



## CITY OF SOUTH EL MONTE

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



Date: October 26, 2011



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

Subject: Dominguez Channel/Harbor Toxics TMDL

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Dear Ms. Townsend:

The **City of South El Monte** is pleased to respond to the State Water Resources Control Board (State Board) invitation to comment on the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters (DC/Harbors Toxics TMDL).

The City has previously filed a petition of review with the State Board on June 3, 2011 setting forth its opposition to the Regional Board's adoption of the TMDL.

In addition to the comments expressed in the City's petition, the City would also like to raise the following additional concerns:

- 1. The DC/Harbor Toxics TMDL Inappropriately Requires MS4 Permittees to Pay for Removal or Containment of Contaminated Sediment in the Harbors and Should Be Revised or Clarified to Eliminate this Possible Interpretation***

The DC/Harbor Toxics TMDL references dredging and capping as a means of remediating contaminated sediment in the harbors. Some have suggested that the Port of Los Angeles and Long Beach will be primarily responsible for performing this task. However, the DC/Harbor Toxics TMDL contains language that could be interpreted to mean that MS4 permittees – including those that are situated in the Los Angeles and San Gabriel Rivers – will be required to share the cost. MS4 permittees could be required to meet waste load allocations in this TMDL. If the WLAs are not met, affected permittees could be found in violation and could be compelled to fund remediation. This could be achieved through the next MS4 permit by requiring absolute

compliance with WLAs – as it had with the Santa Monica Bay Beaches Dry Weather Bacteria TMDL.

It should be noted that the MS4 permit is limited to controlling pollutants in stormwater from the MS4 (to the receiving water) and to prohibiting non-stormwater discharges to the MS4 (not to the receiving water). The MS4 NPDES permit is a point-source permit (see 40 CFR §122.2). Under Clean Water Act section 402 p(iii), *MS4 permits are limited to controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.*<sup>1</sup> The MS4 NPDES permit is limited to compliance with water quality standards, including TMDL WLAs), in stormwater at the point of discharge (outfall or at the end-of-pipe) -- not in the receiving water. The MS4 NPDES permit's limitation to controlling discharges at the end of the point source suggests that the Regional Board may, in the alternative, rely on a waste discharge requirement (hereinafter "WDR"), pursuant to the California Water Code (hereinafter "CWC"). If the Regional Board intends to impose the DC/ Harbor Toxics TMDL WLA or an alternative compliance requirement on the City exclusively through a WDR then it must first comply with CWC section 13241. Further, if an MS4 permittee is compelled to pay a share of cost associated with remediating contaminated sediment in the harbors an argument could be effectively made that such a requirement constitutes an unfunded mandate under the California Constitution.

## **2. *The DC/Harbor Toxics TMDL Inappropriately Includes Los Angeles River and San Gabriel River Permittees and Its Applicability is Unclear***

Although the DC/Harbor Toxics TMDL states that the Los Angeles River and San Gabriel River is not its focus, it nevertheless includes them. The DC/Harbor Toxics TMDL mentions both of these water bodies as contributing fresh water to the harbors. The DC/Harbor Toxics TMDL also references the Los Angeles and San Gabriel River as "responsible parties." In the DC/Harbor Toxics TMDL (staff report) implementation appears to restrict these responsible parties to submitting a *Report of Implementation, which will directly or indirectly support the goals of this TMDL.*<sup>2</sup> Regional Board staff has asserted that Los Angeles and San Gabriel River responsible parties are only subject to implementing already metals TMDLs. This is reflected in the DC/Harbor Toxics TMDL's staff report which states that under Phase I (which has no commencement date): *Responsible parties in these watersheds are implementing other TMDLs, which will directly or indirectly support the goals of this TMDL.*<sup>3</sup>

However, under Table 7-2 of the DC/Harbor Toxics TMDL, "responsible parties" are required to meet the interim allocations as of the effective date of the DC/Harbor Toxics TMDL. It is not clear if the term "interim allocations" refer to the metals TMDLs for the Los Angeles and San Gabriel Rivers or to the

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<sup>1</sup> See CWA 402 p(iii).

<sup>2</sup> Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants, page 108.

<sup>3</sup> *Ibid.*, page 108.

harbors to which these water bodies contribute freshwater. Table 7.2 of the DC/Harbor Toxics TMDL is titled: *Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxics Pollutants TMDL: Implementation Schedule*. Under Task 2 of this implementation schedule, the Los Angeles and San Gabriel Rivers are required to: *Submit a Monitoring Plan to the Los Angeles Regional Board for Executive Officer Approval 20 months after the effective date of the DC/Harbor Toxics TMDL.*<sup>4</sup> It is unclear as to whether the monitoring plan refers to the Dominguez Channel/Harbors Toxics TMDL or to the Los Angeles and San Gabriel River Metals TMDLs. The same holds for the tasks 3, 4, and 7.

Further complicating matters, the term "responsible parties" is not referenced in either the Los Angeles or San Gabriel River Metals TMDLs. The Los Angeles River Metals TMDLs uses the term responsible agencies – not responsible parties. The San Gabriel River Metals TMDL, which USEPA was compelled to adopt, makes no mention of either responsible agencies or parties. In fact, no municipal permittees are mentioned at all. Therefore, neither of the DC/Harbor Toxics TMDLs should be applicable to the Dominguez Channel/Harbors Toxics TMDL.<sup>5</sup>

Beyond this, including the Los Angeles River and San Gabriel River and, presumably MS4 permittees located therein, ignores the fact that only a few of them are subject to metals TMDLs. In the case of the USEPA-adopted metals TMDL, which again does not mention what MS4 permittees are subject to it, only Reach 2, the San Jose Creek, and Coyote Creek, have been listed as impaired. Not all of the some 32 municipal permittees that partially or fully situated in the San Gabriel River drain into Reach 2 and San Jose and Coyotes Creek. Thus the DC/Harbors Toxics TMDL cannot extend its requirements to the San Gabriel River MS4 permittees based on the mere fact it contributes freshwater to the downstream harbors. As for the Los Angeles River, not all municipal permittees are subject to the metals TMDL. Reach 2 of the Rio Hondo, which is tributary to the Los Angeles River system, is not 303(d) listed for metals. Therefore, the 16 MS4 permittees located in this reach cannot be included in the DC/Harbors Toxics TMDL based on the metals TMDL connection.

Although these comments were made to the Regional Board prior to its adoption of the Dominguez Channel/Harbor Toxics TMDL and during the public hearing, it failed to adequately respond to them.

#### **9. Request for 45 Day Public Hearing Notice**

The City fervently hopes that the State Board will recognize the several deficiencies contained the DC/Harbors Toxics TMDL and returns it to the Regional Board for correction without the need for a State Board hearing. If, however, the State Board wishes to review the matter at a public hearing, the City requests that it be given 45 days of advanced notice.

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<sup>4</sup> ibid., page 116

In closing the City appreciates the opportunity to comment on this extremely important matter and looks forward to its amicable resolution. In the meantime, should you have any questions, please contact the City Manager, Anthony R. Ybarra at (626) 579-6540.

Sincerely,

A handwritten signature in black ink, appearing to read "Louie Aguinaga". The signature is fluid and cursive, with a large initial "L" and "A".

Louie Aguinaga  
Mayor of the City of  
South El Monte

CC. City Council Members  
City Manager, Anthony R. Ybarra