

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

**RESOLUTION NO. 06-0XX
October 12, 2006**

**Amendment to the Water Quality Control Plan for the Los Angeles Region
to Incorporate a Total Maximum Daily Load for Trash in the Los Angeles River Watershed**

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

1. The Federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board (Regional Board) to develop water quality objectives which are sufficient to protect beneficial uses for each water body found within its region.
2. A consent decree between the U.S. Environmental Protection Agency (USEPA), Heal the Bay, Inc. and BayKeeper, Inc. was approved on March 22, 1999. This court order directs the USEPA to complete Total Maximum Daily Loads (TMDLs) for all impaired waters within 13 years. A schedule was established in the consent decree for the completion of the first 29 TMDLs within 7 years. The remaining TMDLs will be scheduled by Regional Board staff within the 13-year period.
3. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d) of the CWA, as well as in USEPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background (40 CFR 130.2). Regulations further stipulate that TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)). The regulations in 40 CFR 130.7 also state that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters.
4. The TMDL was created to implement narrative water quality objectives requiring that:
 - “Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses;” and
 - “Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.”
5. Upon establishment of TMDLs by the State or USEPA, the State is required to incorporate the TMDLs along with appropriate implementation measures into the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). This Water Quality Control Plan for the Los Angeles Region (Basin Plan), and applicable statewide plans, serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Regional Board.
6. The Los Angeles River is located in Los Angeles County, California. The Los Angeles River flows 51 miles from the western end of the San Fernando Valley to the Queensway Bay and Pacific Ocean at Long Beach. Also part of the watershed are a number of lakes including Peck Lake, Echo Lake, and Lincoln Lake. Beneficial uses of the Los Angeles River and surrounds include wildlife and marine habitat, including habitat for endangered species, and recreational activities such as fishing, walking, hiking, jogging, bicycling, horseback riding, bird watching and photography.

7. The Regional Board determined that the primary source of trash is litter from the streets of the cities in the Los Angeles River Watershed. When a storm event occurs, the litter is washed through the storm drain sewers into the Los Angeles River, the Estuary, and the beaches at Long Beach.
8. Compliance with the final Waste Load Allocation may be achieved through a full capture system; which is defined as any device or series of devices that traps all particles retained by a 5mm mesh screen and has a design treatment capacity of not less than the peak flow rate (Q) resulting from a one-year, one-hour storm in the sub-drainage area. The Executive Officer has authority to certify, as full-capture, trash reduction systems that meet the operating and performance requirements as described above. To date four full capture systems have received certification; including (i) trash nets for the City of Signal Hill, (ii) two gross solids removal devices for the California Department of Transportation, and (iii) catch basin brush inserts and mesh screens for the cities of Glendale, Pasadena, La Canada Flintridge, and Burbank.
9. On September 19, 2001, the Regional Board adopted a Basin Plan Amendment (Resolution 01-013) incorporating the Los Angeles River Trash TMDL into the Water Quality Control Plan (Basin Plan) for the Coastal Watersheds of Los Angeles and Ventura Counties. The TMDL subsequently was approved by the State Water Resources Control Board on February 19, 2002 and by the Office of Administrative Law (OAL) on July 16, 2002.
10. The State Board and OAL failed to approve the TMDL in time to meet a relevant federal consent decree directed to USEPA (*Heal the Bay, Inc.; Santa Monica Baykeeper, Inc. v. Browner*, Case No. 98-4825 SBA), and accordingly, to meet its obligations under the federal court order, USEPA promulgated its own Trash TMDL, containing WLAs of zero trash. That TMDL contained no compliance schedule. Upon approval of the Regional Board's TMDL by OAL, USEPA approved the Regional Board's Los Angeles River Trash TMDL on August 1, 2002, and deemed it to have superceded the TMDL promulgated by USEPA.
11. The City of Los Angeles and the County of Los Angeles both filed petitions and complaints in Los Angeles Superior Court challenging the Los Angeles River Trash TMDL. Subsequent negotiations led to a settlement agreement, which became effective on September 23, 2003.
12. Twenty-two other cities¹ ("Cities") sued the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) and State Water Resources Control Board (State Water Board) to set aside the TMDL, on several grounds. The trial court entered an order deciding some claims in favor of the Los Angeles Water Board and State Water Board (collectively "California Water Boards"), and some in favor of the Cities. Both sides appealed, and on January 26, 2006, the Court of Appeal decided every one of the Cities' claims in favor of the California Water Boards, except with respect to their CEQA compliance. (*City of Arcadia et al., Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392.) The Cities filed a petition for review by the California Supreme Court, but on April 19, 2006, the Supreme Court declined to hear any of the Cities' claims.
13. The Court of Appeal rejected the following claims litigated by the Cities:
 - a. The Court rejected the Cities' claim that the target of zero trash is unattainable and inordinately expensive. (135 Cal.App.4th at 1413 and 1427-1430.)
 - b. The Court rejected the Cities' claim that an assimilative capacity study was required before the Water Boards could determine how much trash, a pollutant that does not assimilate, would violate the narrative objectives. (135 Cal.App.4th at 1409-1413.)

¹ The cities include Arcadia, Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina, and Whittier. They are members of a group that refers to itself as "The Coalition for Practical Regulation."

- c. The Court rejected the Cities' claim that the California Water Boards were required, but failed, to conduct a cost/benefit analysis and consideration of economic factors. (135 Cal.App.4th at 1415-1418.)
 - d. The Court rejected the Cities' claim that the California Water Boards were prohibited from establishing a TMDL for the Los Angeles River Estuary until it was formally listed on the 303(d) list. (135 Cal.App.4th at 1418-1420.)
 - e. The Court rejected the Cities' claims that TMDLs for storm water may not require agencies to perform better than the "maximum extent practicable", and must allow compliance through best management practices. (135 Cal.App.4th at 1427-1430.)
 - f. The Court rejected the Cities' claim that the California Water Boards were required to implement load allocations for nonpoint sources of trash pollution. (135 Cal.App.4th at 1430-1432.)
 - g. The Court rejected the Cities' claim that the California Water Boards failed to adhere to the data collection and analysis required by federal and state law (135 Cal.App.4th at 1433-34.)
 - h. The Court rejected the Cities' claim that the California Water Boards relied on nonexistent, illegal, and irrational uses to be made of the Los Angeles River. (135 Cal.App.4th at 1432-33.)
 - i. The Court rejected the Cities' claim that the California Water Boards violated the Administrative Procedures Act (APA). (135 Cal.App.4th at 1434-35.)
14. The Court did find, however, that the California Water Boards did not adequately complete the environmental checklist, and that evidence of a "fair argument" of significant impacts existed such that the California Water Boards should have performed an EIR level of analysis through an EIR or its functional equivalent. (135 Cal.App.4th at 1420-26.) The Court therefore affirmed a writ of mandate issued by the trial court, which orders the California Water Boards to set aside and not implement the TMDL, until it has been brought into compliance with the California Environmental Quality Act (CEQA).
15. On June 8, 2006 the Regional Board set aside the trash TMDL and resolution # 01-013 which established it, pursuant to the writ of mandate and to sections 13240 and 13242 of the Water Code. Setting aside the TMDL was not deemed a repudiation of the settlement agreement entered into between the Los Angeles Regional Water Quality Control Board and the City of Los Angeles and the County of Los Angeles, which was executed on September 24, 2003, and the Los Angeles Water Board expressed its continued intent to be bound by that agreement. The Regional Board also directed staff to revise the CEQA documentation as directed by the writ of mandate, and to prepare and submit for the Regional Board's reconsideration, a TMDL for Trash in the Los Angeles River Watershed, consistent with the requirements of the writ. Staff was also directed to incorporate into its proposed revised TMDL the changes agreed upon in the settlement with the City of Los Angeles, Los Angeles County and the Los Angeles County Flood Control District.
16. Staff have revised the CEQA documents as directed by the writ of mandate, and have incorporated, into the TMDL, the changes agreed upon in the settlement with the City of Los Angeles, Los Angeles County and the Los Angeles County Flood Control District. Additional revisions have been made to the TMDL.

17. On October 12, 2006, prior to the Board's action on this resolution, a public hearing was conducted. Notice of the hearing was published in accordance with the requirements of Water Code section 13244. A notice was published in the Los Angeles Times, on July 7, 2006.
18. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. Efforts to solicit public review and comment include release of a preliminary draft Trash TMDL on July 7, 2006, a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on October 12, 2006 to consider adoption of the TMDL.
19. The Regional Board adopts TMDLs pursuant to Water Code section 13242. TMDLs implement existing water quality standards, and therefore they constitute a "program of implementation". Commenters have alleged that section 13241 applies to the establishment of TMDLs. Section 13241 has no application to the establishment of a TMDL because it does not establish a water quality objective, but only implements existing water quality objectives. This interpretation is consistent with the fact that TMDLs are required by section 303(d) of the CWA, whereas water quality standards are established pursuant to section 303(c), and a legal memorandum from the Office of Chief Counsel. Nevertheless, in amending the Basin Plan to establish this TMDL, the Regional Board considered the factors set forth in sections 13240 and 13241 of the Water Code.
20. The amendment is consistent with the State Anti-degradation Policy (State Board Resolution No. 69-16), in that the changes to water quality objectives (i) consider maximum benefits to the people of the state, (ii) will not unreasonably affect present and anticipated beneficial use of waters, and (iii) will not result in water quality less than that prescribed in policies. Likewise, the amendment is consistent with the federal Anti-degradation Policy (40 CFR 131.12).
21. 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.) Section 15252 of title 14 of the California Code of Regulations, and Public Resources Code section 21080.5 specify that agencies that operate under certified regulatory programs must prepare "substitute" environmental documents instead of an environmental impact report (EIR), a negative declaration, and an initial study. The Court of Appeal in the *Cities of Arcadia et al v. Los Angeles Regional Water Quality Control Board et al*, stated that the Regional Board must prepare "an EIR or the functional equivalent of an EIR" if the Regional Board proceeds to adopt a new Trash TMDL. The Honorable Linda Quinn, in an order dated September 26, 2006, clarified that the term "EIR or the functional equivalent of an EIR" includes "substitute environmental documents" as required by section 21080.5 and 15252. (See also "Guide to the California Environmental Quality Act" (1990) Remy, Thomas, Moose, and Manly, p. 146.) The Regional Water Board's Substitute Environmental Documents for this project consist of the following documents:
 - a. This resolution
 - b. The TMDL Staff Report
 - c. The CEQA Checklist
 - d. The Basin Plan Amendments that are the subject of this resolution
 - e. The Notice of Filing
 - f. All comments received at or for the CEQA Scoping Meeting
 - g. All CEQA comments received on the draft TMDL documents
 - h. The Staff Memorandum -"Trash Colloquium"
 - i. The Response to Comments received at or for the CEQA Scoping Meeting
 - j. The Response to Comments received regarding the draft TMDL documents

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- k. The transcripts of proceedings for the June 7th, June 28th, and October 12th Regional Board hearings.

The “report” referenced in 23 Cal Code Regs. § 3777 is interspersed throughout these documents.

22. The project itself is the establishment of a TMDL for trash in the Los Angeles River Watershed. While the Regional Board is mandated by section 303(d) of the CWA to establish a TMDL, and by section 303(d) and CWC section 13242 to establish that TMDL or program of implementation at a level that will attain and implement existing standards, 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 numeric water quality standards established in the Basin Plan.
23. A CEQA Scoping hearing was conducted on June 28, 2006 at the Ronald Reagan State Office Building, 300 South Spring Street, Los Angeles, CA 90013. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with jurisdiction in or bordering the Los Angeles River watershed.
24. In preparing the CEQA substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the substitute documents to serve as a tier 1 environmental review. Nearly all of the compliance obligations will be undertaken by public agencies that will have their own obligations under CEQA. 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. If not properly mitigated at the project level, there could be adverse environmental impacts. The substitute environmental documents for this TMDL, and in particular the Environmental Checklist and staff’s responses to comments, identify mitigation approaches that should be considered at the project level. Consistent with CEQA, the substitute documents do not engage in speculation or conjecture and only consider the reasonably foreseeable environmental impacts of the methods of compliance, the reasonably foreseeable feasible mitigation measures, and the reasonably foreseeable alternative means of compliance, which would avoid, minimize, or eliminate the identified impacts.
25. Comments were received on the substitute environmental documentation and the CEQA checklist was revised in response to several of those comments.
26. The proposed amendment could have a significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both that would substantially lessen any significant adverse impact. The public agencies responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. Possible alternatives and mitigation are described in the CEQA substitute documents, specifically the TMDL technical report and the Environmental Checklist. To the extent the alternatives, mitigation measures, or both are not deemed feasible by those agencies, the necessity of implementing the federally required trash TMDL and removing trash from the waterbodies of the Los Angeles River Watershed (an action required to achieve the express, national policy of the CWA) outweigh the unavoidable adverse environmental effects. In making this finding, the Regional Board is aware that the environmental impacts precipitated by this action are largely (but not exclusively) already occurring but are impacting downstream communities. It is not unreasonable that the communities generating the trash bear the environmental impacts of it as opposed to neighboring communities.
27. The regulatory action meets the “Necessity” standard of the Administrative Procedures Act, Government Code, Section 11353, Subdivision (b). As specified above, 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

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Water Code section 13242. The necessity of developing a TMDL is established in the TMDL staff report, the section 303(d) list, and the data contained in the administrative record documenting the trash impairments in the Los Angeles River Watershed.

28. The Basin Plan amendment incorporating a TMDL for trash in the Los Angeles River Watershed must be submitted for review and approval by the State Water Resources Control Board (State Board), OAL, and the USEPA. The Basin Plan amendment will become effective upon approval by OAL and USEPA. A Notice of Decision will be filed.
29. If during its approval process Regional Board staff, the SWRCB or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer should make such changes and inform the Board of any such changes.

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

1. Pursuant to sections 13240 and 13242 of the California Water Code (CWC), the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapters 3 and 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to incorporate the elements of the trash TMDL for the Los Angeles River Watershed.
2. The Regional Board hereby certifies the final CEQA substitute environmental documentation prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the CWC.
4. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the CWC and forward it to OAL and the USEPA.
5. If during its approval process the State Board or OAL determines 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 Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Jonathan S. Bishop, 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 October 12, 2006.

Jonathan S. Bishop
Executive Officer

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