

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – LOS ANGELES REGIONAL WATER BOARD
SEPTEMBER 9, 2014**

ITEM 7

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION (BASIN PLAN) TO REVISE A TOTAL MAXIMUM DAILY LOAD (TMDL) FOR TOXIC POLLUTANTS IN MARINA DEL REY HARBOR.

DISCUSSION

The Los Angeles Water Board adopted a revision to a TMDL for toxic pollutants in Marina del Rey Harbor on February 6, 2014 as [Resolution No. R14-004](#). The TMDL addresses Clean Water Act (CWA) section 303(d) listings for copper, lead, zinc, chlordane, PCBs, DDT, sediment toxicity, and a fish consumption advisory in Marina del Rey Harbor. Toxic pollutant loading and the resulting ecological responses in Marina del Rey Harbor impair beneficial uses associated with recreation activities (water contact), aquatic life (marine habitat, wildlife habitat), commercial and sport fishing, and shellfish harvesting.

Marina del Rey Harbor drains a 2.9 square-mile watershed that includes portions of the City of Los Angeles, Culver City and unincorporated areas of Los Angeles County. The watershed is highly developed, with limited open space (<5%).

The current revision is required by the implementation schedule in the original TMDL, which was adopted in 2005 and became effective in 2006. The revised TMDL (1) increases the geographical area of the TMDL to include the front basins of Marina del Rey Harbor, (2) adds new numeric targets for p,p'-DDE and total DDT in the sediment, (3) adds a new numeric target for copper in the water column and an associated load allocation for boats coated with copper-based hull paints, and (4) replaces the requirement for the Executive Officer to issue clean up and abatement orders for in-harbor sediments with load allocations for the in-harbor sediments.

- 1) At the time the TMDL was adopted in 2005, the CWA section 303(d) impaired waters listing for Marina del Rey Harbor encompassed only the back basins. Since the adoption of the original TMDL, data collected in the front basins confirms that the water quality impairments extend into the front basins. Changes to the TMDL increase the geographical area addressed by the TMDL to include the entirety of Marina del Rey Harbor. This expansion of the geographic scope of the TMDL also includes a new portion of the watershed – the area that drains to the front basins, which is now subject to the TMDL. Thus, MS4 discharges from this newly added watershed area are provided additional time to comply.
- 2) New data also confirm sediment impairments by DDT (p,p-DDE and total DDT). DDT is a legacy pesticide and will be addressed by the mechanisms currently in the planning stages for the organic pollutants (PCBs and chlordane) addressed in the original TMDL. Thus no additional time is needed to comply with this additional listing.

- 3) New data also confirm impairment of water quality in the water column by dissolved copper. The primary source of dissolved copper to the water column is antifouling paint from boats in Marina del Rey Harbor. Changes include a load allocation for this source and an implementation program to reduce the contribution of dissolved copper from this source over a ten-year period. Similar TMDLs have been established and are being implemented in Newport Bay and San Diego Bay.
- 4) The original TMDL directs Regional Board staff to issue investigatory and clean up and abatement orders to address toxicity hotspots within in-harbor sediments. A Sediment Characterization Study has shown that sediment impairments in Marina del Rey Harbor are not isolated to hotspots but rather are present throughout Marina del Rey Harbor. Changes to the TMDL include the addition of load allocations for the in-harbor contaminated sediments and an implementation schedule for addressing the contaminated sediments. The Regional Board has adopted the same approach in other TMDLs including the Dominguez Channel and Greater LA/Long Beach Harbors Toxics TMDL (Harbors Toxics TMDL). The implementation schedule allows for all other pollutant sources to be addressed by responsible parties prior to implementing actions to remediate in-harbor contaminated sediments.

The revisions to the TMDL also incorporate Sediment Quality Objectives (SQOs) as promulgated in the State Water Quality Control Plan for Enclosed Bays and Estuaries (EB&E Plan Part 1). The changes are consistent with those incorporated into the Ballona Creek Estuary Toxic Pollutants TMDL, which was adopted by the Regional Board in December 2013. The use of the SQOs for direct effects (based on the sediment triad approach) has been included as a means of demonstrating compliance. This is also consistent with the Regional Board's approach in the Harbors Toxics TMDL approved by the State Board in February 2012.

In the 2006 TMDL, required monitoring was divided into "ambient" and "TMDL effectiveness" monitoring. The revised TMDL has been simplified to include only one program of monitoring for purposes of determining attainment of the TMDL targets and allocations. This change is also consistent with the Ballona Creek Estuary Toxic Pollutants TMDL revised by the Regional Board in December 2013.

Finally, updated language on compliance and permitting has been included to reflect current permitting practices. In addition, the MS4 discharges from the watershed area draining to the back basins are allotted an additional two years to comply with the TMDL beyond what was allotted in the original TMDL based on new information about how much pollution is loaded to the back basins from the watershed.

Since the Los Angeles Water Board's adoption of the TMDL revision on February 6, 2014, the Los Angeles Water Board staff has continued to actively engage with stakeholders regarding the TMDL. Los Angeles Water Board staff has participated in meetings with the County of Los Angeles, paint manufacturers, the marina lessees association, and the boating community. In addition, efforts by the responsible parties to implement the TMDL have already begun. These efforts include the designation of \$4 million by the Los Angeles County Board of Supervisors towards TMDL implementation. As an outcome of these meetings, the State Board resolution approving the TMDL revision includes language that addresses stakeholder concerns and clarifies the intent of the TMDL.

POLICY ISSUE

Should the State Water Board approve an amendment to the Basin Plan to revise the TMDL for toxic pollutants in Marina del Rey Harbor?

FISCAL IMPACT

The Los Angeles Water Board and State Water Board staff work associated with or resulting from this action will be addressed with existing and future budgeted resources.

REGIONAL BOARD IMPACT

Yes, approval of this resolution will amend the Los Angeles Water Board's Basin Plan.

STAFF RECOMMENDATION

That the State Water Board:

1. Approves the amendment to the Basin Plan adopted under Los Angeles Water Board Resolution No. R14-004.
2. Authorizes the Executive Director or designee to submit the amendment adopted under Los Angeles Water Board Resolution No. R14-004 as approved, and the administrative record for this action to the Office of Administrative Law and the TMDL to the U.S. EPA for approval.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. In particular, approval of this item will assist in fulfilling Objective 1.1 to implement a statewide strategy to efficiently prepare, adopt, and implement TMDLs, which result in water bodies meeting water quality standards, and adopt and begin implementation of TMDLs for all 2006-listed water bodies by 2019.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION TO REVISE A TOTAL MAXIMUM DAILY LOAD FOR TOXIC POLLUTANTS IN MARINA DEL REY HARBOR

WHEREAS:

1. On February 6, 2014, the Regional Water Quality Control Board for the Los Angeles Region (Los Angeles Water Board) adopted [Resolution No. R14-004](#), an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan amendment), to revise a Total Maximum Daily Load (TMDL) for toxic pollutants in Marina del Rey Harbor.
2. The Los Angeles Water Board found that the analysis contained in the California Environmental Quality Act (CEQA) "Substitute Environmental Documents" for the proposed Basin Plan amendment, including the CEQA Checklist, the final staff report entitled "Reconsideration of the Total Maximum Daily Load for Toxic Pollutants in Marina del Rey Harbor," and the responses to comments complies with the State Water Board's regulations for the implementation of CEQA, as set forth in the California Code of Regulations, Title 23, sections 3775 through 3781. The State Water Board has reviewed the Substitute Environmental Documents for the Basin Plan amendment and concurs with the Los Angeles Water Board's findings and determinations, including the Statement of Overriding Considerations.
3. The Los Angeles Water Board also adopted the Basin Plan amendment pursuant to the "Necessity" standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).
4. The Los Angeles Water Board found the Basin Plan amendment is consistent with the Statement of Policy with Respect to Maintaining High Quality of Waters in California ([State Water Board Resolution No. 68-16](#)) and the federal Antidegradation Policy (40 C.F.R. § 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and attainment of water quality standards.
5. The State Water Board finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that regional water quality control boards may revise basin plans, and section 13242, which requires a program of implementation for achieving water quality objectives. The State Water Board also finds that the TMDL as reflected in the Basin Plan amendment is consistent with the requirements of section 303(d) of the federal Clean Water Act.

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6. A Basin Plan amendment does not become effective until approved by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL). The TMDL must also receive approval from the U.S. Environmental Protection Agency (U.S. EPA).
7. Los Angeles Water Board staff determined that minor, non-substantive changes to the language of the Basin Plan amendment were necessary to correct minor clerical errors. The Los Angeles Water Board's Executive Officer made these minor non-substantive changes in a [memorandum](#) dated April 4, 2014. The memorandum contains correcting language to two compliance options in the Implementation Schedule section of the Basin Plan amendment in order to correct a typographical error.
8. The term "responsible parties" in the TMDL is synonymous with the terms "dischargers accountable for" and "implementing party" as those terms are used in the Total Maximum Daily Load for Dissolved Copper in Shelter Island Yacht Basin, San Diego Bay (approved by the State Water Board on September 22, 2005) and the Richardson Bay Pathogens Total Maximum Daily Load (approved by the State Water Board on August 4, 2009), respectively. This TMDL is enacted under section 303(d) of the federal Clean Water Act. The identification of parties in the TMDL does not assign liability for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.
9. The Los Angeles Water Board has committed to working with interested stakeholders and to reconsider the TMDL in response to studies in Marina del Rey Harbor and other pertinent information.
10. There are a number of U.S. EPA approved tools that can be utilized to derive site-specific water quality objectives. The Los Angeles Water Board will consider revisions to water quality objectives and corresponding TMDL numeric targets developed using the biotic ligand model (BLM) if it is fully approved by the U.S. EPA for use in marine waters during the TMDL implementation period.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the Basin Plan amendment adopted under Los Angeles Water Board Resolution No. R14-004.
2. Authorizes and directs the Executive Director or designee to submit the Basin Plan amendment adopted under Los Angeles Water Board Resolution No. R14-004 to OAL for approval of the regulatory provisions and to U.S. EPA for approval of the TMDL.

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3. Directs the Executive Officer of the Los Angeles Water Board to present to the Los Angeles Water Board for its consideration revisions to the Load Allocations, Waste Load Allocations, and/or compliance deadlines within the TMDL as appropriate or necessary within 18 months of receipt of studies and other pertinent information.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 9, 2014.

Jeanine Townsend
Clerk to the Board