



GAIL FARBER, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

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September 13, 2010

IN REPLY PLEASE

REFER TO FILE: **WM-9**

Mr. Samuel Unger, P.E.  
Executive Officer  
California Regional Water Quality  
Control Board - Los Angeles Region  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

Attention Ms. Stefanie Hada

Dear Mr. Unger:

### **COMMENTS OF THE COUNTY OF LOS ANGELES ON THE PROPOSED SANTA MONICA BAY DEBRIS TOTAL MAXIMUM DAILY LOAD**

Thank you for the opportunity to comment on the proposed Santa Monica Bay Debris Total Maximum Daily Load (TMDL). The following comments are submitted on behalf of the County of Los Angeles.

#### **1. Plastic pellets should be addressed by regulatory mechanisms other than TMDLs.**

Through the adoption of Assembly Bill 258<sup>1</sup> in 2007, the State Legislature amended the California Water Code and established a regulatory program specifically to address preproduction plastic debris. Plastic pellets should be addressed through the regulatory mechanisms adopted pursuant to that bill. Plastic pellets should not be addressed through TMDLs, at least not until the State Water Resources Control Board (State Board) determines that addressing plastic pellets through TMDLs such as this one is an appropriate regulatory method.

The California Regional Water Quality Control Board – Los Angeles Region (Regional Board) currently does not have the authority to include plastic pellets in this TMDL. AB 258, as set forth in Water Code § 13367, provides that the State Board and the regional boards shall implement a program to control

<sup>1</sup> [http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_0251-0300/ab\\_258\\_bill\\_20071014\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0251-0300/ab_258_bill_20071014_chaptered.pdf)

discharges of preproduction plastic from point and nonpoint sources [Water Code § 13367(b)(1)]. It further provides that State Board shall determine the appropriate regulatory methods to address the discharges from these point and nonpoint sources.

To our knowledge, the State Board has not yet determined the appropriate regulatory methods to address these discharges. Specifically, the State Board has not yet determined that TMDLs that impose obligations on municipal stormwater permittees are an appropriate regulatory method to address these discharges. Without this determination, the Regional Board has no authority to include plastic pellets in this TMDL. (Although Water Code § 13367(h) provides that nothing in Water Code § 13367 limits the authority of the State Board or the regional boards to establish requirements in addition to Best Management Practices for the elimination of these discharges, this provision only allows regional boards to establish requirements in addition to Best Management Practices in permits issued to facilities that handle or discharge preproduction plastic. Regional boards, however, cannot adopt a regulatory method, such as this TMDL, until the State Board has determined that such a method is appropriate.)

The County of Los Angeles does support the reduction of these plastic pellets. Given that the sources of plastic pellets are solely industrial facilities, the best and most efficient way to address the impairment is through the Industrial General Permit (IGP) instead of TMDLs. Also, because plastic pellets observed in a given watershed are not necessarily limited to sources in that watershed as they can be transported from watershed-to-watershed or region-to-region, a watershed-based TMDL is not the appropriate regulatory tool to address the problem.

In sum, Water Code § 13367 provides that the State Board shall determine the appropriate regulatory methods to address discharges of preproduction plastic from point and nonpoint sources. Until the State Board has determined that TMDLs are an appropriate regulatory method, the Regional Board does not have the authority to include these provisions in this TMDL. Additionally, addressing the plastic pellet impairment is best achieved through Statewide or regionwide action through the IGP. Therefore, we request that plastic pellets be removed from the subject TMDL and instead be addressed via modifications and enforcement of applicable industrial permits such as the IGP.

**2. Municipal Separate Storm Sewer System (MS4) permittees should not be responsible for plastic pellets.**

As set forth above, plastic pellets cannot be included in this TMDL. If the Regional Board should nevertheless go forward and include them in this TMDL, then responsibility for monitoring and inspections should be placed on industrial facilities that manufacture or use these plastic pellets and State and Regional Board staff. No responsibility for monitoring, inspections, or cleanup should be imposed on municipal stormwater permittees.

While the proposed TMDL clearly identifies industrial facilities as the source of plastic pellets and assigns associated waste-load allocations (WLAs) to those facilities, the TMDL, nevertheless, requires MS4 permittees to conduct monitoring, inspections, and clean up of spills for plastic pellets. The following language is taken from the implementation and monitoring sections of the proposed Basin Plan Amendment (BPA):

*“MS4 permittees identified as responsible jurisdictions and agencies for point sources of trash in this Santa Monica Bay Debris TMDL and in the existing Malibu Creek and Ballona Creek Trash TMDLs shall prepare a Plastic Pellet Monitoring and Reporting Plan (PMRP) to (i) monitor plastic pellet discharges from MS4...; (ii) establish trigger for increased industrial facility inspections...; and (iii) address possible plastic pellet spills. The PMRP shall include protocols for a timely and appropriate response to possible plastic pellet spills within a Permittee’s jurisdictional area, and a comprehensive plan to ensure that plastic pellets are contained.”*

It is not appropriate to place monitoring, inspection, and cleanup responsibilities on MS4 permittees when the plastics industry has already been identified as the source of impairment and the State already possesses regulatory authority to require compliance through the IGP. The State and regional water quality control boards already receive a fee from holders of the IGP for the purpose of stormwater inspection and regulatory compliance [Water Code § 13260(d)(2)(B)(iii)]. Monitoring and cleanup of plastic pellet releases should be required of the plastics industry, and facility inspections should be conducted by Regional Board and/or State Board staff.

**3. The proposed TMDL should clearly state the responsibility of the parties in the Malibu Creek and Ballona Creek Watersheds.**

The proposed BPA states that responsible agencies and jurisdictions covered by the Ballona Creek and Malibu Creek Trash TMDLs are also responsible for discharges of trash in the Santa Monica Bay Debris TMDL. At the same time, the proposed BPA also states that allocations and requirements for these parties can be addressed through the existing Ballona Creek and Malibu Creek Trash TMDLs. It is not clear how compliance with the Santa Monica Bay Debris TMDL is measured for jurisdictional parties located in the Ballona and Malibu Creek Watersheds. For example, does compliance with the Ballona and Malibu Trash TMDLs automatically equate to compliance with the Santa Monica Bay Debris TMDL? We request that the proposed TMDL be revised to clarify how compliance will be assessed for responsible parties in the Ballona Creek and Malibu Creek Watersheds. The TMDL should provide that compliance with the Ballona Creek and Malibu Creek Trash TMDLs constitutes compliance with the Santa Monica Bay Nearshore and Offshore Debris TMDL for those jurisdictions in the Ballona Creek and Malibu Creek Watersheds.

**4. Industries that are responsible for discharge of plastic pellets should be identified in the TMDL.**

Though the proposed TMDL mentions industrial facilities as the source of plastic pellets, these industrial facilities are not specifically identified by name. In fact, it is our understanding that the industrial facilities were not informed about the development of the proposed TMDL, including future compliance expectations, or had the opportunity to comment. Participation by the industrial facilities is critical to the TMDL development process as the responsibility of meeting the plastic pellets target lies directly with them. We request that applicable industrial facilities in the watershed be identified and listed in the TMDL; these facilities should also be given the opportunity to comment on this TMDL.

**5. All obligations imposed on municipal stormwater permittees under this TMDL should be deferred for a minimum of one year in light of the current budget crisis faced by the State and the municipalities.**

The TMDL imposes new obligations on municipal stormwater permittees. These obligations are in addition to the new obligations imposed by this Regional Board on the municipal stormwater permittees this year under the other TMDLs adopted by this Regional Board, as well as the ongoing obligations imposed on municipal

stormwater permittees under prior TMDLs. The new obligations imposed by this TMDL are imposed without regard or discussion of the source of funds for these TMDL obligations.

In light of the State budget crisis and the budget issues faced by municipalities in the County of Los Angeles, the Regional Board should not impose new programs that are going to place additional financial burden on municipal stormwater permittees. Accordingly, all obligations imposed on the municipal stormwater permittees under this proposed TMDL should be deferred for at least one year. With this deferral, the submission of the Trash Monitoring and Reporting Plan (TMRP) should not be required until 18 months from the TMDL's effective date. All other and subsequent dates should likewise be extended by one year. In addition, the TMDL should provide that the dates can be further extended should be municipalities lack funding to implement these programs.

**6. The monitoring and implementation compliance schedule should also be extended given the breadth of the area covered and the number of jurisdictions involved.**

The proposed TMDL covers a much larger geographical area than any of the TMDLs previously developed for the region, consisting of about 420 square miles of land area draining to the Santa Monica Bay, 55 miles of shoreline with 44 beaches, and several miles into the ocean. It also covers numerous responsible agencies. Based on experience with previous TMDLs, it is not possible to develop a sound monitoring and reporting plan in a six-month time frame for a TMDL of this scale. This is because the development of monitoring and reporting plans would require the involvement of experts in the field as well as coordination with multiple agencies throughout the watershed. Therefore, we request that the time frame for developing monitoring plans, as identified in Tables 7-34.2 and 7-34.3 of the proposed BPA, after any deferral, be extended from six months to at least one year. The additional time would allow for more effective interagency coordination and to identify and address the new challenges posed by the plastic pellets monitoring.

Further, the proposed BPA does not provide adequate time for the responsible jurisdictions to attain the final WLA. The TMDL provides no evidence as to how the responsible jurisdictions are to meet the eight-year compliance schedule. Given that the compliance with the proposed TMDL greatly depends on the effective implementation and compliance of other upstream Trash TMDLs, the compliance schedule for this TMDL should take those upstream TMDLs into

account. Sufficient time should be allowed for responsible parties to conduct monitoring and research needed during the course of implementing the TMDL. Integration with other TMDLs and regional watershed management programs is also necessary. We, therefore, request that the eight-year implementation schedule in Table 7-34.2 of the BPA be extended to 15 years.

**7. Discrepancy in the Substitute Environmental Document (California Environmental Quality Act document).**

In the California Environmental Quality Act document, the answer to item 3.e., "Will the proposal result in discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen, or turbidity?" is marked as "No Impact" (p. 71). However, on page 95, the answer is noted as "Potentially significant impact." The answer on page 95 is appropriate; the answer on page 71 should be corrected.

We look forward to your consideration of these comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Rossana D'Antonio at (626) 458-4325 or rdanton@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER  
Director of Public Works

  
for GARY HILDEBRAND  
Assistant Deputy Director  
Watershed Management Division

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