

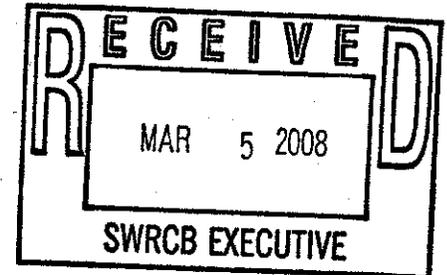


RICHARD WATSON & ASSOCIATES, INC.

Urban & Regional Planning

March 5, 2008

State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



ATTN: Jeanine Townsend, Clerk to the Board

Subject: Comment Letter – Los Angeles River Trash TMDL

Dear Ms. Townsend and Members of the Board:

I am writing these comments on the Los Angeles River Trash TMDL and Substitute Equivalent Document (SED) as consultant to the Coalition for Practical Regulation (CPR), an *ad hoc* group of cities within Los Angeles County that have come together to address water quality issues. This letter does not reiterate all the deficiencies of the Trash Total Maximum Daily Load (TMDL) and its associated Substitute Environmental Document (SED) enumerated in Richard Montevideo's letter of March 4, 2008. Rather, it first describes three underlying concerns CPR cities have with the TMDL and a process issue. Then, it briefly explains the Catch Basin Prioritization and Protection Plan (CBPPP) that was proposed by cities as an alternative to the Trash TMDL proposed by staff and suggests a comprehensive approach modeled after a Water Quality Attainment Strategy and TMDL Basin Plan Amendment adopted by the California Regional Water Quality Control Board, San Francisco Bay Region in 2005.

The Unachievable Zero Target Remains in the TMDL

One of CPR's critical concerns with the Trash TMDL as adopted by the Los Angeles Regional Water Board is that it includes a numeric target of zero trash in the water. This issue has been a driving concern of the cities in the watershed since the first version of the Los Angeles River Trash TMDL was adopted in 2001, and it continues to frustrate and alarm municipalities in the region. It is an impossible target to achieve, as there are many trash sources that are not under cities' control. In addition, cities cannot control the wind, which acts as a transport mechanism for trash. CPR would like to note that the Los Angeles Regional Water Board appears to recognize that zero trash is an impossible numeric target. It has added a statement in Attachment A to Resolution No. 2007-012 that states, "Nonpoint sources, i.e., direct deposition of trash by people or wind into the

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water body, is a de minimus source of trash loading to the LA River." However, the untenable zero target remains.

The TMDL Requires a Thorough Loading Capacity Analysis

CPR is also concerned that the Regional Water Board, while asserting the zero loading capacity, has neither performed a thorough source analysis nor an assimilative capacity study. The "Source Analysis" section of the Staff Report for the TMDL is less than one page long and does not contain any assimilative capacity analysis. The fact that no assimilative capacity study has been performed is particularly surprising considering that the Staff Report acknowledges that there was an absence of paper products in the material removed from a Calabasas Continuous Deflective Separation Unit (CDS) that was used to establish the default values for earlier versions of the TMDL. The Report indicates that staff assumed that part of the trash that had accumulated in the CDS unit had decomposed in the unit. Similar decomposition of paper could be expected in the Los Angeles River and its tributaries.

Punitive Measures in the Trash TMDL

CPR is extremely concerned that the TMDL adopted by the Los Angeles Regional Water Board punishes municipalities that exercised their rights to challenge a TMDL that they thought to be flawed. The adopted Trash TMDL requires a 40% reduction in trash in one year, in sharp contrast to the 10% per year required in the original Trash TMDL. The 40% requirement appears to be based on a presumption on the part of the Regional Water Board that cities should have implemented the TMDL when it had, in fact, been set aside. The State Water Board should direct the Los Angeles Regional Water Board to delete the 40% reduction in the first year requirement and restore the 10% per year for 10 years implementation schedule in the Implementation Plan for the TMDL.

Truncated Discussion on CBPPP

CPR was also frustrated by what happened after the Los Angeles Regional Water Board adopted the Trash TMDL at the conclusion of the August 9, 2007 adoption hearing. Vice-chair Lutz amended member Nahai's motion to request the Interim Executive Officer to "continue communications and collaborative discussions with the group presenting the prioritization program." That group was CPR. She further requested that staff report back on progress within sixty (60) days. This process was never completed. There was one meeting in late August that was initiated by CPR. Board staff truncated the process when CPR was informed that the Board was only interested in a global settlement of pending litigation and issues.

Catch Basin Prioritization and Protection Plan Alternative

In the months preceding the Regional Board's re-adoption of the Trash TMDL, CPR cities developed the Catch Basin Prioritization and Protection Plan (CBPPP) as an alternative to the Trash TMDL. The cities were initially encouraged by Regional Water

Board staff's apparent willingness to consider the CBPPP and by their particular interest in the Prioritization Component of the Plan. CPR appreciated that the Interim Executive Officer and other Board staff met with city representatives to review the evolving Plan and that staff raised questions and provided direction to the cities for modifying the CBPPP to make it more understandable and acceptable to them. However, despite multiple meetings between city representatives and Regional Water Board staff, and the fact that revisions were made based on staff input, the CBPPP Alternative to the Trash TMDL was ignored and not included in the Substitute Environmental Document (SED) prepared for the TMDL adoption process.

Although the Regional Water Board all but ignored the Catch Basin Prioritization and Protection Plan (CBPPP) presented to staff initially on May 4, 2007 and presented at the Regional Board Meeting of August 9, 2007, it is a viable alternative to the Trash TMDL adopted by the Regional Water Board. In addition, it could form the basis of a more comprehensive plan to solve the trash problem in the Los Angeles River.

Prioritization, to which Regional Board staff initially responded with interest, is an important strategy for dealing with trash. The principle of differential trash generation was acknowledged by the Los Angeles Regional Water Board in the 2001 Los Angeles County MS4 Permit, which required that municipalities divide catch basins into three maintenance categories. The use of prioritization will both be cost-effective and facilitate faster reduction of trash in the receiving waters.

The Catch Basin Prioritization and Protection Plan was developed as a sound, practicable method for cities to begin tackling the tough problem of trash. It builds upon maintenance priority concepts in the MS4 permit and incorporates the results of the EPA funded study, *Market Based Strategies for Reducing Trash Loading to Los Angeles Area Watersheds*, published in March 2006. The CBPPP would utilize community litter surveys using the Keep America Beautiful Litter Index (KAB) methodology that has been successfully used in hundreds of communities nationwide.

Cities would complete litter surveys and submit preliminary CBPPPs to the Los Angeles Regional Water Board within 180 days of final TMDL approval by the State Water Board and USEPA. Cities would then commence work with Los Angeles Regional Water Board staff and other stakeholders to develop a protocol for estimating trash removed from catch basins to improve accuracy of estimates.

The basic prioritization schedule would be as follows:

- Fifteen percent (15%) of catch basins with the highest trash generation rates, starting with commercial areas, would be protected within one year following Regional Board approval of the CBPPP.
- Thirty percent (30%) of catch basins with the highest trash generation rates would be protected within three years following approval of the CBPPP.

In year four, cities would update their CBPPPs and submit strategies for addressing single-family neighborhoods and other remaining low trash generation areas.

The anticipated results from prioritization strategy in the CBPPP are exciting. Protecting 15% of a jurisdiction's catch basins with the highest trash generation rates is expected to result in a 50% reduction in water-borne trash and protecting 30% of a jurisdiction's catch basins with the highest trash generation rates is expected to result in a 65-70% reduction. These projections indicate that utilizing the CBPPP would dramatically reduce the impact of trash in the Los Angeles River Watershed.

Opportunity to Develop a Water Quality Attainment Strategy for Trash

As noted above, a 2005 Amendment to the San Francisco Bay Region Basin Plan that recently came to our attention could be the model for a comprehensive Water Quality Attainment Management Strategy and TMDL with wide support and cost-effective implementation. Remanding the Trash TMDL back to the Regional Water Board with directions to conduct a loading capacity study, revise the implementation schedule, review and consider both the CBPPP and combined Water Quality Attainment Strategy and TMDL modeled on the *Water Quality Attainment Strategy and TMDL for Diazinon and Pesticide-Related Toxicity in Urban Creeks* could provide an opportunity to develop a more comprehensive Water Quality Attainment Strategy that would address true source control and ensure long-term achievement. The attainment strategy could be based in part on the CBPPP.

Bay Area Example

In anticipation of future TMDLs for organophosphate-related toxicity in San Francisco Bay Area urban creeks, the Bay Area Stormwater Management Agencies Association (BASMAA) completed its *Strategy for Reducing Organophosphate Pesticide-Related Toxicity in San Francisco Bay Area Urban Creeks* in February 2000. This Strategy became the core of a *Water Quality Attainment Strategy and TMDL for Diazinon and Pesticide-Related Toxicity in Urban Creeks* amendment to the Basin Plan for the San Francisco Bay Area. The implementation portion of the attainment strategy is based on the reduction strategy prepared by BASMAA.

In adopting the Water Quality Attainment Strategy, the San Francisco Bay Regional Board recognized that:

“When pesticide-related toxicity occurs in urban creeks, many entities share responsibility for the discharge, and therefore many entities share responsibility for implementing actions to ensure that pesticide-related toxicity does not threaten water quality. Although the allocations apply to all urban runoff management agencies, responsibility for attaining the allocations is not the sole responsibility of urban runoff management agencies, whose authority to regulate pesticide use is constrained.”¹

¹ Exhibit A: Basin Plan Amendment, California Regional Water Quality Control Board, San Francisco Bay Region, Resolution R2-2005-0063, page 5.

In addition, the San Francisco Bay Regional Board acknowledged:

“The role of the Water Board is to encourage, monitor, and enforce implementation actions, and to lead by example.”¹

The cornerstone of the attainment strategy is pollution prevention. Implementation of the strategy focuses on 1) regulatory programs, 2) education and outreach, and 3) research and monitoring. It specifies actions that will be implemented by the Regional Water Board and actions that should be implemented by USEPA, the California Department of Pesticide Regulation, the County Agricultural Commissions, the Structural Pest Control Board, and private entities. It also specifies permit-related requirements for urban runoff management agencies and similar entities as well as monitoring requirements to be implemented through NPDES permits issued or reissued for urban runoff discharges. In addition, the attainment strategy specifically recognizes adaptive management and provides for review of the strategy by the Water Board every five years. In recognizing the importance of adaptive implementation, the San Francisco Bay Regional Water Board noted that,

“Adaptive implementation entails taking immediate actions commensurate with available information, reviewing new information as it becomes available, and modifying actions as necessary based on the new information.”

In terms of its periodic review, the San Francisco Bay Regional Water Board notes that strategy review will be continued through the Board’s continuing planning program, with opportunities for stakeholder participation. If modifications are required, they will be incorporated into the Basin Plan. The questions used in conducting review will include topics such as whether urban creeks are moving toward water quality improvements, how monitoring should be modified if progress is unclear, how implementation actions or allocations might be modified to improve progress, and whether there is new information to suggest modification of targets, allocations, or implementation actions. In addition, during reviews the Regional Water Board “will consider newly available information regarding such topics as market trends, monitoring results, tools for risk evaluation, outreach effectiveness, and regulatory actions.”

Conclusion

The member cities of the Coalition for Practical Regulation, together with other cities in the Los Angeles River Watershed, would like to have the opportunity to work with the Los Angeles Regional Water Board to create a workable Trash TMDL. On August 9, 2007, when the Regional Water Board adopted the Trash TMDL, they did not grant the request by cities to defer adoption in order to work to amend the CBPPP to make it a workable alternative for all concerned parties; nor did they incorporate the CBPPP as an alternative in the Substitute Environmental Document. Further, they ignored cities’

¹ Exhibit A: Basin Plan Amendment, California Regional Water Quality Control Board, San Francisco Bay Region, Resolution R2-2005-0063, page 5.

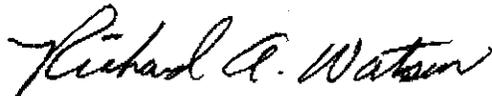
request that the SED be re-noticed due to last-minute changes on which cities and the public were not given the chance to comment.

CPR respectfully requests that the State Water Board remand the TMDL back to the Los Angeles Regional Water Quality Control Board with directions to continue discussion with the proponents of prioritization, work with cities to finalize a CBPPP alternative that staff could support, develop a Water Quality Attainment Strategy Alternative, and address other issues related to adoption and implementation of the TMDL. In addition, we request that the State Water Board direct the Regional Water Board to re-notice and redistribute the Substitute Environmental Document (SED) to solve the problem created by substantial last-minute changes in the July 27 Revised Draft SED and the absence of the CBPPP alternative and a reasonable range of other alternatives in that document.

Thank you for the opportunity to provide these comments.

Sincerely,

RICHARD WATSON & ASSOCIATES, INC. (RWA)

A handwritten signature in cursive script that reads "Richard A. Watson".

Richard A. Watson
President