



February 15, 2013

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, California 95814



**Re: Comments on amending the *Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan)* to establish a Total Maximum Daily Load and Implementation Plan for Bacteria in San Pedro Creek and at Pacifica State Beach and New Implementation Provisions for Bacteria Water Quality Objectives**

Dear Chairman Hoppin and State Board members,

On behalf of Heal the Bay, Clean Water Action and Baykeeper we submit the following comments regarding amendment of the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) to establish a Total Maximum Daily Load (TMDL) and Implementation Plan for Bacteria in San Pedro Creek and at Pacifica State Beach and new implementation provisions for bacteria water quality objectives (“Proposed Amendment”). We became aware of this proposal with the issuance of a State Water Board public notice dated January 18, 2013, thus we did not submit comments previously. We appreciate the opportunity to provide the following comments:

**Dischargers must meet numeric waste load allocations**

We support the use of a reference system approach in the Proposed Amendment. This approach recognizes that there are natural sources of bacteria that may cause or contribute to exceedances of the objectives for indicator bacteria. Also, a reference beach approach sets a realistic standard for impacted beaches in the absence of historical baseline data. In addition, the reference system approach has been used successfully in numerous TMDLs throughout the state including, Santa Monica Bay Beaches, Long Beach and Harbor Beaches of Ventura County. However, we are very concerned by the provision in the Proposed Amendments’ Implementation Plan that seemingly negates the reference system approach and compliance with numeric waste load allocations (“WLAs”).

Specifically, the Regional Board proposes the following:

“The Water Board may establish permit requirements to implement wasteload allocations based on implementation of BMPs in lieu of numeric limits. The wasteload



allocations are not designed to be implemented directly as numeric effluent limitations applicable to a discharger, Pacifica, or San Mateo County. The Water Board will not include numeric limits, based on the wasteload allocations, in NPDES permits if the discharger demonstrates that it has fully implemented technically feasible, effective, and cost efficient BMPs to control all controllable sources to and discharges from their storm drain systems.” (Basin Plan Amendment, Page 7).

By providing this alternative means of demonstrating compliance (“technically feasible, effective, and cost efficient BMPs”), the Regional Board thus creates a safe harbor from final TMDL requirements and incorporates a provision that is inconsistent with the WLAs. Under this regime, there is no assurance that actual final TMDL limits, established to achieve water quality standards and protect beneficial uses, will ever be met in these waterbodies. Measuring the success of a TMDL based on actions and not results (water quality standards attainment) is unacceptable and contradicts the intent of a TMDL.

Further, this provision violates the requirement at 40 C.F.R. § 122.44(d)(1)(vii)(B) that NPDES permit requirements be consistent with existing, applicable WLAs. The Clean Water Act and its implementing regulations require that NPDES permits incorporate WLAs established in existing, applicable TMDLs as water-quality based effluent limitations (“WQBELs”). 40 C.F.R. § 122.44(d)(1)(vii)(B). Thus, the MS4-related WLAs for TMDLs *must* be properly reflected in the MS4 Permit. To the extent a permit exempts Permittees from complying with numeric WLAs, it violates the Clean Water Act. Permittees must be required to comply with all existing, applicable WLAs.

Thus, we urge the State Board to remand the Proposed Amendment back to the Regional Board, requiring that the above-referenced paragraph be deleted and compliance with final waste load allocations (using the reference system approach) be met. Feel free to contact us with any questions at 310-451-1500.

Sincerely,

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