

May 7, 2012



PUBLIC WORKS DEPARTMENT
losangeles@waterboards.ca.gov

Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street
Los Angeles, California 90013

Subject: **“Comment Letter – Bacteria TMDLs Revisions.”**
Reopener, Santa Monica Bay Beaches Bacteria TMDL
Jurisdictional Group 7

Dear Mr. Unger;

The Cities of Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills and Rolling Hills Estates comprise the peninsula agencies of Jurisdictional Group 7 (J7). These are primarily low density residential communities with hillside and rocky coastlines. As such, J7 is in a unique situation as compared to the more alluvial plain cities draining into Santa Monica Bay. The Palos Verdes Peninsula beaches and monitoring locations consistently have fewer exceedances of indicator bacteria as compared with Leo Carrillo, the existing reference beach. While most of the proposed changes to the TMDL appear more applicable to other Jurisdictions, J7 does have several comments with the intent of making the TMDL a less ambiguous document.

We appreciate the Regional Board reopening the Santa Monica Beaches Bacteria TMDL with the purpose of incorporating recent monitoring and other scientific advances that have occurred since the original adoption date. J7 has had a long standing concern that the indicator bacteria monitoring currently taking place may not be the most indicative of anthropogenic causes of shoreline and point zero bacterial exceedances. J7 understands that the current monitoring may be following the best available parameters, but it is requested that wording be inserted into the TMDL to allow for improvements in monitoring and beach management approaches with the anticipated release of new US EPA guidelines.

Specific comments regarding the proposed reopener are:

1. There is an error on Table 3 in the Staff Report. Sample stations SMB 7-1 through 7-9 are listed as being in or near the City of Santa Monica. The locations for these stations are incorrectly listed as being in Jurisdiction 2 and others in Jurisdiction 3. This correction appears to have been made in the related MS4 permit working proposal, but they also need to be made in the Basin Plan Amendment.
2. Similarly, Table 7-4.2a in the proposed Basin Plan Amendment and Table 5 of the Staff Report show sample point SMB 6-6 and 7-1 both in Malaga cove and the Palos Verdes Subwatershed. SMB 6-6 should be shown in the Redondo subwatershed.

3. Page 5 of the proposed Basin Plan Amendment and the associated Table 7-4.2b:

The proposed change from the current compliance targets of 36 (as shown in ~~strikeout~~ in Table 7-4.2b) for each milestone has now been reduced to 29, 24 and 18. This has been changed back to 36, 36, 36 in the related MS4 permit draft proposal, but the change needs to be made in the proposed Basin Plan Amendment also. In other words, the original wet weather reduction targets should be restored. *(The correct compliance targets, should be 33, 33 and 33 to take into account the reassignment of monitoring point 6-6 to Jurisdictional Group 6)*

4. The fourth paragraph under Waste Load allocations (also page 5) should be revised to reflect the lack of authority cities have over one another. The J7 group was originally established somewhat arbitrarily, and while the peninsula cities have no objection to working together, the cities lack the ability to regulate and enforce requirements within another city's jurisdiction. While it makes sense for the Jurisdictional Groups previously identified in the TMDLs to work jointly to carry out implementation plans to meet the interim reductions, only the responsible agencies with land use or MS4 tributary to a specific shoreline monitoring location can be held responsible for the implementation targets to be achieved at each respective beach location. The former and proposed wording designates all jurisdictional group members be jointly responsible for exceedances, even if an individual member's contribution to exceedance was essentially zero. As you will recall, Notices of Violation were issued twice, (and subsequently retracted) to all J7 members, even though in one case, a J7 member was located approximately 10 coastline miles away and the four monitoring stations in between recorded no exceedances in the applicable timeframe.

Suggested changes (shown in ~~strikeout~~ and blue) would be:

~~All~~ *Responsible jurisdictions and responsible agencies³ within a subwatershed are jointly responsible for investigating exceedances, determining the subwatershed members tributary to any monitoring site where exceedance(s) occurred and, for those members determined to be tributary, for complying with the allowable number of exceedance days for each associated shoreline monitoring site as assigned in ~~Table 7-4.2a~~ below.*

SMB 7-1	Palos Verdes Estates, Rancho Palos Verdes, and County of Los Angeles
SMB 7-2	Palos Verdes Estates and County of Los Angeles
SMB 7-3	Rancho Palos Verdes and County of Los Angeles
SMB 7-4	Rancho Palos Verdes and Rolling Hills Estates and County of Los Angeles
SMB 7-5	Rancho Palos Verdes and Rolling Hills and County of Los Angeles
SMB 7-6	City and County of Los Angeles
SMB 7-7	City and County of Los Angeles

(A request to remove this site had been submitted in a separate letter)

5. Under Numeric Targets on page 3, the proposed revisions update the requirements for geometric mean calculations in the Basin Plan and in several TMDLs, including the SMBBB TMDL. For the TMDLs, the current 30-day rolling geometric mean calculated daily would be replaced with a 6-week rolling geometric mean calculated weekly. While we believe that this change provides a more accurate assessment of water quality than the previous method, we are still concerned that even a 6-week monitoring period would not provide the statistical strength to provide reliable and representative water quality determinations. We agree with and support the recent EPA draft recommendations for recreational water quality criteria (76 Federal Register 79176, December 21, 2011) to include more sample results in the geometric mean calculations to improve the accuracy of the characterization of water quality, and therefore prevent the chance of misclassifying water bodies. EPA showed that, for beaches with actual geometric means less than 25 CFU/100 ml (the geometric means observed at Jurisdiction 7 beaches are generally less than this value), the likelihood of misclassifying water bodies is more than 20% with 4 samples and 14% with 5 samples. EPA has been conducting research since 2004 to support the updated criteria and went to great lengths to clarify the intended purpose and use of the geometric mean, as well as how it should be calculated. We support the EPA recommendation to minimize the risk of inaccurate water quality determinations by calculating geometric means over a longer time period, and recommend that geometric means be based on 90-day periods.

The Staff Report and proposed TMDL revisions reflect and acknowledge the anticipated update to EPA's Recreational Bacteria Criteria, forthcoming in 2012. Possible future regulatory updates to California's bacteria water quality standards should be easily adaptable into future updates to the TMDLs. Therefore, it would be helpful to include flexibility in the TMDLs and Basin Plan Amendment to allow such a transition.

6. Under Load Allocations (for non-point sources) on Page 7, the proposed revisions are assigning responsibilities to adjacent agencies that may or may not have any control of the shoreline site where the monitoring station is located. Suggested changes are:

Because dry weather urban runoff and stormwater to SMB beaches is regulated as a point source, if a nonpoint source is directly impacting shoreline bacteriological quality and causing an exceedance of the numeric targets(s), the permittee(s) under the municipal separate stormwater system NPDES permits are not responsible through these permits. However, the jurisdiction or agency adjacent to owning or operating the shoreline where the monitoring location is located may have further obligations as described under "Compliance Monitoring" below.

7. Seasonal Variations and Critical Conditions

The allowable wet-weather exceedance days are based upon a 90th percentile storm years of 75 wet days. There is no provision for increasing the number of allowable exceedance days for those 10 percent of years when the number of wet-weather days exceeds 75.

8. Under “Compliance Monitoring” (page 10)

The proposed TMDL language provides no guidance to how far up current or down current the cause or source any shoreline exceedance may be located. While any proscriptive designation would be arbitrary to some degree, it is recommended that at least a starting point be defined. Suggested wording of the last paragraph of this section is:

If a ~~single~~ daily or weekly sample shows the discharge or contributing area to be out of compliance, the Regional board may require, through permit requirements of the authority contained in the Water code section 13267, ~~daily~~ every other [note: changed due to current 48 hour turnaround time for samples] day sampling in the wave wash or at the existing open shoreline monitoring location until all single sample events meet water quality objectives. Furthermore, if a beach location is out-of-compliance as determined in the previous paragraph, agencies responsible for the operation and/or ownership of the beach (unless further investigation determines a larger or smaller investigative area is more appropriate) shall initiate a beach investigation, which at a minimum shall include ~~daily~~ every other day monitoring in the wave wash or at the existing open shoreline monitoring location until all single sampling events meet bacteria waste quality objectives. - - -

9. Also Under “Compliance Monitoring” (page 10)

The proposed TMDL language is not consistent with efforts to develop model monitoring programs throughout the region and could lead to extensive unwarranted monitoring. It is important to identify and mitigate potential public health risks, when warranted. The following suggested language would be protective and adaptive to changes in basin plan bacteria water quality objectives:

If routine monitoring ~~a single sample~~ exceeds the water quality objectives of the Basin Plan, ~~shows the discharge or contributing area to be out of compliance~~ the Regional Board may require ~~through permit requirements or the authority contained in Water Code section 13267,~~ temporary accelerated monitoring ~~daily sampling~~ in the wave wash or at - - - (note: the reference to 13267 is unnecessary)

10. Footnote 10 on page 10 should be changed:

¹⁰*Safety considerations due to rocky shorelines, access road closures and during wet weather may preclude taking the sample at point zero or in the wave wash.*

11. Attachment A to BPA: Source Analysis (p. 4): The source analysis fails to consider natural sources of elevated bacteria densities present in beach and shoreline waters which are not

associated with runoff but may be associated with presence of ocean debris, birds, dead birds or marine mammals, heavy surf, increased wave height and wind speed.¹ Thus natural background conditions on the beach and in marine waters may contribute to exceedances absent any runoff, whether point or non-point.

12. *Attachment A to BPA: Waste Load Allocations (p. 5):* It should be clarified that waste load allocations as measured in receiving waters only apply to the MS4 to the extent that they are caused by MS4 discharge
13. *Attachment A to BPA: Seasonal Variations and Critical Conditions (p. 9):* The statement about critical dry weather conditions omits the fact that historic shoreline monitoring data for the reference beach during summer dry weather as shown in Table 3 of the staff report exceeds the single sample bacteria objectives at the same rate as during the winter, i.e., in 10% of the days sampled. It is unclear then, why the winter is the critical condition for dry weather.
14. *Attachment A to BPA: Compliance Monitoring (p. 10):* Not all agencies within each subwatershed identified in the TMDL have land area tributary to every shoreline monitoring location listed within the subwatershed. Only those agencies with land area tributary to an MS4 outfall associated with a given shoreline monitoring location should be held responsible for attaining the TMDL targets at that monitoring location. Therefore a separate table needs to be created, and this can be provided by the responsible agencies, which shows those agencies with responsibility for each individual shoreline monitoring location.
15. *Attachment A to BPA: Compliance Monitoring (p. 10):* Need to modify the last sentence in the second paragraph—it is virtually impossible to demonstrate the geographic origin of bacterial sources. The standard should be that **waste load** allocations have not been exceeded such that discharges from the MS4 have not caused or contributed to the exceedance. So if a responsible agency demonstrates that MS4 discharges did not reach the shoreline from its jurisdiction, then a waste load allocation is not exceeded.
16. *Attachment A to BPA: Compliance Monitoring (p. 10):* If this TMDL is requiring the investigation of non-point sources of exceedances, then it should assign responsibility for compliance with load allocations, as has been done in many other TMDLs, to agencies with responsibility for those loads, not to the MS4 operators or dischargers who are strictly responsible for *waste load* allocations.
17. *Attachment A to BPA: Table 7-4.3 Santa Monica Bay Beaches Bacteria TMDL Significant Dates:* Many of the actions required in this table have already been accomplished through the extensive good-faith efforts of the responsible agencies and this should be recognized by modifications to Table 7-4.3 for each action that has been met.
18. *Attachment A to BPA: Table 7-4.2a:* The summer dry weather targets need to be revised so that they are based on the reference beach/anti-degradation approach based on actual data collected and discussed in the staff report rather than on an arbitrary zero target that cannot be

¹ February 2008 Los Angeles County Department of Public Works. Santa Monica Bay Beaches Bacterial Indicator TMDL Compliance Study-Final Report, prepared by Weston Solutions.

attained in mathematical reality. Rather than making the target be based on exceedance days, it may be better to make them based on an exceedance rate expressed as a percentage of sampling days as has been done in Table 3 of the staff report, such an approach makes sense especially with respect to antidegradation monitoring locations where the frequency of exceedances during dry weather is very low such that there may be one exceedance every other year or every three years in which case this is consistent with the historic data and should not be a basis for finding the location out of compliance.

19. *Also, Bluff Cove SMB 7-2 is the only monitoring point in the entire Santa Monica Bay that has a zero wet-weather allowable day. This needs to be raised to allow for natural cycles. Similarly, it is one of only two monitoring points that has a zero winter dry weather allotment. This needs to be increased as well.*
20. *Staff Report, Section 3.5, p. 36-37 Natural Sources Exclusion:* If the staff are eliminating the option of using the natural source exclusion approach for the Santa Monica Bay Beaches Bacteria TMDL, then they must use the reference approach fully, and that applies to summer dry weather as well as winter dry weather and wet weather. The reference beach data shows a history of summer dry weather exceedances, and contrary to the Board staff's statement those summer dry weather exceedances were not limited to a single year, but occurred in multiple years: 2005, 2006, 2008 and 2011. Thus there is no basis for using the reference beach approach in establishing a zero objective for summer dry weather exceedances when in fact the exceedance rate is 10% during both summer dry weather and winter dry weather at the reference beach based on the data presented in Table 3 of the Staff Report.
21. *Resolution:* There should be findings regarding all of the actions that responsible agencies have taken to comply with the Significant Dates/Actions listed in Table 7-4.3 to date (Implementation Plan submittals, coordinated shoreline plan submittals, etc.). In some cases there have been Regional Board resolutions acknowledging the submittals (e.g., Implementation Plan submittals), yet no findings were included recognizing these actions.
22. *Resolution Finding 13.* "States that this reconsideration is not a general reconsideration of each and every element of these TMDLs, but a re-examination of certain technical issues which, as recognized at the time of TMDL adoption, might need revision upon further data collection and analysis, study or experience as indicated in Tables". The Regional Board is not precluded from reconsidering aspects of the TMDL that were not envisioned for reconsideration at the time of adoption if new data and information is gathered which supports reconsidering other aspects of the TMDL, nor should it be. Although not envisioned by the Board staff as needing revision at the time the TMDL was promulgated, data collected under the Coordinated Shoreline Monitoring Program has made it clear that the Regional Board staff assumption that the reference beach exhibits zero summer dry weather exceedances is not supported by the data collected since adoption.

In closing, J7 wishes to thank the Regional Board for the opportunity to comment. Please note that the City of Los Angeles and the County of Los Angeles are also member of J7, but will be submitting

individual comment letters and above comments should not be considered comments from those agencies. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Tom Odom". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Tom Odom

Director of Public Works

Rancho Palos Verdes, lead agency for J7