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September 9, 2010

Mr. Sam Unger  
Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

**Re: Comments on Proposed Amendment to the Water Quality Control Plan for the Santa Monica Bay Nearshore and Offshore Debris TMDL**

Dear Mr. Unger:

On behalf of Heal the Bay, we submit the following comments on the proposed Amendment to the Water Quality Control Plan for the Santa Monica Bay Nearshore and Offshore Debris TMDL ("Draft TMDL" or "Draft Trash TMDL"). As Heal the Bay can attest to via our 20 year management of LA County's Coastal Cleanup Day and our efforts leading thousands of beach cleanups over the last decade, local beaches look like a landfill after every rain, and Santa Monica Bay is routinely plagued by floating plastic trash. We appreciate the opportunity to provide comments.

We strongly support the Regional Board's requirement of zero trash discharge in the Draft TMDL. The Regional Board acknowledged that a zero trash discharge requirement was an appropriate regulation with the adoption of the LA River Trash TMDL in 2001 and 2007, five lake and estuary trash TMDLs in 2007 and the Malibu Creek Trash TMDL in 2008, and subsequent legal decisions regarding this Trash TMDL by the judicial system further validates this limit. A zero trash limit in the Draft Trash TMDL meets the threshold of attaining and maintaining water quality standards as set forth in the Clean Water Act.

In the same vein, we are very supportive of the inclusion of a numeric target and waste load allocation of zero for plastic pellets. However, we see no reason why dischargers would receive 8 years to meet the zero requirements when BMPs for the purpose of meeting zero discharge are already required under AB 258 (California Water Code §13367) which was signed into law in 2007 (Heal the Bay sponsored that legislation). Instead, the Regional Board should require that compliance is attained upon issuance of an industrial stormwater permit.

Also we urge the Regional Board to develop a creative approach for dischargers to implement "institutional controls" such as local trash ordinances. Local trash ordinances for the "worst offending" items of trash will go a long way to water quality standards attainment. These issues and others are discussed in further detail below.



## **I. ZERO TRASH LIMIT**

### **Staff correctly assigns a TMDL of zero trash and plastic pellets.**

The Draft Trash TMDL establishes a numeric target of zero trash and plastic pellets, a final Waste Load Allocation (“WLA”) of zero trash and plastic pellets and a final Load Allocation (“LA”) of zero trash. We strongly support these requirements, as zero is the only appropriate TMDL for trash and plastic pellets given the water quality standards for these waterbodies set forth in the Basin Plan and Clean Water Act requirements and California Water Code §13367 (“Preproduction Plastic Debris Program”).

The federal Clean Water Act requires states to establish TMDLs “...at levels necessary to obtain and maintain the applicable narrative and numerical WQS [water quality standards] with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.”<sup>1</sup> The Basin Plan calls for no floatables or settleables that will cause a nuisance or adversely affect beneficial uses. Even small quantities of trash and plastic pellets violate the Clean Water Act and Basin Plan. For instance, small amounts of trash can maim or kill wildlife that becomes entangled in or ingests the debris. Plastic pellets are commonly mistaken for food by marine life and can contribute to organism starvation through stomachs filled with marine debris. Also, pellets can be a source of contaminants as the pellets act as a pollution “sponge” that sorbs organic contaminants on the pellet surface. Plainly, zero is the only fair interpretation of the Basin Plan water quality standards that will guarantee protection of the beneficial uses of these waterbodies with an appropriate margin of safety. Also after numerous legal challenges by the regulated community, the courts upheld the LA River Trash TMDL zero trash limit as an appropriate regulation. Thus, the Regional Board staff’s proposal of zero trash and plastic pellet discharge is, clearly, appropriate.

## **II. IMPLEMENTATION SCHEDULE**

### **The Regional Board should consider a compliance deadline “bonus” if responsible parties develop local trash ordinances.**

The Draft TMDL allows for the responsible parties to achieve compliance by using a combination of full capture devices, partial capture devices and institutional controls. Institutional controls such as local trash ordinances are a large component to reducing trash impairment in the Santa Monica Bay. Many jurisdictions in the state have already moved forward with local ordinances banning the “worst offending” types of trash such as plastic bags, Styrofoam and cigarette butts (cigarette butts, polystyrene pieces and plastic bags are some of the most commonly found items at Heal the Bay’s approximately 400 beach clean ups a year, including Coastal Cleanup Day), in order to reduce the amount of trash impacting their communities and waterways.

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<sup>1</sup> 40 C.F.R. Section 130.7(c)(1)



In order to recognize the achievement of these local trash ordinances, we suggest that the Regional Board include a provision in the Draft TMDL that allows for two additional years for final compliance if local ordinances targeting plastic bags, Styrofoam and cigarette butts are adopted within two years from the effective date of the TMDL. In other words, point sources who adopt all three of these ordinances would be allowed to achieve 100% reduction of trash from Baseline WLAs *ten years from the effective date of the TMDL* instead of eight years. The cigarette butt ordinance would ban smoking on the beach and in public places (LA City and Santa Monica are examples). Perhaps a one cent per cigarette tax could be instituted like the city of San Francisco (20 cents a pack). Single use polystyrene food packaging bans (including cups and clamshells – Santa Monica, Malibu and West Hollywood are examples) should be the second ordinance requirement. And finally, single use plastic bags should be banned (Malibu is a local example) as the third requirement to earn the extra compliance time. This provision would appropriately recognize these critical institutional efforts made by local governments.

**Compliance with the plastic pellet WLA should be achieved in concurrence with the issuance of the Industrial Stormwater Permit.**

The Draft TMDL requires compliance with the plastic pellet WLA eight years from the effective date of the TMDL, or five years from placement in the general industrial stormwater permit, whichever is sooner. Instead, we believe that full compliance should be linked to the date of permit issuance, as California Water Code § 13367 has been in place since 2007 (AB 258). CWC § 13367 requires implementation of BMPs to eliminate the threat of discharge from an industrial site. At a minimum, another compliance deadline should be included that requires that BMPs as described in CWC § 13367 should be in place upon the issuance of the industrial stormwater permit.

**The Regional Board should require that the Trash Monitoring and Reporting Program and Pellet Monitoring and Reporting Program begin within one year of TMDL adoption.**

The Draft TMDL requires that a Trash Monitoring and Reporting Plan (“Monitoring Plan”) be submitted within 6 months of adoption, and the Executive Officer has 9 months to approve the Monitoring Plan. Further after EO approval, the discharger has 6 months to begin monitoring. Thus, the discharger may not begin monitoring for 21 months, nearly two years after TMDL adoption. In addition, the discharger is given another 6 months to report on recommended baselines and prioritization of full capture installation. This lengthy timeframe is unacceptable, especially given that the first 20% reduction is at year four. Instead, the Regional Board should halve the time allowed for all of the implementations steps outlined above.



### III. MONITORING

**The Regional Board should require the responsible parties to monitor trash in the Santa Monica Bay Watershed Management Area in order to develop an appropriate baseline.**

The Draft TMDL allows the discharger to use current baseline data or perform monitoring in the actual impaired areas to develop a baseline. A baseline based on current data is critical, and the Regional Board should require that this approach be taken. Actual monitoring data is a preferred approach as it represents actual conditions. We are also somewhat concerned that the baselines are based on a linear mile, whereas Santa Monica Bay beaches are often over a hundred yards wide. At a minimum, the Regional Board should ensure that the discharger does not choose one approach over the other, in order to find the lower trash baseline.

Of note, the Regional Board should keep in mind that the baseline developed from beach clean-up data may be skewed as some beaches are cleaned up more frequently than others.

**Plastic Pellets should be monitored on the beach as well as the outfalls.**

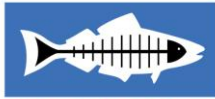
The Draft TMDL requires that pellets be monitored twice per year as they are discharged from the MS4 at critical locations and times. We are concerned that this type of monitoring may be somewhat like finding a needle in a haystack and may require some creative thinking and trial and error. Although we think it is prudent to pursue this proposed monitoring, it would also be useful to better understand the amount of pellets found on the beach over time. This is especially important in understanding the amount of pellets that may be entering Santa Monica Bay. The State Board has collaborated with SCCWRP to develop such a monitoring program and we suggest that this monitoring effort get initiated under the TMDL.

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### IV. MICELLANEOUS

**Operation and Maintenance is a key component of final compliance using full capture devices.**

The responsible parties may achieve full compliance with the TMDL by installing full capture devices. Installation must be followed by proper operation and maintenance to continue compliance with the TMDL. We assume that this is the intent, as the Draft TMDL states that "...compliance with percent reductions from the Baseline WLA will be assumed whenever properly-sized full capture systems are installed and properly operated and maintained..." (Footnote 6, page 16). However this important element needs to be discussed throughout the Draft TMDL. For example, we suggest the following modification to the Basin Plan Amendment:



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“Zero will be deemed to have been met if full capture systems have been installed *and properly operated and maintained* on all conveyances discharging to the waterbodies within the Santa Monica Bay WMA and the Santa Monica Bay.”(Pg 7)

All too frequently, we’ve seen poorly maintained trash screens and inserts with blocked mesh. The end result is increased flood risk and ineffective BMPs. TMDL reporting

requirements should include an operation and maintenance schedule and annual reporting that demonstrates that the BMPs are functioning as designed.

**The Regional Board should develop a definition for a major rain event.**

As part of the MFAC monitoring program, the Draft TMDL requires that the discharger develop a definition for a major rain event. This is an inappropriate task for a discharger and would facilitate varied definitions throughout the Region. Instead, the Regional Board should develop a definition. We propose that a major rain event for monitoring purposes be defined as 0.25” or more predicted rainfall based on the National Weather Service forecast. If the actual rain event is 0.1” or greater, the data would be kept. This is also consistent with the definition of a critical event included in the Los Angeles River Trash TMDL (Resolution No. 2007-012).

**V. CONCLUSION**

In sum we are supportive of most components of the Draft TMDL, and in particular, we strongly support the zero trash and plastic pellets WLAs and LAs. However, as discussed above, some of the implementation schedule, monitoring and other provisions must be clarified or strengthened to ensure that water quality standards are truly attained. Also we highly encourage the Regional Board to consider the creative incentive based approach to institutional controls for local trash ordinances that is discussed above.

If you have any questions, please contact us at 310-451-1500.

Sincerely,

Kirsten James  
Water Quality Director

Mark Gold, D. Env  
President