

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**CHOLLAS CREEK DIAZINON TOTAL MAXIMUM DAILY LOAD**

**“RESPONSES TO COMMENTS #3”**

**Responses to Oral Testimony provided at June 12, 2002 Public Hearing**

**August 14, 2002**

***This document summarizes the Regional Board's understanding of, and responses to, significant oral testimony provided at the June 12, 2002 Public Hearing on the draft Chollas Creek diazinon TMDL.***

**1. *Insufficient Public Participation and Time for Review of Materials***

**Comment: Karen Henry, City of San Diego**

Ms. Henry states: "We received new TMDL requirements and responses to comments yesterday, which did not give us sufficient time to review them prior to this meeting. The public was not involved in the process for the past 2 years. Staff did not involve the public until very recently, after the proposed TMDL was released for comment. Then, due to the expedited schedule, discussions have been hindered as stakeholders did not have ample opportunity to fully develop their ideas or to create synergy that only comes from group discussions. The recent meetings included some, but not all of the stakeholders, at one time."

**Comment: Jack Miller, County of San Diego**

The County states that they only had one day to review the latest information and would prefer one week. The County believes that "the establishment of a nexus between measured diazinon levels and observed toxicity must be properly vetted through a public process." The public review must include a diligent effort by Regional Board staff to respond to concerns of all stakeholders. The Regional Board staff should "not sit silent for two years and quickly rush to a May 2002 workshop and a series of last minute meetings." These actions "clearly falls short of a standard needed for effective public participation to occur."

**RWQCB Response:**

This comment, in reference to the overall public process, was submitted in writing prior to the June 12, 2002 public hearing and was responded to in the "Response to Comments" document dated June 12, 2002. See Item 7 of Attachment 5 to Item 9, June 12, 2002 Supplemental EOSR.

At the public hearing, both the City and County also expressed that inadequate time had been provided to review the materials contained in the June 12, 2002 Supplemental Agenda Package and Errata Sheet. The Regional Board extended the written public comment period (with respect to these materials) to address this concern. All comments received during the extended comment period have been addressed in the document entitled "Responses to Comments #2" dated August 14, 2002 (Attachment 16 to Item 16, August 14, 2002 EOSR).

It should be noted that the significant changes (in the June 12, 2002 Supplemental Agenda Package and Errata Sheet) were made in response to requests by stakeholders and were discussed at meetings with stakeholders immediately prior to the June 12, 2002 hearing. Additionally, the Regional Board is not obligated to provide the written responses to comments, errata, and revised Technical Report to the public in advance of the Public Hearing. Rather, this information must be available to the public at the time of the Public Hearing.

Regarding the two years between the 4<sup>th</sup> and 5<sup>th</sup> public workshops, very little activity was taking place on the Chollas Creek Diazinon TMDL during this period. Once the draft was complete, it was made available to the public and a workshop was scheduled. All public notice requirements

have been satisfied and the Regional Board has heard and considered all public testimony on this matter.

## **2. The City of San Diego Denies their Support for the TMDL**

### **Comment: Karen Henry, City of San Diego**

The City states that they had only offered their support for the development of the phased schedule of compliance. The City had never offered their support for the revised TMDL.

### **RWQCB Response:**

Comment noted.

## **3. New Monitoring Requirements are more Stringent and Restrictive**

### **Comment: Karen Henry, City of San Diego**

The City believes that the revised monitoring requirements are now more stringent and more restrictive. The requirement for sediment testing is a surprise addition and is not in accordance with comments made by the Regional Board at the May 17, 2002 workshop. Since these changes produce more rigid requirements for monitoring, the City must dispute their support for the proposed TMDL.

### **RWQCB Response:**

The Regional Board disagrees that the revisions are more restrictive. The Regional Board has incorporated significantly more flexibility into the revised monitoring plan than was in the original version. The Monitoring Plan language (Section 11.30 of the Technical Report) was modified (in the August 14, 2002 Errata) to clarify the following two points: (1) the TMDL monitoring requirements are intended to augment the Copermittees existing monitoring requirements under their MS4 permit (i.e., a new separate monitoring plan is not required); and (2) the sampling frequency and number and location of sampling stations are recommendations rather than requirements (they were requirements in the original version). The change from “requirements” to “recommendations” was made in the June 12, 2002 Errata. The Copermittees are free to develop and propose the monitoring plan, (to augment their existing monitoring) which they believe makes the most effective use of their monitoring dollars and which meets the stated monitoring objective.

Two other very significant changes to the TMDL requirements were made (in the June 12, 2002 Errata) to increase the overall flexibility of implementation and to greatly reduce Copermittee costs are: (1) the requirement for a Diazinon Source Analysis has been completely eliminated and (2) a phased schedule of compliance for attaining the numeric limits for diazinon has been incorporated. Both of these changes were requested by the City of San Diego and other Copermittees.

Limited sediment monitoring was added to the revised Monitoring Plan. This addition was requested by stakeholders to address concerns about possible accumulation of diazinon within Creek sediments. The scientific literature is inconclusive on the potential for diazinon to accumulate in sediments. If accumulation is taking place, the WARM and WILD beneficial uses of the sediments may be impaired. These same sediments could also serve as a source of diazinon to the water column. To resolve this issue, minimal sampling of Chollas Creek sediments for diazinon was believed to be prudent.

#### **4. Clarify/Exchange Text in Best Management Practices Inventory**

**Comment: Karen Henry, City of San Diego**

The City believes that text in the first paragraph of the first page of Attachment F causes confusion as to how the City and an integrated pest management (IPM) framework can “minimize hazards of pest control products used.” The City believes this is outside of their authority.

**RWQCB Response:**

The RWQCB agrees. This comment was also submitted as part of the City of San Diego’s letter to the Regional Board (June 26, 2002, Attachment 15 for Item 16, August 14, 2002 EOSR). The Regional Board response is contained in the Response to Comments #2 (Attachment 16 to Item 16 of the August 14, 2002 EOSR) as Item #3. The problem has been corrected by the addition of clarifying language.

#### **5. The Beneficial Uses of Chollas Creek Do Not Exist**

**Comment: Karen Henry, City of San Diego**

The City believes that Chollas Creek does not support its designated beneficial uses in the current configuration. The beneficial uses were designated after the Creek had been altered to reduce flooding. The beneficial uses are not accurate and have been in conflict with the Creek since their designation. The designated beneficial uses need to be reevaluated.

**RWQCB Response:**

The Regional Board disagrees that the designated beneficial uses do not exist and that they need to be reevaluated. This comment was also submitted as part of the City of San Diego’s letter to the Regional Board (May 28 2002, Attachment 9 to Item 9 of the June 12, 2002 Supplemental EOSR). This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #9. Furthermore, the beneficial uses as designated in the Basin Plan are “presumed” to exist in Chollas Creek and must be protected by this TMDL. The Regional Board is obligated by law to ensure that Chollas Creek waters are in conformance with the water quality objectives to support the designated beneficial uses of the Creek. Recent staff observations verify the existence of several avian and aquatic species in the Creek.

#### **6. The USEPA Phase-out of Diazinon Eliminates the Need for this TMDL**

**Comment: Karen Henry, City of San Diego**

**Jack Miller, County of San Diego**

Both parties question the need for the proposed TMDL because of the phase-out of diazinon.

**RWQCB Response:**

The Regional Board disagrees. This comment was also submitted as part of the City of San Diego’s letter to the Regional Board (May 28, 2002, Attachment 9 to Item 9 of the June 12, 2002 Supplemental EOSR) and as part of the County’s letter to the Regional Board (May 28, 2002, Attachment 3 of the June 12, 2002 EOSR). This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #3.

**7. Implementation Plan is Redundant with the City's Current Activities; TMDL is Not Necessary**

**Comment: Karen Henry, City of San Diego**

The City of San Diego is committed to improving water quality and has already initiated efforts toward policy decisions, education and outreach, improvement projects and pesticide monitoring. Many of these activities are ongoing, while other aspects are still being developed. The City's Urban Runoff Management Plan (URMP) includes Integrated Pest Management to address pesticide use at all City parks and facilities. A component on pesticide use will be included in the six URMPs that are currently being developed in cooperation with other Copermittees. The City believes these activities have similar goals, objectives and eventually, the same outcome as the proposed TMDL implementation plan.

Furthermore, diazinon is not limited to Chollas Creek, it is throughout our Region, and if we are to tackle it aggressively as program managers, then we need to work on this regionally. The TMDL approach adds a level of complexity that we would have to manage if we were to go forward. When it comes to education there is a broad range of things you could do, we would work to keep costs down, but the education needs to be done everywhere, not just Chollas Creek. We have plans to do general pesticide use throughout the County. This diazinon TMDL is not necessary.

**Comment: Jack Miller, County of San Diego**

The additional measures under the proposed TMDL will not add anything substantive to efforts to reduce diazinon in Chollas Creek. Additional benefits can be achieved through the voluntary efforts of the municipal storm water Copermittees' education and outreach programs.

**RWQCB Response:**

The City's comments were also submitted as part of the City of San Diego's letter to the Regional Board (May 28, 2002, Attachment 9 to Item 9 of the June 12, 2002 Supplemental EOSR). The County provided this comment as oral testimony. This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #4.

While the Regional Board applauds the water quality education and outreach efforts of the City and County, their programs and intentions do not obviate the legal requirement for this TMDL. The Clean Water Act mandates that a TMDL be developed for each waterbody on the Section 303(d) list.

**8. Chollas Creek is not Section 303(d) Listed for Diazinon**

**Comment: Karen Henry, City of San Diego**

**Jack Miller, County of San Diego**

The City and County have concerns regarding the procedural process for this proposed Basin Plan amendment. In 1998, Chollas Creek was placed on the federal 303(d) list as a water quality limited segment for storm water toxicity and elevated levels of cadmium, copper, lead, and zinc in storm water. Additionally the Creek was listed for a high coliform count. The Regional Board's proposed 2002 303(d) list includes Chollas Creek on the Watch List for total chlordane, total PCBs, trash and sediment. It appears that this TMDL was prepared for a pollutant that is not on the existing or proposed 303(d) lists.

**RWQCB Response:**

This comment was also submitted as part of the City of San Diego's letter to the Regional Board (May 28, 2002, Attachment 9 to Item 9 of the June 12, 2002 Supplemental EOSR) and as part of the County's letter to the Regional Board (May 28, 2002, Attachment 3 of the June 12, 2002 EOSR). This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #1. Additionally, a memo from the Office of Chief Council provides further confirmation of the need to develop a diazinon TMDL to address aquatic toxicity in Chollas Creek (Attachment 22 to Item 9 of the August 14, 2002 EOSR).

**9. Peer Review Comments were disregarded: An Ecologic Risk Assessment Must be performed on Chollas Creek****Comment: Karen Henry, City of San Diego**

The City believes that peer review comments were disregarded. The City supports the peer review request of Dr. Schlenk for an Ecological Risk Assessment and a description of fauna susceptible to diazinon be prepared. The City wants to know what is living in the Creek. The City believes that the TMDL should not proceed until an ecological baseline is established.

**RWQCB Response:**

This comment was also submitted as part of the City of San Diego's letter to the Regional Board (May 28, 2002, Attachment 9 to Item 9 of the June 12, 2002 Supplemental EOSR). This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #17.

The RWQCB disagrees that an Ecological Risk Assessment is necessary before the TMDL can proceed. Chollas Creek was listed as impaired on the 1996 Section 303(d) list due to aquatic toxicity. A subsequent Toxicity Identification Evaluation indicated that diazinon concentrations in Chollas Creek waters were, in part, the cause of the toxicity. Available information indicates that reducing diazinon concentrations to levels below the California Department of Fish and Game water quality criteria will reduce the toxicity to aquatic life in the Creek. Accordingly, although desirable, an Ecological Risk Assessment is not required for the adoption of this TMDL.

Furthermore, because they are designated in the Basin Plan, the beneficial uses of WARM and WILD are "presumed" to exist in Chollas Creek and the Regional Board is required to adopt a TMDL to restore and protect these uses. While there are only minimal surveys of faunal assemblages in Chollas Creek, recent staff observations verify the existence of both avian and aquatic wildlife.

**10. The Killifish shown by Regional Board Staff is a Marine Species and Would Not be Protected by this TMDL****Comment: Karen Henry, City of San Diego**

The City contends that the "kill fish" in the photo shown by Staff is a marine species and is not a freshwater "critter" that would be protected by this TMDL action.

**RWQCB Response:**

The RWQCB disagrees. The California killifish, *Fundulus parvipinnis*, is a native estuarine fish found in Chollas Creek estuary. It can live in water ranging from completely fresh to that having

salinities up to 128 ppt. It is most abundant in saltwater lagoons and estuaries but can complete its entire life cycle in fresh water.

Estuaries are formed where freshwater rivers and creeks meet saltwater bays and oceans. Because of this mixing of fresh and salt water, estuaries provide a unique and necessary habitat for a unique assemblage of faunal and floral species. Their location at the mouth of creeks and rivers makes estuaries susceptible to pollutants originating upstream. Although the diazinon water quality criteria developed by the California Department of Fish and Game are for fresh water, the reduction of diazinon in the creek will reduce diazinon loadings to the estuary and the bay. Any diazinon concentrations exceeding the criteria in Chollas Creek may also negatively impact aquatic life in both the Chollas Creek Estuary and in San Diego Bay. In summary, this TMDL should protect killifish from diazinon. In fact, this TMDL should protect all aquatic life in Chollas Creek, Chollas Creek Estuary, and San Diego Bay (in the vicinity of the Creek mouth) from toxicity caused by short and long-term exposure to diazinon.

### **11. Concerns that Regional Board Staff will be Unreasonable in Measuring Compliance**

#### **Comment: Karen Henry, City of San Diego**

The City is concerned that Regional Board staff will not be adaptable when measuring compliance with the provisions of the TMDL. For example, the City is worried that they will not be credited for conducting a workshop if the workshop occurs “five miles to the east or too much to the south.” These are the types of issues that are leading the City to “ask for consideration.”

#### **RWQCB Response**

Most of the requirements of this TMDL are also existing requirements of the MS4 permit. This overlap will ensure that the Copermittees are able to save significant resources. However, the TMDL also requires an additional level of effort, over and beyond the MS4 permit, to specifically reduce diazinon in Chollas Creek. In other words, a focused effort to reduce diazinon in the Chollas Creek watershed will be needed in order to meet the diazinon numeric limits established by the TMDL in Chollas Creek. Although we are encouraged by the City’s plans to implement a region-wide general pesticide education program in compliance with their MS4 permit, this will not replace the need for focusing additional attention and resources on reducing diazinon in Chollas Creek.

In this situation, as always, the Regional Board will determine compliance on a case-by-case basis. Ultimately, the measure of compliance with the requirements of the TMDL will be the Copermittee’s ability to meet the numeric limits for diazinon in Chollas Creek established by the TMDL (and incorporated into the revised MS4).

### **12. The EPA Phase-out is Not the Only Solution Needed.**

#### **Comment: Laura Hunter, Environmental Health Coalition**

The ban on diazinon is not the “magical end of the diazinon problem locally.” If diazinon is not sold here in the United States, it may be brought into the region from Mexico. Utilizing Integrated Pest Management practices is needed because other pesticides may replace diazinon and continue to cause water quality problems in Chollas Creek.

**RWQCB Response**

Regional Board agrees that the proximity of the international border and the introduction of replacement pesticides may further complicate the diazinon issue. Improved water quality in Chollas Creek will only be achieved if actual loadings of diazinon are reduced and if loadings of other pesticides do not increase. Therefore, the proposed TMDL places an emphasis on education and outreach on best management practices that will help to reduce diazinon and other pesticide loadings. The education and outreach program will also encourage the use of Integrated Pest Management (IPM) practices that seek to replace pesticides with less toxic alternatives for pest control.

**13. Add reference to the Northwest Coalition for Alternatives to Pesticides****Comment: Laura Hunter, Environmental Health Coalition**

Ms. Hunter suggests that reference to the Northwest Coalition for Alternatives to Pesticides be added to the Attachment F (Best Management Practices Inventory).

**RWQCB Response**

This comment was also submitted as part of the Environmental Health Coalition's letter to the Regional Board (Attachment 3 to Item 9 of the June 12, 2002 EOSR). This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #20 and was incorporated into Attachment F (in June 12, 2002 Errata).

**14. How is a diazinon Buy-back Program to be developed?****Comment: Laura Hunter, Environmental Health Coalition**

Ms. Hunter asks the Regional Board to help develop an "amnesty or buy-back program to get the product out of households."

**RWQCB Response**

This comment was also submitted as part of the Environmental Health Coalition's letter to the Regional Board (Attachment 3 to Item 9 of the June 12, 2002 EOSR). This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #22. Additionally, a program to buy back remaining diazinon product from retailers is a future part of the United States Environmental Protection Agency's ongoing ban on diazinon manufacture and use.

**15. A TMDL Must be Done****Comment: Laura Hunter, Environmental Health Coalition**

**Bruce Reznik, San Diego BayKeeper**

**Ed Kimura, San Diego Chapter of the Sierra Club**

It is pointed out that Regional Board development of a TMDL is mandated by the Clean Water Act. Therefore, this TMDL should move forward and has the support of all three groups.

**RWQCB Response**

Regional Board agrees.

### **16. Voluntary Compliance does Not Work**

**Comment: Bruce Reznik, San Diego BayKeeper**

Mr. Reznik believes that, despite the programs planned and already implemented by the City and County to reduce pesticide concentrations in Chollas Creek, voluntary compliance fails. The proposed TMDL should be amended to the Basin Plan to codify the plan.

**RWQCB Response**

Comment noted.

### **17. San Diego BayKeeper does not generally favor Phased Compliance Schedules**

**Comment: Bruce Reznik, San Diego BayKeeper**

San Diego BayKeeper does not generally favor a phased schedule of compliance as is proposed in the Chollas Creek Diazinon TMDL. San Diego BayKeeper will favor such a position for this action because of the USEPA's diazinon phase-out program.

**RWQCB Response**

Comment noted. The Regional Board looks forward to the participation of San Diego BayKeeper in the process of developing the details of the phased schedule of compliance for meeting numeric limits of diazinon.

### **18. Diazinon can negatively impact wildlife in the Terrestrial Environment**

**Comment: Ed Kimura, San Diego Chapter of the Sierra Club**

Diazinon granules and other forms of granules can negatively impact the wildlife in the Chollas Creek Watershed even without entering the waters of the creek. Therefore, it is imperative to focus on source control of diazinon and other pesticides.

**RWQCB Response**

Regional Board agrees. The proposed TMDL places an emphasis on education and outreach regarding best management practices that will help to reduce diazinon and other pesticides loadings. The outreach program will also encourage the use of Integrated Pest Management (IPM) practices that seek to replace pesticides with less toxic alternatives for pest control.

### **19. Sediments Should be Tested for Diazinon**

**Comment: Ed Kimura, San Diego Chapter of the Sierra Club**

The available data and information are inconclusive in assessing the potential for diazinon to accumulate in sediments of Chollas Creek. Therefore, sediments should be tested for diazinon.

**RWQCB Response**

This comment was also submitted as part of the Sierra Club's letter to the Regional Board (Attachment 3 to Item 9 of the June 12, 2002 EOSR). This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #15. Sediment sampling was added to the Monitoring Plan requirements prior to the June Public Hearing (in June 12, 2002 Errata).

**20. Chollas Creek Enhancement Program****Comment: Ed Kimura, San Diego Chapter of the Sierra Club**

The Sierra Club believes that the Chollas Creek Enhancement Plan of the City of San Diego can work to complement the proposed TMDL.

**RWQCB Response**

This comment was also submitted as part of the Sierra Club's letter to the Regional Board (Attachment 3 to Item 9 of the June 12, 2002 EOSR). This comment was addressed in the Response to Comments (Attachment 5 to Item 9 of the June 12, 2002 Supplemental EOSR) as Item #14.