



CITY OF
San Fernando
Historic & Visionary

February 1, 2012



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

Subject: Dominguez Channel/Harbor Toxics TMDL Resolution

Dear Ms. Townsend:

The **City of San Fernando** (City) is pleased to submit this comment letter in connection with the proposed resolution *Approving an Amendment to the Water Quality Control Plan for the Los Angeles Basin to Incorporate a Total Maximum Daily Load for Toxics Pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters* (TMDL).

The proposed resolution falls short of correcting the defects raised by the City in its petition to the State Board challenging the TMDL last May. The resolution states that MS4s contribute to sediment contamination. Yet the Los Angeles Regional Board has no data to support this claim. Further, as mentioned in the petition, federal stormwater regulations limit monitoring to water column monitoring at the outfall. They do not require sediment monitoring. Further, while the MS4 permit allows for water column "toxicity" monitoring, the TMDL does not acknowledge that water column toxicity differs from storm-to-storm, thereby complicating compliance. Nor does the TMDL specify what fish species was used or will be used to determine toxicity either at the outfall or the receiving water. This is in short a "shot in the dark" approach.

It should also be noted that during a discussion with Los Angeles Regional Board staff on this matter, Section Chief Renee Purdy acknowledged that the MS4 permit cannot be used to compel permittees to participate in the remediation of the harbors because the permit limits meeting water quality standards at the outfall – the point source. Meeting numeric or narrative standards for stormwater, including TMDL waste load allocations, is limited to controls within the MS4 – not in a receiving water. The resolution contains no reference to this important regulatory fact. Without it subject cities could be easily exposed to third party litigation.



The resolution also does not mention water quality based effluent limitations (WQBELs), which the TMDL also lacks. Regional Board staff has announced on several occasions that the TMDL is a planning tool. For MS4s it is important to know, for obvious planning purposes, if WQBELs are to be incorporated into the permit that addresses each TMDL WLA. The City is not confident that Regional Board staff is headed in that direction. In deed, in each of the TMDLs it has incorporated into the Los Angeles County MS4 permit (viz., trash and dry weather bacteria for Santa Monica Bay Beaches) Regional Board staff has not referenced WQBELs. Staff has asserted that WQBELs were "implied" in the permit. However, there is no evidence in the findings section or in any of the other sections of the current MS4 permit implying that a WQBEL was applied to these TMDLs and expressed as BMPs. This is consistent with Regional Board staff's position that waste load allocations must be met by any BMP means necessary and waste load allocations are WQBELs. However, there is also no indication in any of the MS4 permit re-openers that the Regional Board had complied with 40 CFR § 122.44(d)(1)(vii)(B): *that NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs.*

Finally, the resolution does not address the problem of including San Gabriel and Los Angeles River MS4 permittees in this TMDL. Regional Board staff has determined that these permittees must be subject simply because runoff from these respective watersheds could drift into the harbors. However, there is no evidence of this. This view is based on speculation. Further, the Los Angeles River and San Gabriel Rivers have their own metals TMDLs for which they must address through WQBELs expressed as BMPs. We see no reason why these permittees should be included in a TMDL that is for the Dominguez Channel – other than using them as funding sources for the clean-up of the harbors.

Given the manifold defects from which the Dominguez Channel/Harbors Toxics TMDL suffers the City recommends that the State Board not adopt it and instead defer adoption to USEPA. Discussions with David Smith, USEPA Region 9 and Cindy Lin, the TMDL person for the Los Angeles USEPA office seem to assure that USEPA adopted TMDLs will contain WQBELs in keeping with federal guidance memoranda.

State Board Chair Hoppin expressed concern about USEPA adopting this TMDL, suggesting that it would not be a desirable alternative. His concern is based on the fact that USEPA adopted TMDLs do not require implementation plans as do TMDLs adopted by the State¹. This is an apparent reference to California Water Code Section §13242 which states:

The program of implementation for achieving water quality objectives shall include, but not be limited to:

(a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.

(b) A time schedule for the actions to be taken.

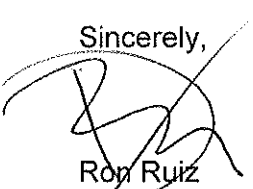
¹Note that the Water Code does not use the term *implementation plan* but instead *implementation program*.

(c) A description of surveillance to be undertaken to determine compliance with objectives.

Nevertheless, USEPA staff could incorporate language indicating that the Dominguez Channel/Harbors Toxics TMDL – as well as the others it intends to adopt to meet the March 2012 consent decree deadline – would address these provisions in the next MS4 permit. WQBELs, for example, could address aforementioned *provision (a)* by translating the WLAs into BMPs and/or other actions (e.g., monitoring). A time schedule could easily be placed into the TMDL compliance section of the permit to attain WLAs. And, monitoring could be used to evaluate the performance of BMPs in meeting WLAs at the outfall. The “implementation program” could be executed through the stormwater quality management plan (SQMP), in a section that specifically identifies BMPs to attain WLAs for each of the TMDLs.

In closing, the City appreciates the opportunity to comment on this very important matter.

Sincerely,



Ron Ruiz
Public Works Director