



City of South Gate

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February 2, 2012

Submitted via email to commentletters@waterboards.ca.gov
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: *2/7/2012 BOARD MEETING (Agenda Item 7, Consideration of a proposed Resolution approving an amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate a total maximum daily load for toxic pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters)*

Dear Ms. Townsend:

The City of South Gate appreciates the opportunity to provide written comment on the revised Staff Report and revised language for the adopting resolution for the above-captioned item ("Harbor TMDL"). At the suggestion of State Water Resources Control Board (State Board) members at the December 6, 2012 Water Board hearing, City Staff and/or consultants representing the City have attended several meetings with staff of the Regional Water Quality Control Board (Regional Board), including meetings on January 9, 2012, and January 25, 2012.

The City has reviewed the adopting resolution language and appreciates the sincere attempt on the part of the State Board to clarify the implementation of the TMDL. Unfortunately, the language of the adopting resolution does not alleviate our concerns with the flawed scientific foundation or with the implementation measures of the TMDL adopted by the Regional Board in May 2011.

In particular, the City continues to have concerns that are unresolved by the language of the adopting resolution as follows:

1. The revised adopting resolution indicates that the Regional Board could re-consider the fish tissue targets in the future, but only after "making significant progress toward achieving the final allocations." We do not believe they are attainable or appropriate

- targets. The City believes that it is inappropriate to require "significant progress toward achieving" allocations based upon ERLs before the reconsideration of fish tissue targets.
2. The revised adopting resolution states that the TMDL sediment targets "are not intended to be used as 'clean-up standards' for navigational, capital or maintenance dredging or capping activities" (see Whereas Item 6, emphasis added). This language does not clarify that they should not be used as targets for remedial dredging activities. As stated in our original written comments, we believe that the TMDL sediment targets (i.e., ERLs) are inappropriate; in our opinion, the proposed language is insufficient to prevent their application for remedial dredging projects.
 3. The language of the revised adopting resolution does not change the primary targets of the TMDL and does not appear to provide alternative means of demonstrating compliance for NPDES permittees. The TMDL targets, as discussed above, are based upon ERLs (for bed sediment) and Fish Contaminant Goals (FCGs for fish tissue), and each of these are discussed separately below.
 - a. Sediment targets. The loading capacities, load allocations, and wasteload allocations of the TMDL continue to be calculated from the ERLs and are not based on the SQO Policy. Although the language of the adopting resolution states that "compliance may be demonstrated using the direct effects SQO assessment approach" (see Whereas Item 5), the direct effects SQO assessment approach is applicable to bed sediments, not to stormwater discharges, MS4 system discharges, and other discharges regulated by NPDES permits. Instead, and as detailed in item 2 above, the wasteload allocations that will be implemented in NPDES permits are based upon ERLs, and the revised language appears to provide no mechanism for NPDES permittees to show compliance using the SQO Policy.
 - b. Fish tissue targets. The language of the adopting resolution references Phase 2 of the SQO Policy (i.e., the human health portion of the SQO Policy that is currently in development) and indicates that compliance may be demonstrated using the "indirect effects SQO assessment methodology" (see Whereas Item 5). The adopting resolution also states that "The State Water Board further acknowledges the Los Angeles Water Board's intention to utilize the assessment methodology developed as Phase 2 of the State's SQOs to determine compliance with the final 'indirect effects' sediment allocations" (see Resolved Item 2). However, the TMDL itself fails to reference the Phase 2 SQOs for human health and has instead referenced the SQOs for resident finfish and wildlife. Thus, the TMDL itself has failed to specify that compliance can be achieved using the SQO Policy.
 4. The cities have entered into a Consent Decree with US EPA and the State of California that protects them from any legal or administrative action to force the Cities to conduct dredging or remedial activities in the Harbor areas or in the Dominguez Channel, the Consolidated Slip, the Torrance lateral or the Kenwood drain. We understand that the language in the proposed revised staff report clarifies that the dredging/remedial requirements in the TMDL are to be addressed thru the load allocations, rather than the waste load allocations, but believe that it is contrary to the terms of the Cities Montrose

Consent Decree for the Boards to adopt a regulation designating a city as a responsible party in the TMDL for sediment removal/dredging activity, where the City has already entered into a Consent Decree and paid funds to address this same (and other) sediment contamination. In short, we believe the Boards are legally without authority to in fact identify and pursue the cities as responsible parties for any such sediment contamination.

For the reasons detailed above, the City of South Gate continues to request that the State Board remand the Harbor TMDL to the Regional Board so that the fundamental flaws with the scientific foundation of the TMDL can be addressed and resolved.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "George Troxcil for".

George Troxcil
City Manager

cc: Mohammad Mostahkami, Director of Public Works/City Engineer
John Hunter, John L. Hunter and Associates