

State of California
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R14-004
February 6, 2014

Amendment to the Water Quality Control Plan for the Los Angeles Region to Revise the Total Maximum Daily Load for Toxic Pollutants in Marina del Rey Harbor

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), finds that:

1. On October 6, 2005, the Regional Board adopted, by Resolution No. R05-012, an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) incorporating a TMDL for toxic pollutants in Marina del Rey Harbor (hereinafter "Marina del Rey Harbor Toxics TMDL"). The TMDL included an implementation plan requiring reduction of toxic pollutants in sediments to Marina del Rey Harbor by March 22, 2021.
2. The Marina del Rey Harbor Toxics TMDL was subsequently approved by the State Water Resources Control Board (State Water Board) on January 13, 2006, the Office of Administrative Law (OAL) on March 13, 2006, and the United States Environmental Protection Agency (U. S. EPA) on March 16, 2006. The effective date of the Marina del Rey Harbor Toxics TMDL established by Resolution No. R05-012 was March 22, 2006, when the Certificate of Fee Exemption was filed with the California Department of Fish and Game.
3. The Marina del Rey Harbor Toxics TMDL includes a scheduled reconsideration. Specifically, pursuant to Table 7-18.2 of the TMDL, the Regional Board will re-assess the numeric targets and waste load allocations for consistency with the State Board adopted sediment quality objectives. In addition, the Regional Board will reconsider the TMDL to re-evaluate the waste load allocations and the implementation schedule.
4. This reconsideration is not a general reconsideration of each and every element of the TMDL, but a re-examination of certain technical issues, which might need revision upon further data collection and analysis, or new State or regional water quality control plans or policies as indicated in Table 7-18.2.
5. The Marina del Rey watershed is approximately 2.9 square miles located with the larger Santa Monica Bay watershed. It is south of Venice and north of Playa del Rey, and approximately 15 miles southwest of downtown Los Angeles. The watershed includes area within the City of Los Angeles, Culver City and some unincorporated areas of Los Angeles County.
6. The Regional Board's goal in establishing the Marina del Rey Harbor Toxic Pollutants TMDL is to protect the aquatic life, wildlife, recreational and fishing beneficial uses of Marina del Rey Harbor, and to achieve the level of water quality and sediment quality to protect these beneficial uses. The proposed TMDL revision addresses impairments of fish tissue, sediment quality, and water quality caused by metals and organic compounds in Marina del Rey Harbor.

7. Regional Board staff has prepared a detailed technical document that analyzes and describes the specific necessity and rationale for this TMDL revision. The technical document entitled "Reconsideration of the Total Maximum Daily Load for Toxic Pollutants in Marina del Rey Harbor" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting.
8. Upon reconsideration of the Marina del Rey Harbor Toxic TMDL, these amendments address newly identified impairments and revise the TMDL to adjust the targets, loading capacity, and allocations. The technical document provides the detailed analysis supporting these revisions as well as analysis of other technical matters to be reconsidered as specified in the TMDL, such as providing additional flexibility in compliance determination.
9. On February 6, 2014, prior to the Regional Board's action on this resolution, a public hearing was conducted on the revision to this TMDL. Notice of the hearing for this revision of the TMDL was published in accordance with the requirements of Water Code Section 13244. This notice was published in the Los Angeles Times on November 5, 2013.
10. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. A draft of the revisions to the Marina del Rey Harbor Toxic Pollutants TMDL was released for public comment on November 5, 2013; a Notice of Hearing was published and circulated 45 days preceding Regional Board action; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on February 6, 2014 to consider adoption of the revised TMDL.
11. In amending the Basin Plan, the Regional Board considered the factors set forth in sections 13240 and 13242 of the California Water Code.
12. Neither TMDLs nor their targets or other components are water quality objectives, and thus their establishment or revision does not implicate California Water Code section 13241.
13. This amendment is consistent with the State Antidegradation Policy (State Water Board Resolution No. 68-16), and the federal Antidegradation Policy (40 CFR § 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and attainment of water quality standards.
14. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) requirements for preparing environmental documents. (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.)
15. The Regional Board previously prepared substitute environmental documentation for the establishment of the Marina del Rey Harbor Toxics TMDL Resolution No. R05-012, which was filed with the Resources Agency on March 22, 2006. That documentation contained the required environmental documentation under the State Water Board's CEQA regulations (23 Cal. Code Regs § 3777). The project itself was the establishment of the TMDL. In preparing the previous substitute environmental documentation, the Regional Board considered the requirements of Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and intended those documents to serve as a tier 1 environmental review.

16. These TMDL revisions alter the environmental analysis that was previously prepared for the establishment of the Marina del Rey Harbor Toxics TMDL because the TMDL revisions will result in different implementation actions than those previously analyzed and different effects upon the environment. Moreover, additional reasonably foreseeable methods of compliance warrant environmental analysis pursuant to Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187.
17. The Regional Board staff has prepared “substitute environmental documents” for this project that contain the required environmental documentation under the State Water Board’s CEQA regulations. (23 Cal. Code Regs. § 3775-3781.) The project itself is the revision of a TMDL for metals and organic compounds in the Marina del Rey Harbor Watershed. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law and regulation), the Board does exercise discretion in assigning waste load allocations and load allocations, determining the program of implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.
18. In preparing the substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and section 15187 of Title 14 of the California Code of Regulations, and intends those documents to serve as a tier 1 environmental review. This analysis is not intended to be an exhaustive analysis of every conceivable impact, but an analysis of the reasonably foreseeable consequences of the adoption of this regulation, from a programmatic perspective. The “Lead” agencies for tier 2 projects will assure compliance with project-level CEQA analysis of this programmatic project. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.
19. The reasonably foreseeable methods of compliance for this TMDL include structural BMPs such as: installation of infiltration systems, vegetated swales, sand/media filters, oil/water separators, and catch basin inserts; removal of contaminated sediments in the harbor by dredging; upgrading storm drains; monitoring natural attenuation of contaminants; capping of contaminated sediments; replacement of copper-based antifouling paints; and diverting or eliminating non-storm water discharges. Foreseeable methods of compliance also include non-structural BMPs, such as housekeeping practices, public education and outreach, trash collection/street sweeping, reducing effects of copper-based paints, conducting boater education programs, imposing controls on Marina del Rey boat owners, implementation of financial incentives, storm drain cleaning, commercial demonstrations and scientific studies.
20. Consistent with the Regional Board’s substantive obligations under CEQA, the substitute environmental documents do not engage in speculation or conjecture. The substitute environmental documents only consider the reasonably foreseeable environmental impacts, including those relating to the reasonably foreseeable methods of compliance, reasonably foreseeable feasible mitigation measures to reduce those impacts, and the reasonably foreseeable alternative means of compliance, which would avoid or reduce the identified impacts.
21. The regulatory action meets the “Necessity” standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b). Federal regulations require that TMDLs be

incorporated into the water quality management plan. The Regional Board's Basin Plan is the Regional Board's component of the water quality management plan, and the Basin Plan is how the Regional Board takes quasi-legislative, planning actions. Moreover, the TMDL is a program of implementation for existing water quality objectives, and is, therefore, appropriately a component of the Basin Plan under Water Code section 13242. The necessity of revising the Marina del Rey Harbor Toxic Pollutants TMDL is established in Table 7-18 and the TMDL staff report.

22. The Basin Plan amendment revising the Marina del Rey Harbor Toxic Pollutants TMDL must be submitted for review and approval by the State Water Board, the State OAL, and the USEPA. The Basin Plan amendments will become effective upon approval by OAL and USEPA. Once effective, a Notice of Decision will be filed with the Resources Agency.
23. If during its approval process, Regional Water Board staff, the State Water Board or State Water Board staff, or OAL determine that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Water Board of any such changes.

THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the Water Code, the Regional Water Board hereby amends the Basin Plan as follows:

1. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, which was prepared in accordance with Public Resources Code section 21159 and section 15187 of Title 14 of the California Code of Regulations, and directs the Executive Officer to sign the environmental checklist.
2. Pursuant to Sections 13240 and 13242 of the California Water Code, the Regional Water Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to Chapter 7 of the Basin Plan, as set forth in Attachment A hereto, to revise the Marina del Rey Harbor Toxic Pollutants TMDL.
3. The Executive Officer is directed to forward copies of the Basin Plan amendments to the State Water Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the State Water Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward the approved amendment and record to OAL and the USEPA.
5. If during its approval process, Regional Water Board staff, the State Water Board or State Water Board staff, or OAL determine that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Water Board of any such changes.
6. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Wildlife, and/or transmit payment of the applicable fee as may be required to the Department of Fish and Wildlife.

I, Samuel Unger, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on February 6, 2014.



Samuel Unger
Executive Officer

