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October 24, 2011

Chair Hoppin and Board Members  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814  
Via Email: commentletters@waterboards.ca.gov



**Re: Comments on the Proposed Amendments to the California Ocean Plan  
Regarding Model Monitoring and Control of Commercial Vessel Discharges  
and Invasive Species**

Dear Chair Hoppin and Board Members:

On behalf of Heal the Bay, we submit the following comments on the Proposed Amendments to the California Ocean Plan Regarding Model Monitoring and Control of Commercial Vessel Discharges and Invasive Species (“Draft Amendments” or “Amendments”). We appreciate the opportunity to provide these comments.

We are supportive of the Vessel Discharges Draft Amendments with one exception. We urge the State Water Resources Control Board (“State Board”) to explicitly state that there shall be no sewage discharge in State Waters, regardless of specific NDZ designation. In general we support the State Board providing direction to the regional boards on a model monitoring framework, as this provides a certain level of consistency among monitoring programs and ensures that useful information will be gathered. However as outlined below, we have numerous concerns with the Draft Amendments as written.

Of note, in pursuing the model monitoring program amendments, the State Board should consider the provisions of SB 72 adopted in 2001 (Water code Section 13383.5), which requires the standardization of storm water monitoring programs. Specifically the law states that “[b]efore January 1, 2003, the state board shall develop minimum monitoring requirements for each regulated municipality and minimum standard monitoring requirements for regulated industries.” To date, the State has failed to comply with SB72 requirements, and there has been no attempt to implement the law. The State Board has an opportunity with these amendments to ensure that the Ocean Plan is consistent with SB 72 requirements. Specifically, SB 72 calls for standardized methods for collection and analysis; standardized quality assurance and control protocols; standardized reporting format; minimum detection limits; annual reporting requirements; and minimum sampling intervals, frequency and constituents. These elements should all be included in the Amendments.



## **MODEL MONITORING**

### **Types of Waste Discharge Sources**

The Draft Amendments provide a list of regulated non-point sources but only include agriculture and golf courses in the model monitoring requirements. Other non-point sources such as “grazing” can have a large impact on water quality and should not be excluded from minimum monitoring requirements. The State Board should broaden the applicability of these requirements.

### **Indicator Bacteria – General**

The Draft Amendments outline monitoring for indicator bacteria. For clarity purposes, the Amendments should explicitly state that monitoring should occur for all three indicator bacteria: total coliform, fecal coliform, and enterococcus.

The Draft Amendments indicate that indicator bacteria monitoring should take place “at a minimum five times per month.” The Amendments should go further to specify that these samples shall be collected at least on a weekly basis. If this is not explicitly stated, all samples could potentially be collected in the same week. This scenario would not be protective of public health and would not give regulators a complete picture for compliance purposes.

### **Indicator Bacteria – Point Sources**

The Draft Amendments do not specify where the indicator bacteria samples will be collected. Although POTW outfalls may be large distances offshore, there is the possibility that the effluent could migrate to the shore and impact public health. Thus, the Amendments should include a shoreline component for bacteria monitoring. Of note, POTWs in the Los Angeles Region include requirements for shoreline monitoring.

### **Indicator Bacteria – Storm Water Sources**

We strongly support the requirement that monitoring be collected at “ankle depth, point zero”. As you know, this type of monitoring is critical for public health protection. Since children often play directly in front of storm drains or in the runoff-filled ponds and lagoons, monitoring at ‘point-zero’ is the best way to ensure that the health risks to swimmers are minimized. If the water is clean at ‘point-zero’, then the public will know the entire beach is safe for swimming and the regional boards will know that the discharge is in compliance with water quality standards. In order for the State Board to fully account for public health and beneficial use protection, additional sampling points should be designated at set distances away from the discharge point to understand the fate and transport of pollutants. The State Board should stipulate these requirements in the Amendments.

The Draft Amendment specifies that, at a minimum, receiving water at outfalls greater than 36 inches in diameter or width must be monitored during three storms and when flowing during dry weather at AB 411 beaches. This limited monitoring approach will not allow regional boards to fully assess compliance and will not ensure that public health is adequately protected. First,



beaches that are defined under AB 411 should be monitored year-round on a weekly basis, not only during three rain events. Conducting bacteria monitoring only three times provides no benefit. AB411 requires weekly sampling from April to October at a minimum. Monitoring must occur on at least a weekly basis and more frequently (ideally, five times per week) at beaches with year-round recreational use. Also as these requirements are addressing storm water impacts, there is no reason to have a less aggressive monitoring schedule during the winter months, especially at popular surfing beaches. In addition flows can often be intermittent. So even if flow is not observed during dry weather, previous flow may be impacting receiving waters. Thus regardless of observed flows, all AB 411 must be monitored during dry weather on a weekly basis or more frequently. Finally, smaller drains may be impacting water quality, so the model monitoring program should not be limited to larger drains.

The Draft Amendments allow for the possibility of a regional monitoring program instead of a core monitoring program. This does not make sense for indicator bacteria monitoring, as this type of monitoring is beach specific. Water quality information is necessary for each individual beach in order to ensure the greatest public health protection. The only time the core monitoring program should be suspended is if a particular beach is already monitored by another entity (i.e. Public Health Department). Under this scenario, the storm water discharger should be on hand to pursue monitoring in the event that the other entity suspends normal monitoring.

### **Indicator Bacteria – Non-Point Sources**

The Draft Amendments require less frequent monitoring for non-point sources than point sources. There is no rationale for decreasing monitoring frequency for agricultural discharges, as agriculture can be a large source of bacteria pollution. In addition in areas of the state such as the Central Coast, agricultural discharges may be a greater pollution threat than point source discharges. Thus, the non-point source requirements should mimic point source pollution requirements.

### **Chemical Constituents – General Comments**

The Draft Amendments require annual monitoring for chemical constituents discharged from point sources (semiannual if over 10 MGD) and MS4s and two storm events for non-point sources. Clearly, monitoring this limited number of times has little to no value, as no variability will be captured at this extremely low monitoring frequency. Instead, monitoring should be conducted on a frequency that depicts variability.

The Amendments refer to parameters in Tables 1 and 2 and several other constituents to be monitored. Nutrients are notably absent from the list of parameters to be monitored. It is critical to monitor for nutrients, especially as excessive nutrients have been linked to harmful algal blooms in ocean waters and there is a concern that high nutrient loads could be tied to localized ocean acidification in addition to anoxic or hypoxic conditions. In addition the State Board should consider including a basic suite of emerging contaminants. The Los Angeles Regional Board has included these requirements in major POTW NPDES permits.

The option of a regional program should not be given to storm water dischargers, as this is problematic for source identification. In general, group monitoring tends to be extremely



misleading and does not give an accurate reflection of individual pollution sources. Pollution is site-specific, and sampling should be as well. For instance, group monitoring makes it impossible to measure the effectiveness of site-specific best management practices or the on-going effects of runoff from individual facilities. Moreover, under the group monitoring approach, it will be extremely difficult to pinpoint, mitigate and potentially enforce upon the source(s) of pollution in a timely manner. Thus, the State Board should remove this provision from the Draft Amendments. Instead the State Board should develop a minimum acreage value for the drainage area that needs to be monitored.

As stated above in order to be in compliance with SB 72, the State Board must specify minimum detection limits. We have seen big problems with inappropriate detection limits being used in the Los Angeles Region. For instance in LA County, much of the PCB and DDT data is not useful, as PQLs and MDLs are orders of magnitude above levels of concern. The State Board should ensure that permits include PQLs and MDLs that are able to detect CTR levels and levels of concern.

### **Chemical Constituents – Storm Water Sources**

The Amendments state that Phase I and II storm water dischargers should monitor 10% of outfalls greater than 36 inches at least once per year. It is unclear how the State Board has determined that 10% of outfalls greater than 36 inches are an appropriate number of monitoring locations. Regardless, the State Board should allow *no* discretion for monitoring in watersheds over 50 square miles. Otherwise as currently written, the biggest pollution contributors may not be sampled.

### **Chemical Constituents – Non-point Sources**

The Amendments should require that the Regional Boards take into account individual site characteristics such as when pesticides and fertilizers are applied and crop rotation and irrigation schedules when developing a monitoring program. If the discharger significantly changes a management practice such as the type of crop or pesticide(s) or fertilizer(s) used, additional samples should be collected during the monitoring cycle to characterize the new discharge.

### **Aquatic Life Toxicity – General Comments**

The definition provided for toxicity should also state that toxicity is commonly a result of additive effects. Toxicity tests are another method used to assess risk to aquatic life. The tests assess the overall toxicity of the effluent, including the toxicity of unmeasured constituents and/or synergistic effects of multiple constituents.

The Amendments should specify that the Test of Significant Toxicity (TST) statistical approach be utilized for toxicity testing. This method is peer-reviewed and is a statically superior approach to current methods because it regulates the instances of both false positives and false negatives in toxicity testing. Of note, this is also the approach being proposed in the State Board's draft Toxicity Policy.



### **Aquatic Life Toxicity – Point Sources**

The Amendments require semiannual toxicity monitoring for facilities 10 MGD and greater and annual monitoring for smaller facilities. Clearly, monitoring this limited number of times has little to no value, as no variability will be captured at this extremely low monitoring frequency and toxicity can often be fleeting. Instead, facilities over 10 MGD should monitor at least monthly and smaller facilities should monitor at least quarterly.

### **Aquatic Life Toxicity – Storm Water Sources**

The Amendments should specify that dischargers conduct a species sensitivity screening at least once per year. The pollutants contained in storm water are extremely variable, and different species have different sensitivities to different pollutants. Therefore, the most sensitive species at one point in time may not be the same as the most sensitive species at another time. Thus, the State Board should require that all three species (marine invertebrate, marine vertebrate, marine alga) be required for at least the first toxicity monitoring event of each season, ideally the first major storm of the rainy season. Toxicity monitoring can be reduced to the most sensitive species after a screening period.

### **Benthic Community Health**

The Draft Amendments require benthic community monitoring once per permit cycle for certain categories of non-storm water point sources. This low monitoring frequency is inadequate, as benthic community health can drastically change over a period of five years. Appropriately, the NPDES monitoring program for the Los Angeles County Joint Water Pollution Control Plant requires *annual* benthic infauna community monitoring. The State Board should take a similar approach in the Amendments.

Also, there is no sound rationale for limiting benthic community monitoring to non-storm water point sources. Storm water pollution can also severely impact the benthic community. The State Board should include a provision for benthic community monitoring at storm water outfalls as well.

### **Bioaccumulation**

The Draft Amendments require bioaccumulation monitoring for point sources greater than 10 MGD and Phase I MS4s once per permit cycle. We suggest that the minimum schedule be once every three years.

The Amendments call for bioaccumulation to be monitored by a mussel watch program or a fish tissue program. We urge the State Board to require both types of programs for all dischargers, as the two different species may tell different things. For instance, mussels may be more indicative of water quality issues in the water column, whereas bioaccumulation tests of some fish species may be more representative of sediment pollution issues. Also in order to better protect public health, fish monitoring requirements should require whole fish testing because some cultural groups (numerous Asian cultures) consume the whole fish, not just the fillets.



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Non point sources are notably absent from the bioaccumulation monitoring provisions. Agriculture is a dominant land use in some coastal areas of the state such as the central coast.

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In sum, we are very supportive that the State Board is amending the Ocean Plan to include a model monitoring program and a prohibition of various vessel discharges. However, the issues discussed above must be modified in order to ensure that the regional boards will have the data necessary to ensure compliance with water quality standards, identify sources of pollution and track trends.

If you have any questions or would like to discuss any of these comments, please feel free to contact us at (310) 451-1500. Thank you for your consideration of these comments.

Sincerely,

Kirsten James  
Water Quality Director

Mark Gold, D.Env.  
President