended Consent Decree, the Regional Board has agreed that it will not compel response activities by or seek natural resource damage or response costs from the LACFCD. Naming the LACFCD as a responsible party is barred by this Decree and does not further the remediation of the harbor sediments and waters.

2. Los Angeles County Flood Control District Should Not Be Responsible for Meeting Waste Load Allocations

The proposed TMDL inappropriately names the LACFCD as a responsible party for meeting waste load allocations (WLAs) or for monitoring associated with assessing compliance with those WLAs. The purpose of the proposed TMDL is to identify discharges and assign waste load and load allocations so that the receiving waters will meet water quality objectives. The water bodies addressed by the proposed TMDL are Torrance Lateral, Dominguez Channel, Dominguez Channel Estuary, Greater Los Angeles and Long Beach Harbors, and Los Angeles River Estuary. As we stated previously to the Regional Board, land areas draining into LACFCD storm drains that empty into these water bodies are under the jurisdiction of upstream municipalities. The WLAs, therefore, should be allocated in a manner that will further reduction of those pollutant loads to the receiving water bodies. This means that the WLAs should be assigned to those parties that have jurisdiction or control over the land uses which generate the proposed TMDL's pollutants of concern, and thus have the ability to prevent the pollutants from entering the water bodies.

In response to this comment, the Regional Board staff contended that, even if the LACFCD merely functions as a conveyance, it is responsible as a point source that is discharging to the harbors. The LACFCD disagrees with this response and the response misses the point. Because the LACFCD does not have jurisdiction over the land areas that drain to the water bodies, and thus cannot control the pollutant generation thereof, assigning WLAs to the LACFCD does not accomplish the proposed TMDL's goal of reducing the contribution of the pollutants to the receiving water bodies. In order to effectively reduce the pollutants entering the harbor waters, WLAs should be assigned to the parties who control the source of those pollutants.

In Trash TMDLs adopted by the Regional Board, WLAs are assigned to the jurisdictions that have control over the areas that generate trash. The same approach should be used for pesticides and PCBs. There is no reason to treat these pollutants differently than trash; it is the party that controls the source that should be assigned the WLAs attributable to those sources. In the past the Regional Board has contended that trash is different because it is visible. No justification for that conclusion has been provided, and we cannot

think of a justification for it. The fact that pollutants such as pesticides and PCBs are not generally visible should have no bearing on who is ultimately responsible for addressing them. If the proposed TMDL is going to control the introduction of these pollutants into the receiving waters, it must control the sources, and whether the pollutant is visible or not has no relevance to who has that responsibility.

Assigning WLAs to the LACFCD when the LACFCD does not have authority over the land uses generating the pollutants is also inconsistent with the Los Angeles County Municipal Storm Water Permit (Permit), one of the stated means by which the proposed TMDL will be implemented (See Proposed TMDL, Table 7-40.1, page 26). The Permit provides that each Permittee “is required to comply with the requirements of this Order applicable to discharges within its boundaries . . . and *not for the implementation of the provisions applicable to . . . other Permittees* (Permit, Part 3.E., page 26)”. The permit provides that the LACFCD, as principal permittee, is to “coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual permittee (Permit, Part 3.D, page 25)”. Finding G.4 provides that the LACFCD will coordinate with other municipalities, but “each permittee is responsible only for a discharge for which it is the operator (Permit, page 20)”. Under the permit, the LACFCD is not responsible for discharges from land areas over which it has no jurisdiction. Assigning WLAs to the LACFCD for pollutants that are generated from those land areas will result in WLAs that cannot be implemented through the Permit.

Therefore, allocation of WLAs to the LACFCD is contrary to the proposed TMDL’s goals. The LACFCD should be removed from the responsible parties listed in Table 7-40.1 on pages 35 and 36 of the proposed TMDL.

3. The LACFCD Should Not Be Responsible for Monitoring or Clean Up In the Harbor Waters

The proposed TMDL requires the LACFCD to participate in water, sediment, and fish tissue monitoring in the Los Angeles and Long Beach Harbors. While the LACFCD agrees to facilitate monitoring in the Dominguez Channel and Dominguez Channel Estuary by granting access to its facilities where feasible, to the extent that the monitoring does not interfere with flood control activities, the LACFCD should not be responsible for conducting monitoring in the harbors because it is not a responsible agency. As discussed above, the LACFCD does not generate any of the flows being discharged into the harbor waters nor does it own, manage, or operate the harbor waters. Monitoring and implementation actions are properly the responsibility of those entities with authority over the land uses that generate the pollutants entering the lagoon and that possess the means to prevent polluted runoff from entering the harbors. Therefore, the LACFCD should be removed from any clean up and monitoring responsibilities in the harbor waters.