

925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725



The Port of  
**LONG BEACH**  
The Green Port

February 2, 2012

VIA ELECTRONIC MAIL

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814  
commentletters@waterboards.ca.gov



Re: **2/7/12 BOARD MEETING (Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters) -- Port of Long Beach**  
**Comment Letter**

---

Dear Ms. Townsend:

The Port of Long Beach (Port) appreciates the continued opportunity to work with the State Water Resources Control Board (State Board), the Regional Water Quality Control Board (Regional Board), and the United States Environmental Protection Agency, Region 9 (EPA) on the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Load (TMDL).

Since the December 6, 2011 hearing in front of the State Board, the Port of Long Beach has participated in all Regional Board meetings pertaining to the TMDL to which it has been invited. The Port attended a Regional Board public meeting on January 9, 2012, a technical meeting with the Regional Board on January 25, 2012, and an additional meeting with the Regional Board on January 27, 2012. While we understand that the Regional Board invited the *Port of Los Angeles* to participate in a meeting with on or about December 21, 2011, the Port of Long Beach was not invited to that meeting. The Port has taken each and every opportunity available to try to resolve outstanding issues pertaining to the TMDL, yet, the Port's concerns were not addressed during these meetings. Despite the peer reviewers' concerns and the extensive stakeholder comments to the contrary, the Regional Board continues to take the position that no changes need to be made to the TMDL itself.

Instead, the proposed solution appears to be the "clarifying language" contained in the January 25, 2012 State Board draft resolution (Resolution) to adopt the TMDL. This legally unenforceable Resolution from the State Board does not address the Port's concerns for a variety of reasons, discussed below.

First, the language in the resolution does not address the technical issues previously raised by the Port. While the Port shares the goal of improving harbor waters, the TMDL as written still contains overly stringent targets that could actually result in more harm to the harbor's biological communities than good. The language in the Resolution does not alter the numeric targets contained in the TMDL. The language does not address the fact that for the same fish tissue listing that covers the area from Santa Monica to Seal Beach, we now have three different targets for PCBs and DDTs: one proposed for this TMDL (the most stringent) in the harbor area, one approved for the Palos Verdes Shelf located just outside of the harbor, and one proposed for the recent TMDL for Santa Monica Bay. The language does not ensure that the TMDL is consistent with State Board policy, nor does it ensure that all potential sources of loading to fish tissue are evaluated. Neither language in the resolution, nor subsequent special studies, can remedy the fundamental flaws in the structure of the TMDL. Additionally, the language in the Resolution does not address concerns that the Substitute Environmental Document is flawed, in part due to the failure to evaluate alternative targets which may have been protective of human health, but with fewer environmental impacts. In addition, the document should have properly analyzed the foreseeable impacts of air emissions and traffic caused by the potential for 2.6 million truckloads of sediment being hauled to a landfill to meet the chosen Fish Contaminant Goal target.

Second, the language fails to address the concern that the brunt of the obligation for legacy pollution falls on the ports and their cities. The Port and City of Long Beach should not be held responsible for remediating the contamination that resulted from historical inputs that occurred throughout the region simply because we are located downstream. All parties who are responsible for the contamination should be held responsible for their fair share of the remediation. As written, the TMDL could be interpreted to require 38 million cubic yards of material at a cost of over \$9 billion to be dredged from western San Pedro Bay alone, with the potential for an equivalent amount for eastern San Pedro Bay, and that burden would fall to the ports and their cities.

Third, the Resolution does not alleviate concerns that the Port will be exposed to third party lawsuits for failure to meet the TMDL's unnecessarily strict numeric targets. It is unclear how or if the resolution would bind third parties. The Port's limited resources would be better spent on implementing projects to improve water quality, not on third party litigation.

Finally, there is a question as to whether the Resolution, provides enforceable legal authority upon which the Port could rely in the future. The resolution could be altered or rescinded by the current or any future State Board at any time without notice, hearing, or any opportunity whatsoever to be heard. Further, while Regional Board staff has orally represented that this TMDL is intended to address hot spots in the harbors, the language of the TMDL as written goes beyond the stated intent. This TMDL is anticipated to remain in place for 20 years, and during that time there will be turnover of the Regional

Jeanine Townsend

February 2, 2012

Page 3

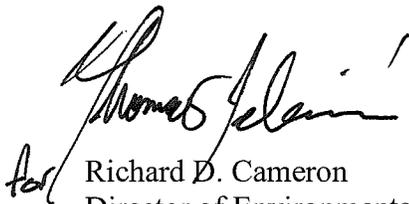
Board staff. If the language within the TMDL is not consistent with the staff's stated intent, , the interpretation of the TMDL has the potential to change over time.

For all of the foregoing reasons, the Port requests that the State Board remand the TMDL to the Regional Board so that the parties can work to ensure that the TMDL is consistent with State Board policy, scientifically sound, and technically and economically feasible. The regulated community should not have the burden of trying to fix a fundamentally flawed TMDL after adoption through a series of expensive special studies. The TMDL should be scientifically sound in the first instance as required by federal and state law.

To the extent the State Board is not willing to remand the TMDL to the Regional Board, the Port respectfully requests that the State Board delay consideration of this TMDL until the Regional Board and the stakeholders are able to develop a workable TMDL.

As always, the Port would like to continue working with the State and Regional Boards to achieve the ultimate goal of restoration and protection of the harbor waters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard D. Cameron". The signature is written in a cursive style with a large initial "R".

Richard D. Cameron  
Director of Environmental Planning