

EXECUTIVE OFFICER SUMMARY REPORT
August 14, 2002

- ITEM: **16**
- SUBJECT: **AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SAN DIEGO REGION (9) TO INCORPORATE A TOTAL MAXIMUM DAILY LOAD (TMDL) FOR DIAZINON IN THE CHOLLAS CREEK WATERSHED, SAN DIEGO COUNTY (Tentative Resolution No. R9-2002-0123).** *(Linda Pardy and Jimmy Smith)*
- PURPOSE: To consider adoption of Tentative Resolution No. R9-2002-0123 amending the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) to include a Total Maximum Daily Load (TMDL) for diazinon in the Chollas Creek watershed.
- PUBLIC NOTICE: As detailed in the June 12, 2002 Executive Officer Summary Report, all public noticing requirements were fully satisfied for the June 12, 2002 public hearing.
- DISCUSSION: ***Extension of Written Comment Period***
- On June 12, 2002 the Regional Board received public testimony and closed the public hearing on this matter. It extended the written public comment period for fifteen days (until June 27, 2002) stipulating that only comments pertaining to the changes contained in the June 12, 2002 "Errata Sheet for Item 9" would be accepted. The Board also determined that, during its subsequent deliberations on August 14, 2002, it would consider staff's recommendations on comments received during the extended comment period but would not accept further public comment on the matter.
- Public Comments on June 12 Errata Sheet***
- Following the public hearing, on June 20, staff met again with the City of San Diego and other key stakeholders to discuss and clarify the changes in the June 12 Errata Sheet. All of the significant June 12 changes were made in response to public comment received prior to the hearing and, with one exception (the addition of limited sediment monitoring), each of the significant changes had been

discussed with stakeholders during of the series of meetings immediately preceding the June 12 public hearing.

Three comment letters were received by the June 27 extended comment period deadline. These letters, from the City of San Diego, Port of San Diego, and San Diego BayKeeper, are included in Attachment 15 for your review. In general, the letters requested two date changes and clarification of certain language, but raised no new, substantive issues.

Changes in Response to Latest Public Comments

Staff has considered all of the comments submitted during the extended comment period and, as a result, recommends the following three minor changes to the draft TMDL documents.

1. *Change of Monitoring and Reporting Dates*
Stakeholders requested and staff recommends that the Monitoring Program dates in the draft TMDL be revised to make them fully consistent with the Monitoring Program dates in the MS4 permit. Consistency is essential to ensure that the results of Copermittee monitoring in the Chollas Creek watershed can be used to fully or partially satisfy the monitoring requirements of both the MS4 permit as well as the TMDL.
2. *Addition of Word "Inventory"*
Stakeholders requested and staff recommends the addition of the word "Inventory" to the title of Attachment F. The new title, which will read "Best Management Practices Inventory," emphasizes that Attachment F is a list of possible best management practices rather than a list of required best management practices.
3. *Addition/Exchange of Clarifying Words*
Stakeholders requested and staff recommends the addition of seven words (to Attachment F) to clarify that "minimizing hazards" means minimizing hazards "to the environment associated with the application" of pest control products. Also as requested, staff recommends exchanging the words "diazinon return center" to "hazardous waste collection center."

The stakeholders also requested two additional changes regarding the monitoring requirement of the TMDL that staff does not support. It was requested that the Regional Board approve a proposed monitoring plan at this time and incorporate it verbatim into the TMDL (for Regional Board adoption). Secondly, in reference to sampling frequency and station number and location, it was requested that the word "may" replace the word "should".

Staff's response and rationale for not supporting these changes, as well as our written responses to all of the comments received during the extended comment period, are contained in the

document entitled "Responses to Comments # 2" provided for your review in Attachment 16.

Other Recommended Changes

In addition to the three changes noted above (in response to public comments), staff also recommends several other changes to the draft TMDL documents. All of these changes are minor and non-controversial in nature and are recommended to clarify, correct, update, or enhance the information in the draft documents. Examples include correction of typographical errors, correction of the number of public workshops conducted (there were five rather than four); addition of a "Chronology of Public Participation" (see Attachment 21); correction of a boundary on Map A-2 (see Attachment 18); update of June 12, 2002 dates to August 14, 2002. A complete list of all of the recommended changes, (both those requested by stakeholders as well as those initiated by staff to improve the drafts), is contained in the document entitled "Errata Sheet #2" dated August 14, 2002 provided for your review in Attachment 17.

A revised version of the tentative Resolution, draft Basin Plan Amendment, Technical Report, and Attachment F (Best Management Practices Inventory) is enclosed with this Executive Officer Summary Report as Attachments 13, 14, 19, and 20 respectively. These August 14, 2002 redline strikeout versions incorporate all of the June 12 Errata Sheet changes and are provided to illustrate the proposed text and location of the newest changes recommended in the August 14, 2002 Errata Sheet #2.

Memorandum from Legal Counsel

To further clarify the issue raised by stakeholders (before and at the hearing) that this TMDL is not appropriate for the corresponding Section 303(d) listing, enclosed for your review (see Attachment 22) is a June 21, 2002 legal memorandum prepared by Michael Levy, Staff Counsel, Office of Chief Counsel, State Water Resources Control Board (SWRCB). Mr. Levy specializes in legal issues related to TMDLs. The memorandum explains that when a waterbody is on the Section 303(d) list due to an impairment condition, it is appropriate to address that condition by developing a TMDL to reduce the underlying causative pollutant(s). Specifically, Mr. Levy states that "when waters are listed as impaired for conditions that are caused by pollutants, the Regional Water Quality Control Boards must establish a TMDL for those pollutants that cause or contribute to the impairing condition." In

the case at hand, the Regional Board is required to adopt a TMDL for diazinon because it is, in part, the cause of the aquatic toxicity in Chollas Creek (Chollas Creek is Section 303(d) listed for the impairment condition of aquatic toxicity).

LEGAL CONCERNS: None.

SUPPORTING
DOCUMENTS:

Note: Attachments 1-12 were included with the June 12, 2002 agenda and supplemental agenda packets.

Attachment 13. Revised Tentative Resolution No. R9-2002-0123
(Includes all June 12 Errata Sheet Changes)

Attachment 14. Revised Tentative Basin Plan Amendment
(Attachment A to Tentative Resolution No. R9-2002-0123)

Attachment 15: Comment Letters Submitted During Extended
Comment Period By:

- City of San Diego
- Port of San Diego
- San Diego BayKeeper

Attachment 16. "Responses to Comments #2" (Responses To
Comments Submitted During Extended Comment Period)

Attachment 17. "Errata Sheet #2" dated August 14, 2002
(Changes recommended since June 12, 2002)

Attachment 18. Revised Maps (Attachments A-1 & A-2)

Attachment 19. Revised Technical Report (includes all June 12
Errata Sheet Changes)

Attachment 20. Revised Attachment F, "Best Management
Practices Inventory" (Includes all June 12 Errata Sheet Changes)

Attachment 21. Attachment P. Chronology of Public Participation

Attachment 22. June 21, 2002 Memorandum from Michael Levy
entitled "TMDLs for Condition-Based Impairments"

RECOMMENDATION(S): Adopt Tentative Resolution No. R9-2002-0123.