

April 29, 2008

Ms. Amy Mecklenborg
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123
VIA ELECTRONIC MAIL: amecklenborg@waterboards.ca.gov



Re: Basin Plan Amendment to Incorporate Implementation Provisions for Indicator Bacteria Water Quality Objectives to Account for Loading from Natural Uncontrollable Sources within the Context of a Total Maximum Daily Load

Dear Ms. Mecklenborg:

San Diego Coastkeeper (Coastkeeper) submits these comments on the proposed Basin Plan Amendment to account for natural uncontrollable sources of bacteria in total maximum daily load (TMDL) implementation. Coastkeeper is a non-profit organization working to protect the San Diego region's waters for the people and wildlife that depend on them through community outreach, education, and advocacy to promote stewardship of clean water and healthy ecosystems. As a member of the Stakeholder Advisory Group (SAG), we appreciate the opportunity to comment on the latest Basin Plan Amendment and the associated Technical Report.

1. Anthropogenic Sources Are Different From Controllable Sources

The Technical Report and the Basin Plan Amendment (BPA) both contain a definition of the term "anthropogenic source" that is contrary to plain meaning. Anthropogenic means "of, relating to, or resulting from the influence of human beings on nature."¹ We reiterate our concern made during the SAG process, that the term anthropogenic is being conflated with the term controllable. Whether a bacteria source is controllable is a factor distinct from the source of the bacteria. Thus, the definition of "anthropogenic source" should remain constant regardless of whether such source is controllable. Excluding uncontrollable anthropogenic sources from the definition excludes such pollution from regulatory reach. This turns the whole reference system and antidegradation approach (RSAA) and natural source exclusion approach (NSEA) on its head. The purpose of RSAA and NSEA is to account for natural sources because they are often uncontrollable and any attempts to control them could be detrimental to water quality. As stated in the Technical Report,

"The RSAA and NSEA are designed to allow the San Diego Water Board to develop and implement TMDLs that result in exceedances of indicator bacteria water quality objectives that equate to the natural uncontrollable loading of indicator bacteria. In this manner, the RSAA and NSEA address circumstances where natural uncontrollable sources of indicator bacteria are the cause of exceedances of indicator bacteria water quality objectives."²

¹ Merriam-Webster Dictionary

² Draft Technical Report, *Implementation Provisions for Indicator Bacteria WQOs*, February 29, 2008, p. 2

Excluding anthropogenic sources from TMDL implementation exceeds the scope and stated purpose of the BPA. The RSAA and NSEA are meant to allow dischargers to simulate a natural loading scenario. Anthropogenic sources are not natural and cannot be made such by labeling them uncontrollable. Moreover, the Technical Report acknowledges the need to control anthropogenic sources,

“[T]hese approaches provide that MS4 and nonpoint source dischargers subject to indicator bacteria TMDLs will not be required to control indicator bacteria from natural uncontrollable sources. However, the Basin Plan amendment does not obviate the need for MS4 and nonpoint source dischargers to control indicator bacteria from anthropogenic sources.”³

Thus, by altering the definition of “anthropogenic source”, the BPA and Technical Report exempt “uncontrollable” anthropogenic sources from regulation. This is especially alarming in the BPA because the term is defined in a hidden footnote.

Also, anthropogenic sources may become “uncontrollable,” though their origins are in fact controllable. For example, contaminated sediment that releases bacteria into a waterbody would be considered an uncontrollable source. If the original source of bacteria is anthropogenic, it remains anthropogenic, regardless of its ability to be controlled. This distinction is important in describing bacteria sources, because at some point, all sources may be characterized as “uncontrollable.”

Therefore, we suggest either a definition of “anthropogenic source” that comports with the traditional meaning and does not account for the “controllability” of the source, or that the BPA provide no definition, leaving the traditional meaning of the term “anthropogenic” in place.

2. Epidemiological Studies are a Preferred Method for Section 5.3.3 Demonstration of Maintenance of Health Risks at Acceptable Levels

Coastkeeper agrees with the Technical Report statement that “to demonstrate that elevated risks are not present, epidemiological studies may be necessary.”⁴ If alternative measures to epidemiological studies are used to demonstrate acceptable health risk levels, such alternatives should indicate similar levels of reliability and should be looked to only after it is shown that epidemiological studies are infeasible.

3. A Specific Method for Incorporation of RSAA and NSEA Into TMDLs Has Not Been Chosen

Coastkeeper is pleased to see that the Technical Report explicitly states that a particular method for implementing TMDLs with the RSAA and NSEA has not been chosen. The SAG was concerned that the method outlined in the Technical Report was the final method. The current version of the Technical Report makes several references to the fact that the method for incorporation of RSAA and NSEA into

³ Draft Technical Report, *Implementation Provisions for Indicator Bacteria WQOs*, February 29, 2008, p. 2

⁴ Draft Technical Report, *Implementation Provisions for Indicator Bacteria WQOs*, February 29, 2008, p. 20

TMDLs has not been finalized.⁵ We are glad to see the SAG comments reflected in the Technical Report and hope to work with the Regional Board staff in the future development of incorporation methods and models.

4. The Technical Approach for Incorporation of RSAA and NSEA Into TMDLs is Not Protective of Waterbodies

Coastkeeper's comments submitted on February 5, 2008, during the SAG process outline our reservations with the current technical approach for calculating allowable exceedance frequencies within a TMDL.

Some of these concerns include:

- Lack of concrete plan to demonstrate that all anthropogenic sources of bacteria have been controlled for NSEA
- Calculation of exceedance frequency is skewed toward higher exceedance frequencies
- Reference watershed characterization should include more criteria, including land use patterns


While some of our other concerns have been addressed in the current Technical Report, these issues remain. We hereby incorporate our earlier unaddressed comments by reference.

5. RSAA Is Not Appropriate if the Exceedance Frequency of the Target Waterbody is Lower Than Exceedance Frequency of the Reference Waterbody

As proposed, the BPA states that the frequency of exceedance will be the observed frequency at either the reference or target waterbody, whichever is lower.⁶ If a reference waterbody has a higher exceedance frequency, the RSAA should not be used. The purpose of the RSAA is to account for natural sources of bacteria in the TMDL context. Without a valid reference waterbody, RSAA is unjustified. Further, the exceedance frequency of a target waterbody should not be used to perpetuate exceedances simply because a valid reference system is unavailable.

Coastkeeper appreciates the opportunity to comment on the proposed BPA. As a member of the SAG, we understand that extensive work and planning that has gone into the development of this BPA. We look forward to receiving your response and seeing the final work product.

Sincerely,



Gabriel Solmer
Legal Director

⁵ Draft Technical Report, *Implementation Provisions for Indicator Bacteria WQOs*, February 29, 2008, pp. 3, 13, and 17

⁶ Draft Appendix 2, Resolution No. R9-2008-0028 and Basin Plan Amendment, p. 11