

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1550
fax 310 496 1902

info@healthebay.org
www.healthebay.org

August 12, 2009

Ms. Renee Purdy
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

VIA EMAIL: rpurdy@waterboards.ca.gov

**Re: Modifications to Waste Discharge Requirements for the County of Los Angeles
Municipal Storm Water Discharge Permit to Incorporate Provisions of the Los Angeles
River Watershed Trash Total Maximum Daily Load ("Reopener")**

Dear Ms. Purdy,

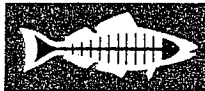
On behalf of Heal the Bay and our over 13,000 members, thank you for the opportunity to comment on the consideration of modifications to the Los Angeles County Municipal Stormwater ("L.A. MS4) permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load ("L.A. River Trash TMDL"). Federal law mandates that the Los Angeles Regional Water Quality Control Board ("Regional Board") integrate TMDLs into NPDES permits. Thus we support staff's proposal discussed at the July 29, 2009 Public Workshop to incorporate the L.A. River Trash TMDL waste load allocations and compliance points into the L.A. MS4 permit. However, it is critical that staff expand the scope of this Reopener to include additional TMDLs that are in effect.

I. The Regional Board's Proposal Is Required By Law

Federal law clearly commands that the Regional Board integrate the L.A. River Trash TMDL into the effluent limitations of appropriate NPDES permits. Specifically, Federal regulations require that:

Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7. (40 CFR § 122.44(d)(4)(vii)(B).)

In fact, the Regional Board has, in other ongoing proceedings, stated that the Environmental Protection Agency has underscored that "NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs." Correspondence from Executive Officer Jonathan Bishop to Elizabeth Miller Jennings (June 15, 2006) (citing "Establishing Total Maximum Daily Loads (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NDPEs Permit Requirements Based on Those WLAs," USEPA, 2002.) Federal law leaves no room for the Regional Board to *not* assure that the Los Angeles County MS4 Permit contains limitations consistent with already established WLAs, and the underlying L.A. River Trash TMDL. Thus, the



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effluent limits set by the L.A. MS4 permit must be consistent with the L.A. River Trash TMDL's wasteload allocations. Failure to perform a nondiscretionary duty imposed by the Clean Water Act is grounds for a citizen suit, as well as withdrawal of EPA approval of California's administration of the NPDES permitting program. (33 U.S.C. §1365(a)(2); 40 C.F.R. § 123.25.)

II. Staff's Proposal is Consistent with Regional Board and State Board Actions

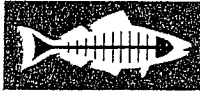
As you are aware, The Los Angeles Regional Board integrated TMDL limits for the Santa Monica Bay Beaches Bacteria Dry-Weather TMDL and Marina del Rey Harbor Mother's Beach and Back Basins Bacteria TMDL into the L.A. MS4 permit in 2006 and 2007, respectively. In fact, the State Water Resources Control Board adopted an Order on August 4, 2009 that denied the County of Los Angeles's claims against this Regional Board action to include the Santa Monica Bay Beaches Bacteria Dry-Weather TMDL in the L.A. MS4 permit (see Order No. WQ 2009-0008). In addition, the recently adopted Ventura MS4 included all TMDLs in effect in Ventura County and their corresponding wasteload allocations and implementation schedules. Hence, there is nothing new or unique about incorporating the L.A. River Trash TMDL into the L.A. MS4 permit and this process has been upheld by the State Board.

Integration of the L.A. River Trash TMDL at this time makes all the more sense because California's focus on the reduction of marine debris. On November 20, 2008 the California Ocean Protection Council adopted an *Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter*. This landmark Strategy lays out ambitious actions for eliminating harmful trash from entering the Pacific Ocean statewide. As the OPC has recognized, the growing amount of trash in our oceans is choking marine life, crippling regional economies and diminishing quality of life along California shorelines. Stormwater runoff carries trash and other pollutants directly to local streams, such as the Los Angeles River, and eventually to the ocean unfiltered and untreated.

III. The Regional Board Should Broaden the Scope of the Reopener to Include Additional TMDLs.

As acknowledged at the July 29, 2009 workshop, the renewal of the L.A. MS4 will likely be a multiple year process. Thus it is even more critical that the proposed Reopener include all applicable TMDLs that are in effect in Los Angeles County. At a minimum all TMDLs with compliance points that have passed or that are upcoming in the next two years, should be included in this reopener. It is unclear why the proposed scope of the reopener is so narrow. As the Ballona Creek Trash TMDL is nearly identical to the L.A. River Trash TMDL, why did the Regional Board not at least propose to include this TMDL in the Reopener as well? This seems like a logical extension of the Reopener and would require little staff resources.

Also of note, the plethora of water quality issues in the Malibu Creek Watershed has dominated the discussion at several Board hearings over the past year. In order to improve water quality in this area, enforceable TMDLs are critical. If nutrient WLAs and LAs were in the L.A. MS4 permit, then the Malibu Creek watershed TMDLs would finally be enforceable. This is a critical tool in catalyzing any significant progress towards water quality standards attainment in the watershed. Thus, the Regional Board should also include the Malibu Nutrients and Bacteria TMDLs in the Reopener.



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IV. The Regional Board Should Clarify that Compton Creek is Covered by the L.A. River Trash TMDL.

At the July 16, 2009 L.A. Regional Board hearing on the 2008 303(d) List in response to public and Board inquiry, staff noted that the Compton Creek Trash impairment listing would be addressed under the L.A. River Trash TMDL. In the Workshop presentation, staff included "Los Angeles River Tributaries" in the PowerPoint slide addressing the reopener scope. Staff should specify in the reopener that Compton Creek is included in the scope of the TMDL so that there is no ambiguity.

In sum, we strongly support staff moving forward with modifications to the L.A. MS4 permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load. This action is consistent with the law and previous Regional Board and State Board action. Also this route is clearly described in the adopted L.A. River Trash TMDL: "This TMDL will be implemented through stormwater permits and via the authority vested in the Executive Officer by section 13267 of the Porter-Cologne Water Quality Control Act: (Water Code section 13000 et seq.)." However, we urge staff to expand the scope to ensure that all adopted TMDLs are enforceable, which in turn will lead to improved water quality in Region 4.

Sincerely,

Handwritten signature of Kirsten James in cursive script.

Kirsten James
Water Quality Director

Handwritten signature of Mark Gold in cursive script.

Mark Gold, D. Env
President