



CITY OF COMMERCE

Joe Aguilar
Mayor

Tina Baca Del Rio
Mayor Pro Tem

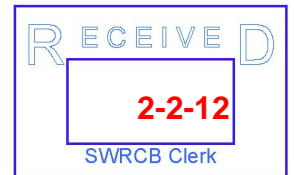
Robert C. Fierro
Councilmember

Lilia R. Leon
Councilmember

Denise M. Robles
Councilmember

February 2, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



Submitted via email to commentletters@waterboards.ca.gov

Subject: 2/7/2012 BOARD MEETING (Agenda Item 7, Consideration of a proposed Resolution approving an amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate a total maximum daily load for toxic pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters)

Dear Ms. Townsend,

The City of Commerce appreciates the opportunity to provide written comment on the revised Staff Report and revised language for the adopting resolution for the above-captioned item ("Harbor TMDL"). At the suggestion of State Water Resources Control Board (State Board) members at the December 6, 2011 Water Board hearing, City Staff and/or consultants representing the City have attended several meetings with staff of the Regional Water Quality Control Board (Regional Board), including meetings on January 9, 2012, and January 25, 2012. We have also provided recommendations for language that could be included in the adopting resolution for this item (see Attachment A).

The City has reviewed the adopting resolution language and appreciates the sincere attempt on the part of the State Board to clarify the implementation of the TMDL. Unfortunately, the language of the adopting resolution does not alleviate our concerns with the scientific foundation or with the implementation measures of the TMDL adopted by the Regional Board in May 2011.

In particular, the City continues to have concerns that are unresolved by the language of the adopting resolution as follows:

1. The revised adopting resolution indicates that the Regional Board could re-consider the fish tissue targets in the future, but only after "making significant progress toward achieving the final allocations" (see Whereas Item 9). As detailed in our original comments, the final allocations are based on ERLs (sediment quality guidelines applied

to bed sediments), not on the Sediment Quality Objective (SQO) Policy, and we do not believe they are attainable or appropriate targets. The City believes that it is inappropriate to require “significant progress toward achieving” allocations based upon ERLs before the reconsideration of fish tissue targets.

2. The revised adopting resolution states that the TMDL sediment targets “are not intended to be used as ‘clean-up standards’ for navigational, capital or maintenance dredging or capping activities” (see Whereas Item 6, emphasis added). This language does not clarify that they should not be used as targets for remedial dredging activities. As stated in our original written comments, we believe that the TMDL sediment targets (i.e., ERLs) are inappropriate; in our opinion, the proposed language is insufficient to prevent their application for remedial dredging projects.
3. The language of the revised adopting resolution does not change the primary targets of the TMDL and does not appear to provide alternative means of demonstrating compliance for NPDES permittees. The TMDL targets, as discussed above, are based upon ERLs (for bed sediment) and Fish Contaminant Goals (FCGs for fish tissue), and each of these are discussed separately below.
 - a. Sediment targets. The loading capacities, load allocations, and wasteload allocations of the TMDL continue to be calculated from the ERLs and are not based on the SQO Policy. Although the language of the adopting resolution states that “compliance may be demonstrated using the direct effects SQO assessment approach” (see Whereas Item 5), the direct effects SQO assessment approach is applicable to bed sediments, not to stormwater discharges, MS4 system discharges, and other discharges regulated by NPDES permits. Instead, and as detailed in item 2 above, the wasteload allocations that will be implemented in NPDES permits are based upon ERLs, and the revised language appears to provide no mechanism for NPDES permittees to show compliance using the SQO Policy.
 - b. Fish tissue targets. The language of the adopting resolution references Phase 2 of the SQO Policy (i.e., the human health portion of the SQO Policy that is currently in development) and indicates that compliance may be demonstrated using the “indirect effects SQO assessment methodology” (see Whereas Item 5). The adopting resolution also states that “The State Water Board further acknowledges the Los Angeles Water Board’s intention to utilize the assessment methodology developed as Phase 2 of the State’s SQOs to determine compliance with the final ‘indirect effects’ sediment allocations” (see Resolved Item 2). However, the TMDL itself fails to reference the Phase 2 SQOs for human health and has instead referenced the SQOs for resident finfish and wildlife. Thus, the TMDL itself has failed to specify that compliance can be achieved using the SQO Policy.

4. The cities have entered into a Consent Decree with US EPA and the State of California that protects them from any legal or administrative action to force the Cities to conduct dredging or remedial activities in the Harbor areas or in the Dominguez Channel, the Consolidated Slip, the Torrance lateral or the Kenwood drain. We understand that the language in the proposed revised staff report clarifies that the dredging/remedial requirements in the TMDL are to be addressed thru the load allocations, rather than the waste load allocations, but believe that it is contrary to the terms of the Cities Montrose Consent Decree for the Boards to adopt a regulation designating a city as a responsible party in the TMDL for sediment removal/dredging activity, where the City has already entered into a Consent Decree and paid funds to address this same (and other) sediment contamination. In short, we believe the Boards are legally without authority to in fact identify and pursue the cities as responsible parties for any such sediment contamination.

For the reasons detailed above, the City of Commerce continues to request that the State Board remand the Harbor TMDL to the Regional Board so that the fundamental flaws with the scientific foundation of the TMDL can be addressed and resolved.

Please contact Jorge Rifá (323) 722-4805 x2215 if you have any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Joe Aguilar".

Joe Aguilar
Mayor

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

RESPONSIBLE PARTIES	FIRST 5 YEARS	YEARS 6 TO 20	BY 20 YEARS
Dominguez Channel Responsible Parties	<ul style="list-style-type: none"> • COMPLY WITH INTERIM ALLOCATIONS – (BPA, page 10) • MONITORING¹: (1) WATER (BPA pages 23-24) <ul style="list-style-type: none"> ○ Submit MRP (6 month); ○ Submit annual reports (15 month after workplan approval and annually after) (BPA Tasks 2,3, and 4 page 38) • IMPLEMENTATION PLAN: Submit Implementation Plan – 2 years (BPA, Task 5 page 38) 	<ul style="list-style-type: none"> • COMPLY WITH INTERIM ALLOCATIONS – Interim wet freshwater allocation (ug/L)– (BPA, page 10) • MONITORING¹: (1) WATER (BPA pages 23-24) <ul style="list-style-type: none"> ○ Submit MRP (6 month); ○ Submit annual reports (15 month after workplan approval and annually after) (BPA Tasks 2,3, and 4 page 38) • IMPLEMENTATION PLAN: Submit Implementation Plan – 2 years (BPA, Task 5 page 38) 	<ul style="list-style-type: none"> • COMPLY WITH FINAL WLAs: <ul style="list-style-type: none"> ○ Water WLAs for DC (wet-weather only) ○ Water (wet-weather) and sediment WLAs Torrance lateral (BPA pages 11-13) • ANNUAL MRP (BPA Task 4, page 38)
Dominguez Channel Estuary Responsible Parties	<ul style="list-style-type: none"> • IMPLEMENTATION PLAN, PHASE I (year 1-5) (BPA page 29-31) <ul style="list-style-type: none"> ○ Agreements between cooperating parties and to develop a detailed scope of work with priorities ○ Implement structural and non-structural BMPs ○ Evaluate sediment condition through SQO process – list of impacted sites to be managed 	<ul style="list-style-type: none"> • IMPLEMENTATION, PHASE II (year 6-15) • IMPLEMENTATION, PHASE III (year 16-20) 	<ul style="list-style-type: none"> • COMPLY WITH FINAL WLAs and LAs <ul style="list-style-type: none"> ○ Water WLAs for non MS4 point sources (BPA page 13) ○ Sediment WLAs and LAs (BPA pages 14-21)

¹Responsible parties are each individually responsible for conducting water, sediment, and fish tissue monitoring as specified in the BPA. However, they are encouraged to collaborate or coordinate their efforts to avoid duplication and reduce associated costs. Dischargers interested in coordinated monitoring shall submit a coordinated MRP that identifies monitoring to be implemented by the responsible parties. Under the coordinated monitoring option, the compliance point for the stormwater WLAs shall be storm drain outfalls or a point(s) in the receiving water that suitably represents the combined discharge of cooperating parties (See BPA pages 24-27)

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

RESPONSIBLE PARTIES	FIRST 5 YEARS	YEARS 6 TO 20	BY 20 YEARS
	<ul style="list-style-type: none"> ○ Submit annual reports (15 month after workplan approval and annually after) (BPA Tasks 2,3, and 4 page 38) ● IMPLEMENTATION PLAN AND CONTAMINATED SEDIMENT MANAGEMENT PLAN: Submit CSMP – 2 years (BPA, Task 5 page 38) ● IMPLEMENTATION PLAN, PHASE I (year 1-5) (BPA, page 29-30; Task 5 page 38) <ul style="list-style-type: none"> ○ Agreements between cooperating parties and to develop a detailed scope of work with priorities ○ Implement structural and non-structural BMPs ○ Evaluate sediment condition through SQO process – list of impacted sites to be managed 	<ul style="list-style-type: none"> ○ Submit annual reports (15 month after workplan approval and annually after) (BPA Tasks 2,3, and 4 page 38) ● IMPLEMENTATION PLAN AND CONTAMINATED SEDIMENT MANAGEMENT PLAN: Submit CSMP – 2 years (BPA, Task 5 page 38) ● IMPLEMENTATION PLAN, PHASE II (year 6-15)(BPA, page 30; Task 11 page 39): <ul style="list-style-type: none"> ○ Implement additional BMPs and site remediation actions based on results of Phase I ○ Report on status of implementation of Phase II (year 10) ○ Complete Phase II (15 year) ● IMPLEMENTATION, PHASE III (year 16-20)(BPA, page 31; Task 13 page 39) <ul style="list-style-type: none"> ○ Implement additional secondary and additional implementation action to be in compliance with final allocations 	<ul style="list-style-type: none"> ● ANNUAL MRP (BPA Task 4, page 38)
	<ul style="list-style-type: none"> ● SPECIAL STUDIES AND RECONSIDERATION OF TMDL TARGETS, ALLOCATIONS, AND SCHEDULE (BPA page 34-35) <ul style="list-style-type: none"> ○ Optional studies include but not limited to fish tissue, foraging ranges of targeted fish, watershed and hydrodynamic models, LAR and SGR contaminant contributions, air deposition, DDT related to Montrose site ○ Incorporate new State policies including, but not limited to SQO Part II, Toxicity Policy, Air quality criteria and other regulations affecting air quality 		
Greater L.A/LB Harbor Waters Responsible Parties including Consolidated Slip	<ul style="list-style-type: none"> ● COMPLY WITH INTERIM ALLOCATIONS: Interim sediment allocation (mg/kg) (BPA, first table on page 11). Compliance options: <ul style="list-style-type: none"> ○ SQO Part 1, is met; or ○ Meet the interim allocations in bed sediment; or ○ Meet the interim allocations in the discharge. (BPA, page 11, 2nd paragraph) ● MONITORING: (1) WATER, (2) SEDIMENT, AND (3) FISH TISSUE 		<ul style="list-style-type: none"> ● COMPLY WITH FINAL WLAs and LAs <ul style="list-style-type: none"> ○ Water WLAs for non MS4 point sources and POTW (BPA pages 13

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

RESPONSIBLE PARTIES	FIRST 5 YEARS	YEARS 6 TO 20	BY 20 YEARS
	<p>(BPA pages 24-27)</p> <ul style="list-style-type: none"> ○ Submit MRP (6 month); ○ Submit annual reports (15 month after workplan approval and annually after) (BPA Tasks 2,3, and 4 page 38) <ul style="list-style-type: none"> ● IMPLEMENTATION PLAN AND CONTAMINATED SEDIMENT MANAGEMENT PLAN: Submit CSMP – 2 years (BPA, Task 5 page 38) ● IMPLEMENTATION PLAN, PHASE I (year 1-5) (BPA, pages 31-33; Task 5 page 38) <ul style="list-style-type: none"> ○ Submit Implementation Plan and Contaminated sediment Plan (CSMP) to address contaminated sediments in DC with milestones for load reductions or removals – 2 years ○ Removal of contaminated sediment within areas of known concern ○ Prioritization assessment of contaminated sediment through SQO process ○ Implement BMPs 	<ul style="list-style-type: none"> ○ Implement additional BMPs and site remediation actions based on results of Phase I ○ Report on status of implementation of Phase II (year 10) ○ Complete Phase II (15 year) <ul style="list-style-type: none"> ● IMPLEMENTATION, PHASE III (year 16-20)(BPA, page 34; Task 13 page 39) <ul style="list-style-type: none"> ○ Implementation of secondary and additional implementation action to be in compliance with final allocations 	<ul style="list-style-type: none"> ○ Sediment WLAs and LAs (BPA pages 14-21) ● ANNUAL MRP (BPA Task 4, page 38)
Los Angeles River Estuary Responsible Parties	<ul style="list-style-type: none"> ● SPECIAL STUDIES AND RECONSIDERATION OF TMDL TARGETS, ALLOCATIONS, AND SCHEDULE (BPA page 34-35) <ul style="list-style-type: none"> ○ Optional studies include but not limited to fish tissue, foraging ranges of targeted fish, watershed and hydrodynamic models, LAR and SGR contaminant contributions, air deposition, DDT related to Montrose site ○ Incorporate new State policies including, but not limited to SQO Part II, Toxicity Policy, Air quality criteria and other regulations affecting air quality 	<ul style="list-style-type: none"> ● COMPLY WITH INTERIM ALLOCATIONS: Interim sediment allocation (mg/kg) (BPA, first table on page 11). Compliance options: <ul style="list-style-type: none"> ○ SQO Part 1, is met; or 	<ul style="list-style-type: none"> ● COMPLY WITH FINAL WLAs and LAs <ul style="list-style-type: none"> ○ Water WLAs for non

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

RESPONSIBLE PARTIES	FIRST 5 YEARS	YEARS 6 TO 20	BY 20 YEARS
	<ul style="list-style-type: none"> ○ Meet the interim allocations in bed sediment; or ○ Meet the interim allocations in the discharge (BPA, page 11, 2nd paragraph) ● MONITORING: (1) WATER, (2) SEDIMENT, AND (3) FISH TISSUE (BPA pages 24-27) <ul style="list-style-type: none"> ○ Submit MRP (6 month); ○ Submit annual reports (15 month after workplan approval and annually after) (BPA Tasks 2,3, and 4 page 38) ● IMPLEMENTATION PLAN AND CONTAMINATED SEDIMENT MANAGEMENT PLAN: Submit CSMP – 2 years (BPA, Task 5 page 38) ● IMPLEMENTATION PLAN, PHASE I (year 1-5) (BPA, pages 31-33; Task 5 page 38) <ul style="list-style-type: none"> ○ Submit Implementation Plan and Contaminated sediment Plan (CSMP) to address contaminated sediments in DC with milestones for load reductions or removals – 2 years ○ Removal of contaminated sediment within areas of known concern ○ Prioritization assessment of contaminated sediment through SQO process ○ Implement BMPs ● SPECIAL STUDIES AND RECONSIDERATION OF TMDL TARGETS, ALLOCATIONS, AND SCHEDULE (BPA page 34-35) <ul style="list-style-type: none"> ○ Optional studies include but not limited to fish tissue, foraging ranges of targeted fish, watershed and hydrodynamic models, LAR and SGR contaminant contributions, air deposition, DDT related to Montrose site ○ Incorporate new State policies including, but not limited to SQO Part II, Toxicity Policy, Air quality criteria and other regulations affecting air quality 	<p>MS4 point sources (BPA page 13)</p> <ul style="list-style-type: none"> ○ Sediment WLAs and LAs (BPA pages 14-21) ● ANNUAL MRP (BPA Task 4, page 38) 	

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

RESPONSIBLE PARTIES	FIRST 5 YEARS	YEARS 6 TO 20	BY 20 YEARS
<p>Los Angeles River and San Gabriel River Responsible Parties</p>	<p>WLAs AND LAs ARE NOT REQUIRED MONITORING: (1) WATER, (2) SEDIMENT</p> <ul style="list-style-type: none"> ○ Submit MRP (6 month); ○ Submit annual reports (15 month after workplan approval and annually after) (BPA Tasks 2,3, and 4 page 38) <p>IMPLEMENTATION PLAN, PHASE I (year 1-5) (BPA, page 34; Task 6 page 38)</p> <ul style="list-style-type: none"> ● Submit report of implementation of current activities support downstream TMDL – 2 year 	<p>IMPLEMENTATION PHASES II AND III (year6-15) (BPA page 34;Task 6)</p> <ul style="list-style-type: none"> ● Implementation actions and TMDLs to allocate contaminant loads between dischargers in the Los Angeles and San Gabriel Rivers may be developed and required in Phases II and III as necessary to meet the targets in the Greater Harbor waters. 	<ul style="list-style-type: none"> ● ANNUAL MRP (BPA Task 4, page 38)

Responsible parties for assigned LAs and WLAs and monitoring for this TMDL as referenced in the table are listed below (BPA pages 36-37):

1. Dominguez Channel Responsible Parties
 - Dominguez Channel, Torrance Lateral, and Dominguez Channel Estuary MS4 Permittees
 - Los Angeles County
 - Los Angeles County Flood Control District
 - Caltrans
 - City of Carson
 - City of Compton
 - City of El Segundo
 - City of Gardena
 - City of Hawthorne
 - City of Inglewood
 - City of Lawndale
 - City of Long Beach
 - City of Los Angeles
 - City of Manhattan Beach

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

- City of Redondo Beach
 - City of Torrance
 - Individual and General Stormwater Permit Enrollees
 - Other Non-stormwater Permittees
 - Dominguez Channel Estuary Subgroup for bed sediment and fish:
 - Los Angeles County
 - Los Angeles County Flood Control District
 - Caltrans
 - City of Carson
 - City of Compton
 - City of Gardena
 - City of Los Angeles
 - City of Long Beach
 - City of Torrance
2. Greater Los Angeles and Long Beach Harbor Waters Responsible Parties
- Greater Los Angeles and Long Beach Harbor Waters MS4 Permittees
 - Los Angeles County
 - Los Angeles County Flood Control District
 - Caltrans
 - Bellflower
 - City of Lakewood
 - City of Long Beach
 - City of Los Angeles
 - City of Paramount
 - City of Signal Hill
 - City of Rolling Hills
 - City of Rolling Hills Estates
 - Rancho Palos Verdes
 - City of Los Angeles (including the Port of Los Angeles)
 - City of Long Beach (including the Port of Long Beach)
 - State Lands Commission
 - Individual and General Stormwater Permit Enrollees
 - Other Non-stormwater Permittees, including City of Los Angeles (TIWRP)
 - Los Angeles River Estuary Subgroup for bed sediment and fish:
 - Los Angeles County

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

- Los Angeles County Flood Control District
 - City of Long Beach
 - City of Los Angeles
 - City of Signal Hill
 - Caltrans
 - Consolidated Slip Responsible Parties subgroup
 - Consolidated Slip MS4 Permittees
 - Los Angeles County
 - Los Angeles County Flood Control District
 - City of Los Angeles
3. Los Angeles River and San Gabriel River Watershed TMDLs Responsible Parties
- Los Angeles River and San Gabriel River metals TMDLs responsible parties (For list of responsible parties, see Chapter 7-13 herein and US EPA, “Total Maximum Daily Loads for Metals and Selenium: San Gabriel River and Impaired Tributaries”, March 26, 2007.)

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

Responsible Parties	Dominguez Channel		Greater Los Angeles and Long Beach Harbor Waters			Los Angeles River and San Gabriel River
	Dominguez Channel (DC)	DC Estuary	Greater Harbors	Los Angeles River Estuary	Consolidated Slip	
• Los Angeles County	MP (W), WLA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA, LA	
• Los Angeles County Flood Control District	MP (W), WLA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA, LA	
• Caltrans	MP (W), WLA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA	MP (W, F, S), WLA, LA		
• City of Carson	MP (W), WLA	MP (W, F, S), WLA, LA				
• City of Compton	MP (W), WLA	MP (W, F, S), WLA, LA,				
• City of El Segundo	MP (W), WLA					
• City of Gardena	MP (W), WLA	MP (W, F, S), WLA, LA				
• City of Hawthorne	MP (W), WLA					
• City of Inglewood	MP (W), WLA					
• City of Lawndale	MP (W), WLA					
• City of Long Beach	MP (W), WLA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA, LA		
• City of Los Angeles	MP (W), WLA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA, LA	MP (W, F, S), WLA, LA	
• City of Manhattan Beach	MP (W), WLA					
• City of Redondo Beach	MP (W), WLA	MP (W, F, S), WLA, LA				
• City of Torrance						
• Bellflower			MP (W, F, S), WLA			
• City of Lakewood			MP (W, F, S), WLA			
• City of Paramount			MP (W, F, S), WLA			
• City of Signal Hill			MP (W, F, S), WLA	MP (W, F, S), WLA, LA		

Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics TMDL

Responsible Parties	Dominguez Channel		Greater Los Angeles and Long Beach Harbor Waters			Los Angeles River and San Gabriel River
	Dominguez Channel (DC)	DC Estuary	Greater Harbors	Los Angeles River Estuary	Consolidated Slip	
• City of Rolling Hills			MP (W, F, S), WLA			
• City of Rolling Hills Estates			MP (W, F, S), WLA			
• Rancho Palos Verdes			MP (W, F, S), WLA			
• State Lands Commission			MP (W, F, S), WLA, LA			
• Individual and General Stormwater Permit Enrollees	MP (W), WLA	MP (W), WLA	MP (W), WLA	MP (W), WLA	MP (W), WLA	
• Other Non-stormwater Permittees	MP (W), WLA	MP (W), WLA	MP (W), WLA	MP (W), WLA	MP (W), WLA	
• Terminal Island Water Reclamation Plant			MP (W), WLA			
• Los Angeles River/San Gabriel River Watershed TMDLs Responsible Parties						MP (W,S) Report of Implementation

Responsible parties that are assigned WLAs are required to submit an Implementation Plan (IP) and responsible parties that are assigned LAs are required to submit a Contaminated Sediment Management Plan (CSMP) to the Regional Water Board two years after the effective date as required in Task 5 of the Implementation Schedule.

LIST OF ACRONYMS

MP: Monitoring Plan
W: Water Column Monitoring
F: Fish Tissue Monitoring
S: Sediment Monitoring
WLA: Waste Load Allocation
LA: Load Allocation

Harbor Toxics TMDL – Dredging Requirements for Cities

Regional Board's TMDL



State Board's SQO Policy

