

**Regional Board Staff Response to Comments**  
**Orange County Coastkeeper Letter signed by Garry Brown, Dated July 8, 2011**

**Comment C1.** The Regional Board should not accept staff's recommendation to modify the distant final TMDL compliance date from December 31, 2015. As written, the final TMDL compliance date was seven years following projected Office of Administrative Law (OAL) approval and provided notice sufficient to place regulated entities that an Organochlorine Compound TMDL would be impacting San Diego Creek, Upper and Lower Newport Bay in the next decade and to anticipate an approaching compliance date with relative certainty. Regional Board staff's recommendation to modify Resolution No. R8-2007-0024 to replace the compliance date with "seven years from the date of OAL approval of this Basin Plan Amendment (BPA)" is not protective of water quality for severe pollutants, such as DDT and PCBs.

The adoption of this revision to an amendment to the Basin Plan would prolong the acquisition of organochlorine compound TMDLs at least seven years and perhaps as long as a decade following the adoption of a Resolution passed on September 7, 2007. We recommend modifying the revision to the adopted amendment by projecting two years for OAL approval...Coastkeeper encourages the Regional Board to modify the language to add "but in no event later than December 31, 2020." This final deadline would provide a date certain for a compliance with organochlorine compounds TMDL and others with certainty that a second multi-year delay will not further frustrate the implementation of this needed TMDL.

**Response to Comment C1:**

Per the Coastkeeper's recommendation, the following change to the TMDL compliance date is now proposed in the errata for this item.

"The TMDLs are to be achieved as soon as possible but no later than December 31, 2020."

**Comment C2.** Coastkeeper encourages the Regional Board to direct staff to further clarify the requirement that water quality standards be applied to the water column under the TMDL. As written, the TMDL is susceptible to interpretation placing a heavier emphasis on sediment concentrations. Staff's refinement on this issue will emphasize the importance of water quality as well as sediment quality and provide guidance on this critically important issue.

**Response to Comment C2:**

Organochlorine compounds are highly hydrophobic and are rarely detectable in water using standard collection procedures and laboratory analytical methods. This fact was acknowledged by USEPA in their technical TMDLs:

"In some cases, it is necessary to interpret a numeric standard in terms other than the method through which the standard is expressed as long as the target(s) can be shown to relate back to achieving the water quality standard(s). For some pollutants (e.g., bioaccumulative toxins) or receiving water settings (e.g.

embayments), it often makes more sense from the standpoint of source control and impact assessment to focus the TMDL on reductions of pollutant mass loads than solely on avoidance of exceedences of concentration-based standards. Moreover, use of sediment and/or fish tissue endpoints may provide more discriminating indicators of the beneficial use impacts of concern in a TMDL.”

“...there are technological challenges accompanied with sampling and accurately detecting these [OCs] compounds in water column samples. Therefore, these pollutants are unlikely to be detected in the water column in dissolved form even in waters where they may be present at levels of concern.”

Organochlorine compounds are primarily found in association with fine suspended sediment and fine bed sediment. Accurate estimates of OCs in the water column requires large volumes of water to be collected to ensure that a sample contains sufficient suspended materials to allow the analysis of both dissolved concentrations and particulate concentrations. [Passive sampling techniques](#) used by SCCWRP to measure hydrophobic organic constituents (HOCs) in the Ballona Estuary in the San Diego Region only provided a measure of dissolved HOC concentrations, not HOC concentrations in the particulate fraction, so this method does not provide a complete measurement of OCs that may be present in the water column, unless it is coupled with data on bed sediment and porewater contaminant levels (Keith Maruya, SCCWRP, personal communication, July 13, 2011).

For these reasons, the Regional Board’s OCs TMDLs, as well as USEPA’s OCs TMDLs, focused on analysis of OCs in sediments and fish tissue as the best method for determining OC concentrations in the water bodies in the watershed and for assessing the effectiveness of actions taken to reduce these pollutants. The California Toxics Rule (CTR) criteria for OC constituents in water are included as alternate numeric targets in the Regional Board’s OCs TMDLs.

The Regional Board’s OCs TMDL implementation plan includes a task (8.3.8) that requires the MS4 permittees to revise the regional monitoring program to evaluate the effectiveness of actions and programs implemented pursuant to the TMDL. One of the listed requirements under this task requires that temporal and spatial trends in organochlorine compound concentrations in water, sediment, and tissue samples be assessed. The current (2009) MS4 permit for Orange County uses the CTR criterion for OCs in water as numeric targets that can be used to evaluate the monitoring results and determine the need for any additional control measures. However, as discussed previously, assessment of only dissolved concentrations of OCs in water (which is what is required by the CTR) is likely to underestimate the total amount of the contaminants being transported via surface waters.

**Comment C3.** Coastkeeper encourages the Regional Board to direct staff to consider requiring construction sites which drain to San Diego Creek, Upper or Lower Newport Bay and their tributaries to sample for all TMDL constituents due to the nature of these legacy contaminants.

**Response to Comment C3:**

The recently adopted (September 2, 2009) [General construction permit](#)<sup>1</sup> addresses the fact that storm water discharges associated with construction and land disturbances are subject to compliance with TMDLs in the watershed where the activity is occurring. Specific provisions that layout these requirements are included in the Order under Section I. Findings, G. Determining and Reducing Risk, page 9, as follows:

“G.51. Dischargers located in a watershed area where a Total Maximum Daily Load (TMDL) has been adopted or approved by the Regional Water Board or U.S. EPA may be required by a separate Regional Water Board action to implement additional BMPs, conduct additional monitoring activities, and/or comply with an applicable waste load allocation and implementation schedule. Such dischargers may also be required to obtain an individual Regional Water Board permit specific to the area.”

The Order also explicitly states (Section I. Findings, N. Regional Water Board Authorities, page 13):

“79. Regional Water Boards are responsible for implementation and enforcement of this General Permit. A general approach to permitting is not always suitable for every construction site and environmental circumstances. Therefore, this General Permit recognizes that Regional Water Boards must have some flexibility and authority to alter, approve, exempt, or rescind permit authority granted under this General Permit in order to protect the beneficial uses of our receiving waters and prevent degradation of water quality.”

In addition to that requirement, the permit also explicitly states that the Regional Boards may impose additional requirements on dischargers, including additional monitoring and reporting requirements, to satisfy TMDL implementation requirements or provisions in their Basin Plans (see Attachment A, L. Regional Water Board Authorities, 7 and 8).

The Regional Board’s OCs TMDLs implementation plan includes a task (8.3.4) to “Develop and Implement Appropriate BMPs and Sampling Plans for Construction Activities”. That task includes the following additional requirements for construction sites covered under the General Permit:

“(a) Storm Water Pollution Prevention Plans (SWPPPs) prepared in response to the General Construction Permit must include supporting documentation and assumptions for selection of sediment and erosion control BMPs, and must state why the selected BMPs will meet the Construction WLAs for the organochlorine compounds; (b) SWPPP provisions must be rigorously implemented on construction sites; (c) sampling and analysis for the organochlorine pesticides and PCBs in storm and nonstorm discharges containing sediment from

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<sup>1</sup> National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, NPDES No. CAS000002.

construction sites is necessary to determine the efficacy of BMPs, as well compliance with the construction WLAs; sampling and analysis plans must be included in SWPPPs; (d) additional BMPs, including advanced treatment BMPs, must be evaluated to determine those most appropriate for reducing or eliminating organochlorine compound discharges from construction sites (e.g., BMPs effective in control of fine particulates); (e) outreach and training are necessary to communicate these SWPPP requirements and assure their effective implementation; and (e) enforcement of the SWPPP requirements is necessary.”

Board staff intends to implement the above approach identified in the Regional Board’s OCs TMDLs once the TMDLs become effective.

**Comment C4.** Coastkeeper has been informed some regulated entities are advocating for the harmonization of organochlorine compound and selenium TMDL deadlines. The Regional Board must avoid conflating deadlines for unrelated TMDLs impacting San Diego Creek or Upper and Lower Newport Bay. These waterbodies are adversely impacted by a variety of compounds and are 303d listed for a number of harmful contaminants that require the appropriate implementation of TMDLs to ensure these waterbodies are able to meet water quality standards in the foreseeable future. The implementation of one TMDL for a contaminant should have no relation to the implementation of a TMDL for a disparate contaminant. The Regional Board approved Resolution No. R8-2007-0024 on September 7, 2007 and a delay until the implementation date of the oft delayed selenium TMDL is unacceptable and indefensible.

**Response to Comment C4:**

Board staff agrees that it would be inappropriate to withhold action on the OCs TMDLs, or to modify the compliance date, in order to accommodate consideration of the selenium TMDLs currently being drafted. Thus, revisions to the OCs TMDLs originally approved by the Regional Board in 2007 are scheduled for consideration by the Regional Board on July 15, 2011. Board staff expects to make the movement of the OCs TMDLs through the full approval process a high priority. We note that USEPA has already indicated its intent to approve the TMDLs once they have been approved by the State (see July 8, 2011 comment letter from USEPA). It may be noted that while a hearing date for the Selenium TMDLs has not yet been scheduled, Board staff are moving forward as quickly as possible to complete the combined Selenium TMDLs and Site-Specific Objectives (SSOs).

(Also please see response to Comment E.3 from USEPA letter dated July 8, 2011.)