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June 3, 2008

Mr. Wayne Chiu
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340.

Subject: Comments on the Resolution to Adopt an Amendment to the Basin Plan to Incorporate Total Maximum Daily Loads for Indicator Bacteria, Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay (“Draft TMDL”)

Dear Mr. Chiu:

On behalf of Heal the Bay, a non-profit organization dedicated to protecting Southern California’s coastal waters, we submit the following comments on the June 11, 2008 draft of the above referenced TMDL (“Draft TMDL”). We appreciate the opportunity to comment.

Heal the Bay was intimately involved in the development and subsequent implementation of the Santa Monica Bay Beach Bacteria Dry Weather and Wet Weather TMDLs. Based on our experience with this TMDL and several other similar TMDLs adopted over the last few years, we are very concerned with various underlying concepts used in the development of the Draft TMDL. These comments are discussed in further detail below.

I. A Reference-Based approach is appropriate for setting waste load allocations and load allocations.

Heal the Bay strongly favors the Los Angeles Water Quality Control Board’s approach in setting the TMDL targets for the Santa Monica Bay Beaches Bacteria TMDLs, the Marina del Rey Mother’s Beach and Back Basins Bacteria TMDL and the Kiddie Beach Bacteria TMDL. Of note, Mother’s Beach and Kiddie Beach are enclosed beaches. This approach is based on exceedances of fecal indicator bacteria standards for both interim and final TMDL targets. The most important beneficial use that is impaired by high fecal indicator bacteria densities is recreational water contact. A TMDL based on the total number of fecal bacteria in the water, rather than the numbers of days that exceed beach water quality standards, will not lead to beneficial use attainment and is an insurmountable compliance assurance problem. How will anyone be able to determine compliance with a monthly waste load allocation in terms of billion MPN/month? Further, how will this approach verify that the receiving waterbody is no longer impaired? What happens if the discharger does not exceed the loading but does exceed water quality standards? In this case, the beach would be posted with warning signs yet compliant with the TMDL. A determination of impairment should be based on water quality standards attainment, not the monthly loading.

Every time a beach water quality standard is exceeded, a beach gets closed or warning signs are posted, and this is an impaired beneficial use. An exceedance based approach is more consistent with current risk management procedures, AB 411 requirements, and public health protection.



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Also, the San Diego Regional Water Quality Control Board recently adopted this reference approach for the *Project I – Beaches and Creeks in San Diego Region TMDL*. We urge the Board to be consistent and use the reference-based approach. As noted above, this approach has been used for enclosed beaches in Region 4.

II. The TMDLs should be based on all of the California Department of Health Services beach bathing water standards.

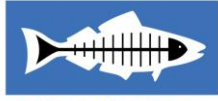
The Draft TMDL provides wet weather targets based on the single sample maximum water quality objectives and dry weather targets based on the 30-day geometric mean and single sample maximum water quality objectives for total coliform, fecal coliform, and enterococcus. However as outlined below, there are **seven** Ocean Plan water quality standards for indicator bacteria. Thus, all seven indicators should be included as wet weather **and** dry weather targets. As written, the Draft TMDL excludes 30-day geometric mean wet weather targets. If there are not enough samples to calculate the 30-day geometric mean, the standard would not apply. However if there are five samples, which is very possible, the standard must apply. Also, the Draft TMDL is missing single sample limits for a fecal-to-total coliform ratio. The fecal-to-coliform ratio was the indicator that was most strongly correlated to human health risk in the Santa Monica Bay Epidemiological Study. Thus, the wet and dry weather targets in the Draft TMDL should be modified to include a total/fecal ratio.

- TMDL targets are based on allowable exceedances of all seven of the state’s beach water quality standards in the California Ocean Plan:
 - Single sample
 - Total coliform 10,000 MPN
 - Fecal coliform 400 MPN
 - Enterococcus 104 MPN
 - Total/fecal ratio ≤ 10
 - Geometric mean
 - Total coliform 1,000 MPN
 - Fecal coliform 200 MPN
 - Enterococcus 35 MPN

III. The compliance point for final dry weather targets should be moved forward.

The Draft TMDL’s compliance schedule requires a “50 percent reduction” in Enterococcus at year seven for wet weather and in total coliform, fecal coliform, and Enterococcus at year 3 for dry weather. Final compliance deadlines are required at 10 and 5 years in wet and dry weather, respectively.

The timeframe appears excessive for meeting final dry weather targets. As you know dry weather targets are much easier to meet than wet weather targets, and the dry weather period is the most critical period from a public health perspective. The Santa Monica Bay, Marina del Rey and San Pedro Bay Beaches Bacteria TMDLs require final dry weather targets to be met three years after adoption for the AB411 time period and 6 years for winter dry weather. Since



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this deadline has past, we have seen great improvements in beach water quality in Santa Monica Bay. Many municipalities in Los Angeles County have implemented best management practices such as dry weather diversions and treatment facilities to improve beach water quality. Also, Orange County and Dana Point have implemented numerous BMPs at Baby Beach that have sustainably improved water quality. Moving the final compliance dates forward is necessary to protect public health as soon as feasible during the high-use beach period.

IV. Birds should not be discounted as a source of bacteria pollution.

Even if birds are deemed a significant source of bacteria pollution as hypothesized, enclosed beach environments do not constitute “natural” conditions, but instead are the unintended consequence of a man-made facility designed for recreational use. Thus, a natural source exclusion is not appropriate in this situation.

Further, risk associated with birds is unknown, and this loading can often mask a true human sewage problem. As stated by a peer reviewer, “[i]f watershed sources don’t account for much at the shore and birds are suspected as the major source, then either data should be available to back this up or data should be gathered to confirm. Further, birds should be considered as a public health concern.” Draft TMDL at B-10. Popular beaches with discarded food and trash from visitors and open trash cans serve as attractive foraging sites for gulls and pigeons. In addition from a public perception standpoint, the public does not want to swim in bird feces.

In sum as written, the Draft TMDL will not lead to water quality standards attainment. Instead, the San Diego Regional Board should follow a reference and exceedance based approach similar to the Los Angeles Region and northern San Diego County multiple bacteria TMDLs in effect. The approach taken in the development of these TMDLs has been accepted by the State Water Resources Control Board and the US Environmental Protection Agency and has resulted in major water quality improvement at Santa Monica Bay beaches.

Thank you for your consideration of these comments. If you have any questions, please contact us at 310-451-1500.

Sincerely,

Kirsten James, MESM
Water Quality Director

Mark Gold, D. Env.
President