



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

June 4, 2010

Renee Purdy
California Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Dear Ms. Purdy,

The U.S. Environmental Protection Agency (EPA) appreciates the opportunity to comment on the proposed Bacteria TMDLs for Los Angeles River Watershed. We strongly urge the Regional Board to adopt the TMDLs to meet California's TMDL commitments and to enable EPA to meet its requirements under the consent decree (*Heal the Bay V. Browner*, C. 98-48 25 SBA, March 22, 1999).

EPA reviewed the proposed draft basin plan amendment (BPA) and technical report and finds some remaining issues warranting clarification. Unlike other bacteria TMDLs in the Los Angeles region, this TMDL defines two phases of TMDLs to be achieved over the course of a 25 year implementation period. The draft BPA and Implementation Plan should define more clearly the difference between Phase I and II milestones, and the consequences of not meeting "Interim" WLAs. The draft BPA describes wasteload allocations (WLA) in the form of meeting a set of allowable exceedence days and a maximum *E. Coli* mass load. We understand the interim WLAs are allocated to MS4 dischargers during dry weather, but this is not currently indicated in the draft BPA; thus, the revised draft should clarify that the "Interim" mass load is assigned during dry weather only. Please explain how "Interim" and "Final" WLA in this TMDL differ since both must be achieved ten years following approval of the TMDL. In the implementation plan, please clarify if *both* Interim WLAs *and* the Load Reduction Strategy must be achieved to show compliance. Since this draft TMDL includes milestones to achieve a mass load and meet an exceedence frequency, more detailed description of the monitoring requirements and steps to attain compliance would be useful.

The draft TMDL technical report includes language describing the applicable numeric standards, *E. Coli* and fecal coliform. It further described the Regional Board's plan to update the bacteria objectives for freshwaters by removing fecal coliform objectives and maintaining only *E. coli* for REC-1 in freshwaters as the applicable standard. Please include comparable language in the BPA, stating that all existing standards are applicable in this TMDL until final approval to remove fecal coliform standards is in effect.


he fact that EPA intends to publish in the Federal Register new or revised recommended criteria to protect public health by October 2012 should not preclude the development of TMDLs to address consistent and excessive long-term exceedences of existing bacterial standards. EPA does not support the delay of the TMDL adoption due to future changes in criteria. The bacterial TMDLs for the Los Angeles River Watershed must be State adopted and EPA approved by March 2012. It is important to note the distinction between EPA's criteria recommendations and water quality criteria that are elements of state water quality standards. "Section 304(a) criteria" is defined at 40 CFR 131.4 as "developed by EPA under authority of Section 304(a)(9) of the Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health." In contrast, the phrase "water quality criteria" is defined at CFR 131.3 as "elements of State water quality standards, expressed as constituent concentrations, levels, or a narrative statement, representing a quality of water that supports a particular use," and "when criteria are met, water quality will generally protect the designated use." In short, once adopted into water quality standards, "water quality criteria" express the desired ambient condition of the water to protect a designated use. States are expected to incorporate the EPA criteria into their state standards during the triennial reviews, but should not postpone regulatory actions due to future changes. It would be inappropriate and unwise to further delay development of TMDLs and actions to address a history of bacterial impairments in the watershed.

Overall, EPA finds the proposed TMDLs provide reasonable scientific analysis for addressing bacteria impairments included on California's Section 303(d) List. We find the mass-based WLA established for stormwater permittees and defined for Phase I of the TMDL consistent with EPA guidance and CFR Section 130.7; we believe setting WLAs for stormwater municipalities is an appropriate approach to define the responsibility of the permittees since the Basin Plan includes quantitative bacterial indicator criteria. These TMDLs appropriately reviewed all sources of pollutant loading and separated the large watershed into reasonably sized segments and subpopulations, where compliance will need to be met. These TMDLs also clearly assigned allocations to the all sources and appropriately defined TMDLs for existing permits, where applicable, and in the receiving water, during Phase II, where protection of the beneficial uses is ultimately determined.

Finally, we appreciate the inclusion of specific actions and milestones in the associated implementation plan to provide greater clarity of implementation expectations for all concerned stakeholders. However, in keeping with Element Five in the State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, we do recommend that the potential consequences of failing to achieve the load allocations be specified more clearly.

We commend your hard work on these TMDLs and strongly recommend adoption by the Regional Board. If you have any questions, please contact me at (213) 244-1803.

Sincerely yours,



Cindy Lin
TMDL Liaison, Water Division