



Heal the Ocean, 1430 Chapala Street, Santa Barbara, CA 93101 T: (805) 965-7570  
Heal the Bay, 1444 9th Street, Santa Monica, CA 90401 T: (310) 451-1500

April 5, 2018

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

**RE: Conditional Waiver Renewal and TMDL List Amendment: Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems.**

Dear Chair Felicia Marcus and Members of the State Water Resources Control Board:

Heal the Ocean and Heal the Bay have reviewed the proposed Conditional Waiver Renewal and TMDL List Amendment that is being considered for adoption by the State Water Resources Control Board (State Board), which would append the AB 885 State Policy (Policy) for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS). Heal the Ocean and Heal the Bay would like to submit the following objections in response to the proposed amendment to this Policy.

We have considerable objections in four major areas: 1) The Conditional Waiver Renewal and TMDL List Amendment alters the intent of AB 885 regulations; 2) Many water bodies that remain on the 303(d) list have passed their TMDL deadlines with no justification, no regulatory action as required by AB 885, and no amended completion date; 3) Many of the justifications given for TMDL deadline extensions violate the Policy; and 4) The initiation of a waiver renewal program poses serious risk to public and environmental health.

**1) The Conditional Waiver Renewal and TMDL List Amendment alters the intent of AB 885 regulations.**

Authored by former Assembly Member (and current state Senator) Hannah-Beth Jackson in 1999, AB 885 was signed into law in September 2000. The State Board was required to adopt, by January 2004, regulations or standards for the permitting or operation of the 1.2 million septic systems operating in California. After a period of inactivity, Coast Law Group, Encinitas, filed a "friendly lawsuit" in February 2011 on behalf of Heal the Ocean and Heal the Bay against the State Board to urge movement forward on the development of the standards under AB 885 law, with expected completion in 2019. The action was called "friendly" because Mark Gold, then Executive Director of Heal the Bay, gave advanced notice of the lawsuit to State Board

Executive Director, Jonathan Bishop. Mark Gold and Jonathan Bishop were in agreement that the process of writing AB 885 regulations had to move forward as soon as possible.

The TMDL List Amendment now proposes extensions in Attachment A Tables 5 (Pathogens) and 6 (Nitrogen), which would delay the development of these standards up to an additional seven years, which extends deferment of action concerning OWTS up to a total of 24 years after AB 885 passed in 2000. This law was passed in recognition of 303(d)-listed water bodies where OWTS were degrading water quality, and any further unjustified delay poses a serious risk to public and environmental health.

**2) Many water bodies that remain on the 303(d) list have passed their TMDL deadlines with no justification, no regulatory action as required by AB 885, and no amended completion date.**

The proposed amendment lists a number of water bodies that have passed deadline for the development of a TMDL, with no justification for inaction and no amended completion date. OWTS within the vicinity of these waterbodies should be put immediately into OWTS Policy Section 10, and be required to submit an Advanced Protection Management Program (APMP) for Regional Water Board approval, or they should implement the requirements of an adopted TMDL implementation plan. The waterbodies that have passed the TMDL deadlines with no justification and with no amended completion date include:

**Table 5 (Impaired for Pathogens)**

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>Required TMDL Completion Date</u>
3	Rincon Creek	Santa Barbara, Ventura	2015
4	Coyote Creek	Los Angeles, Orange	2015
4	Rincon Beach	Ventura	2017
4	San Jose Creek, Reach 1	Los Angeles	2015
4	San Jose Creek, Reach 2	Los Angeles	2015
4	Sawpit Creek	Los Angeles	2015
4	Walnut Creek Wash	Los Angeles	2015
7	Alamo River	Imperial	2017
7	Palo Verde Outfall Drain/Lagoon	Imperial/Riverside	2017

**Table 6 (Impaired for Nitrogen)**

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>Required TMDL Completion Date</u>
8	Grout Creek	San Bernardino	2015
8	Rathbone Creek	San Bernardino	2015
8	Summit Creek	San Bernardino	2015

All of the above listed waterbodies should be immediately entered into the Advanced Protection Management Program if no TMDL has been submitted.

### 3) Many of the justifications given for TMDL deadline extensions violate the Policy.

Tables 5 and 6 of Attachment A list proposed justifications for extending TMDL Completion Dates. Some of the justifications are given with detail as well as an obvious record of work done towards developing a TMDL (e.g. the work on the Russian River). However, Heal the Ocean and Heal the Bay find many other justifications to be unreasonable. For example, as many as six additional years are being proposed to extend required action in the San Francisco Bay (Region 2), and the justification is *"based on current work load and priorities..."* We understand that many Regional Boards have a large workload; however, AB 885 is a law, and as such, its implementation should be prioritized, not deprioritized.

TMDL extensions should not be given unless reasonable effort has been exercised and shown through submittal of work completed to date. Heal the Ocean and Heal the Bay ask that the State Board require detailed work reports for the following waterbodies. If these reports are not submitted in timely fashion, OWTS in these regions should immediately be entered into OWTS Policy Section 10, and require submittal of an APMP for Regional Water Board approval.

**Table 5 (Impaired for Pathogens)**

**Justification given for San Francisco Bay (Region 2):** “Based on current work load and priorities, this work is anticipated for completion in...”

**Heal the Ocean/Heal the Bay Response:** This is not an acceptable justification. AB 885 is a law; coming into compliance with the law is not negotiable. Especially egregious is the statement that the required work is not a "priority."

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>Required TMDL Completion Date</u> <u>(with proposed extension)</u>
San Francisco Bay	Pacific Ocean at Pillar Point Beach	San Mateo	2016 2022
San Francisco Bay	Petaluma River	Marin, Sonoma	2017 2018
San Francisco Bay	Petaluma River (tidal portion)	Marin, Sonoma	2017 2018
San Francisco Bay	San Gregorio Creek	San Mateo	2019 2022

**Justification given for Los Angeles (Region 4):** “The schedule extension is needed to study the impacts of the Thomas Fire on bacteria loading in the Ventura River watershed.”

**Heal the Ocean/Heal the Bay Response:** We understand the Thomas Fire has had massive and devastating impacts on the Ventura and Santa Barbara communities. However, the fire started in December 2017. The TMDL for these water bodies was to have been completed in 2017. The State Board should require a report of work done in development of TMDLs up until December 2017.

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>Required TMDL Completion Date</u> <u>(with proposed extension)</u>
Los Angeles	Canada Larga	Ventura	2017 2024
Los Angeles	San Antonio Creek	Ventura	2017 2024
Los Angeles	Ventura River, Reach 3	Ventura	2017 2024

**Justification given for Santa Ana (Region 8):** “2016 303(d) List as approved by the Regional Board and State Board indicated a revised expected TMDL completion date.”

**Heal the Ocean/Heal the Bay Response:** "Expected" does not imply the certainty required to meet the demands of a state regulation. Unlike some explanations provided for other waterbodies, no additional details are provided to explain this extension given for TMDL completion.

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>Required TMDL Completion Date</u> <u>(with proposed extension)</u>
Santa Ana	Goldenstar Creek	Riverside	2019 2021
Santa Ana	Mill Creek, Reach 1	San Bernadino	2015 2019
Santa Ana	Morning Creek Canyon	Orange	2017 2021
Santa Ana	Seal Beach	Orange	2017 2019
Santa Ana	Serrano Creek	Orange	2017 2021
Santa Ana	Huntington Harbor	Orange	2017 2019

**Table 6 (Impaired for Nitrogen)**

**Justification given for San Francisco Bay (Region 2):** “A nutrient study was conducted in 2016/17. Will probably delist in 2022 Integrated Report. If not, will develop TMDL.”

**Heal the Ocean/ Heal the Bay Response:** This justification is very confusing, vague and presumptuous. "Will probably delist..." is not a proper justification. It is unclear what this potential delisting is based on. Will work continue so that if it is not delisted in 2022, a TMDL can be developed immediately, or will additional time be required?

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>Required TMDL Completion Date</u> <u>(with proposed extension)</u>
San Francisco Bay	Lagunitas Creek	Marin	2016 2022
San Francisco Bay	Petaluma River	Marin, Sonoma	2017 2022
San Francisco Bay	Walker Creek	Marin	2016 2022

**Justification given for Santa Ana (Region 8):** “2016 303(d) List as approved by the Regional Board and State Board indicated a revised expected TMDL completion date.”

**Heal the Ocean/Heal the Bay Response:** "Expected" does not imply the certainty required to meet the demands of a state regulation. Unlike some explanations provided for other waterbodies, no additional details are provided to explain this extension given for TMDL completion.

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>Required TMDL Completion Date</u> <u>(with proposed extension)</u>
Santa Ana	Serrano Creek	Orange	2017 2021

**4) The initiation of a waiver renewal program poses serious risk to public and environmental health.**

Heal the Ocean and Heal the Bay make this final, most important point: **The launching of a Waiver Program on the heels of State promulgated regulations is deeply problematic**, as it creates an opportunity for entities to avoid compliance and thereby continue to pose serious risk to public and environmental health. The 301(h) waiver program associated with The Clean Water Act (1973) is an example of how waiver programs can be abused. The Clean Water Act required all wastewater treatment plants in the United States to upgrade treatment levels to full secondary, because the pollution impact of partially treated sewage on our lakes, rivers and ocean was severe. A 301(h) Waiver program was included in the regulatory language to give wastewater treatment plants time to assemble revenue and plans to upgrade, but some treatment plants made it a standard practice to renew their waivers every five years to avoid upgrading treatment. At least one facility is still operating under a 301(h) waiver, more than forty years after the Clean Water Act was passed.

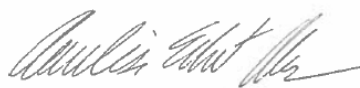
We ask that the State Board not go down this path of laxity. Significant time and resources went into the promulgation of regulations under AB 885 by State Board members and staff, environmental health officials from around the state, environmental groups, plumbers and septic system experts. After much discussion and compromise, we arrived at regulations that would encompass the needs of all groups involved.

We insist that the State Board not undermine this work or diminish the strength of AB 885 by starting a program of waivers and extensions, especially those that are based on the excuse that coming into compliance with this law is "not a priority."

Sincerely,



Hillary Hauser, Executive Director  
Heal the Ocean



Annelisa Ehret Moe, Water Quality Scientist  
Heal the Bay