



GAIL FARBER, Director

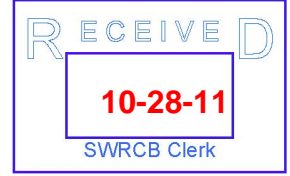
# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
<http://dpw.lacounty.gov>

Public Comment  
Dominguez Channel/LA/Long Beach  
Waters Toxic Pollutants TMDL  
Deadline: 10/28/11 by 12:00 noon



ADDRESS P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

October 27, 2011

IN REPLY PLEASE  
REFER TO FILE: WM-9

Ms Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P O. Box 100  
Sacramento, CA 95812-2000

Dear Ms. Townsend.

### COMMENT LETTER – DOMINGUEZ CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS TOXIC POLLUTANTS TOTAL MAXIMUM DAILY LOAD

Thank you for the opportunity to comment on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Load. Enclosed are comments submitted on behalf of the County of Los Angeles

We look forward to your consideration of our comments. If you have any questions, please contact me at (626) 458-4300 or [ghildeb@dpw.lacounty.gov](mailto:ghildeb@dpw.lacounty.gov) or your staff may contact Ms. Angela George at (626) 458-4325 or [ageorge@dpw.lacounty.gov](mailto:ageorge@dpw.lacounty.gov)

Very truly yours,

GAIL FARBER  
Director of Public Works

GARY HILDEBRAND  
Assistant Deputy Director  
Watershed Management Division

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Enc

cc: Chief Executive Office (Dorothea Park)  
County Counsel (Judith Fries)

**COMMENTS OF THE COUNTY OF LOS ANGELES ON THE PROPOSED TOTAL  
MAXIMUM DAILY LOAD FOR TOXIC POLLUTANTS IN DOMINGUEZ CHANNEL  
AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS**

**1. The County of Los Angeles Cannot be Named a Responsible Party for the Dominguez Channel and the Greater Los Angeles and Long Beach Harbors as such Action Would Conflict with the Amended Consent Decree Entered by the Federal District Court**

The designation of responsible parties under the proposed TMDL for Toxic Pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor conflicts with an Amended Consent Decree entered by the federal district court in Los Angeles. Pursuant to the terms of the Amended Consent Decree, the proposed TMDL should be modified to delete the County of Los Angeles (County) as a responsible party for the Dominguez Channel, including the Torrance Lateral and Dominguez Channel Estuary, and the Los Angeles and Long Beach Harbors.

In 1999 the United States and the State of California settled a lawsuit with local governmental entities over the environmental condition of the Dominguez Channel and the Los Angeles and Long Beach Harbors. The lawsuit was brought by the United States on behalf of the United States Environmental Protection Agency, the Department of the Interior and the National Oceanic and Atmospheric Agency, and by the State of California on behalf of the State Lands Commission, the Department of Fish & Game, the Department of Parks and Recreation, the Department of Toxic Substances Control and the Regional Board.

The settlement is set forth in an Amended Consent Decree entered by the federal district court on August 24, 1999. The County was one of the parties to this settlement. The Regional Board also was a party, with the Executive Officer signing the Amended Consent Decree on behalf of the Regional Board.

The Amended Consent Decree resolved all liability of the settling local governmental entities for all natural resource damages with respect to the "Montrose NRD Area" and all response costs incurred in connection with the "Montrose NPL Site" (Amended Consent Decree, p. 19). The Montrose NRD Area was defined to include the Los Angeles and Long Beach Harbors (Amended Consent Decree, ¶ 6.J). The Montrose NPL Site was defined to include the Torrance Lateral, the Dominguez Channel from Laguna Dominguez to the Consolidated Slip, and that portion of the Los Angeles Harbor known as the Consolidated Slip (Amended Consent Decree, ¶ 6.I.).

Under the Amended Consent Decree, the Regional Board explicitly agreed that, except for certain circumstances not applicable here, the Regional Board would not take any civil or administrative action against any of the settling local governmental entities, including the County, for any civil or administrative liability for natural resource damages (Amended Consent Decree, ¶ 11). Natural resource damages

were defined to include loss of use, restoration costs and resource replacement costs, among other costs (Amended Consent Decree, ¶ 6 L)

The Regional Board also agreed that, except for certain circumstances not applicable here, the Regional Board would not take any civil or administrative action against any of the settling local governmental entities, including the County, to compel response activities or to recover response costs in connection with the Montrose NPL site (Amended Consent Decree, ¶ 17) Response costs were defined to include all costs of response as provided in 42 U S C § 9607(a)(1-4)(A) and as defined by 42 U S C § 9601(25) (Amended Consent Decree, ¶ 6 M). These response activities and costs included activities to remove hazardous substances from the environment, to monitor, assess, and evaluate the release or threat of release of hazardous substances (see 42 U S C §9601(23)), and actions consistent with a permanent remedy such as diversions, dredging and excavations (see 42 U S C. §9601(24))

The proposed TMDL's assignment of responsibility to the County for the Dominguez Channel and the Los Angeles and Long Beach Harbors violates this Amended Consent Decree. The obligations imposed by the proposed TMDL, such as preparing monitoring plans and implementation plans, monitoring, dredging of sediments and diverting stormwater, clearly fall within the definition of natural resource damages and response activities under the Amended Consent Decree (See Amended Consent Decree, ¶¶ 6 L and M) By naming the County as a responsible party for the Dominguez Channel and the Greater Los Angeles and Long Beach Harbors, the Regional Board is requiring the County to take these or related actions Under the Amended Consent Decree, however, the Regional Board has explicitly agreed that it will not require the County to take these and other actions (Amended Consent Decree, ¶¶ 11 and 17).

In response to comments, the Regional Board staff contended that there was no conflict between the Consent Decree and the proposed TMDL, that the Consent Decree does not preclude Regional Board staff from adopting the TMDL, and that the TMDL is not a removal or remedial action under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. Regional Board staff recognized, however, that the TMDL forms the basis for further administrative actions that will address the pollutants that are the subject of the TMDL, including administrative action through amendment of the Los Angeles County MS4 permit.

The County disagrees with the Regional Board staff's assertion that the TMDL is not covered by the Consent Decree The Consent Decree explicitly states that the Regional Board will not take any civil or administrative action against any of the settling local governmental entities, including the County for natural resources damages or to compel response activities (Amended Consent Decree, ¶¶ 11 and 17) The TMDL is an administrative action relating to natural resources damages and, as recognized in the response to comments, is an administrative action that is the foundation for future administrative actions

Moreover, even if the TMDL is viewed as not being an administrative action in violation of the Consent Decree, implementation of the TMDL through Los Angeles County MS4 permit definitely would be such an administrative act. It does not benefit to any party to set forth in the TMDL an administrative approach to remediation of the harbor sediments and waters, including assignment of waste load allocations, where that approach and assignment of WLAs cannot be implemented without violating the Consent Decree. If the pollutants in the harbor sediments and waters are to be addressed pursuant to this TMDL, then the TMDL should set forth an approach and assign WLAs that realistically can be implemented. The TMDL should be consistent with the Consent Decree, not contrary to it.

Accordingly, the proposed TMDL must be modified to delete the County as a responsible party for the Dominguez Channel, including the Torrance Lateral and Dominguez Channel Estuary, and the Los Angeles and Long Beach Harbors. Under the Amended Consent Decree, the Regional Board has agreed that it will not compel response activities by or seek natural resource damage or response costs from the County. Naming the County as a responsible party is barred by this Decree and does not further the remediation of the harbor sediments and waters.

## **2. Toxicity Waste Load Allocation for the Dominguez Channel Freshwater Should be Removed from the Proposed TMDL**

In its letter to the Regional Board dated February 22, 2011, the County commented that the sea urchin toxicity data should not be used to assess water column toxicity in Dominguez Channel. There is no scientific basis for using a marine species as indicator for freshwater toxicity. When examining *Ceriodaphnia dubia*, a freshwater species, test results over the last eight years (see table below) show only two toxic results between 2002 and 2005, and none after October 2005 when the United States Environmental Protection Agency (USEPA) banned the urban use of diazinon.

Regional Board staff responded to the County's comment by suggesting that the County submit a request to replace sea urchin with a more appropriate species. The County will consider Regional Board staff's suggestion. In the interim, Regional Board staff's response does not adequately address the fundamental issue that the proposed freshwater toxicity WLA for Dominguez Channel lacks scientific basis. The absence of toxicity based on freshwater species following USEPA's diazinon ban in 2005 indicates diazinon as the likely cause of toxicity before 2005.

Therefore, the County requests that the State Water Board remand the TMDL to the Regional Board and direct the Regional Board to revise the TMDL by removing the toxicity WLA for Dominguez Channel freshwater, specifically on pages 4, 9, and 11 of the Draft Basin Plan Amendment (BPA). Alternatively, if the toxicity WLA for Dominguez Channel freshwater is retained, the TMDL should be revised so compliance with the WLA is assessed based using freshwater species only.

<b>Summary of Toxicity Data for Dominguez Channel (S28) Monitoring Station</b> (Results are in TU)						
Year	Toxicity Indicator		Dry Weather		Wet Weather	
			Event 1	Event 2	Event 1	Event 2
2002-2003	Ceriodaphnia	Survival	<1	<1	<b>1.33</b>	<1
		Reproduction	<1	<1	<b>1.33</b>	<1
2003-2004	Ceriodaphnia	Survival	<1	<1	<1	<1
		Reproduction	<1	<1	<1	<1
2005-2006	Ceriodaphnia	Survival	<1	<1	<b>1.23</b>	<1
		Reproduction	<1	<1	<b>1.1</b>	<1
2006-2007	Ceriodaphnia	Survival	<1	<1	<1	<1
		Reproduction	<1	<1	<1	<1
2007-2008	Ceriodaphnia	Survival	<1	<1	<1	<1
		Reproduction	<1	<1	<1	<1
2008-2009	Ceriodaphnia	Survival	<1	<1	<1	<1
		Reproduction	<1	<1	<1	<1
2009-2010	Ceriodaphnia	Survival	<1	<1	<1	<1
		Reproduction	<1	<1	<1	<1

**3. Determination of Total Recoverable Metals Should Use Consistent Values for Hardness and Conversion Factor**

The proposed TMDL calculates freshwater targets for total recoverable metals using California Toxics Rule (CTR) acute dissolved criteria based on a median hardness and 90th percentile conversion factor. In its comments to the Regional Board, the County noted the inconsistency and suggested that either the median or the 90th percentile values be used for both parameters.

Regional Board staff responded by referring to the CTR State Implementation Plan (SIP):

“The translator shall be derived using the median of data for translation of chronic criteria and the 90th percentile of observed data for translation of acute criteria” (P 14)

This statement from the SIP is in relation to conversion factors and does not mention the use of median hardness to calculate metals targets. Contrary to Regional Board staff’s response, our review found that the SIP provides no guidance on the appropriate hardness value to use when calculating a metals target.

In the absence of such guidance, the County requests that the State Water Board remand the TMDL to the Regional Board and direct the Regional Board to revise the

TMDL by recalculating the total recoverable metals target using consistent values for hardness and conversion factor. The table below shows the total recoverable metals target values calculated with 90th percentile hardness and 90th percentile conversion factor. We recommend that freshwater metals targets for Dominguez Channel be replaced with the calculated values below.

<b>Freshwater Metals Targets for Dominguez Channel (µg/L)</b>				
<b>Metal</b>	<b>Using 90<sup>th</sup> percentile Hardness and Conversion Factor</b>			
	<b>Hardness (mg/L)</b>	<b>Dissolved Criteria</b>	<b>Conversion Factor</b>	<b>Total Metals</b>
Copper	133	17.56	0.722	<b>24.3</b>
Lead	133	87.98	0.684	<b>128.6</b>
Zinc	133	149.2	0.935	<b>159.6</b>

**4. All WLAs and LAs for Stormwater Discharges Should Be Expressed as Mass Per Year**

As currently written, the TMDL’s final allocations are expressed as mass for certain metals (copper, lead, and zinc), PAHs, DDT, and PCBs in sediment for the Estuaries and Harbors, but as concentration for other pollutants (cadmium, chromium, mercury, chlordane, dieldrin, and toxaphene). Where data are available, WLAs and LAs should be expressed as mass per year.

Mass-based allocations provide equal level of water quality protection as that with concentration-based allocations, but has the added benefit of encouraging the use of low-impact development (LID) practices or other infiltration best management practices (BMPs). LID and infiltration BMPs are designed to reduce runoff volume as opposed to pollutant concentration, thus concentration-based WLAs and LAs have the unintended effect of discouraging LID and other infiltration BMPs, which is contrary to the State’s and local agencies’ LID initiatives.

For reasons described above, all TMDL allocations should be expressed as mass where data are available. If sufficient data does not exist to express some of these pollutants as mass, then the TMDL should state to that effect and acknowledge the need for addressing this issue during the TMDL reconsideration once sufficient data is collected. The County requests that the State Water Board remand the TMDL to the Regional Board and direct the Regional Board to revise the TMDL as discussed above.

**5. Dry-Weather Monitoring for Dominguez Channel and Torrance Lateral Freshwaters Should Not Be Required**

The proposed TMDL requires a dry-weather monitoring event in addition to two wet-weather monitoring events every year for Dominguez Channel and Torrance Lateral.

Requiring dry-weather monitoring for these water bodies is inappropriate because the proposed TMDL clearly indicates that they are impaired only during wet weather. Available data does not indicate impairment during dry weather. Consequently, any monitoring and compliance requirements should be limited to wet weather.

Regional Board staff responded to the County's comment by stating that "[w]hereas dry weather TMDLs for metals are not defined in freshwaters, the water quality standards must still be attained and continued monitoring helps to evaluate compliance." The County disagrees with the staff's response. The waterbodies are currently meeting the water quality objectives during dry weather, and continued monitoring of unimpaired water-body would have no added benefit, but instead divert the already scarce resources from being used for more urgent water quality issues. The County requests that the State Water Board remand the TMDL to the Regional Board and direct the Regional Board to remove dry-weather monitoring for Dominguez Channel and Torrance Lateral freshwaters.