

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
June 11, 2008

- ITEM: 6
- SUBJECT: Total Maximum Daily Loads (TMDLs) for Indicator Bacteria, Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay. The San Diego Water Board will deliberate and consider adopting an amendment incorporating the TMDLs into the Basin Plan. (Tentative Resolution No. R9-2008-0027). (*Wayne Chiu*)
- PURPOSE: The California Regional Water Quality Control Board, San Diego Region (Regional Board) will deliberate and consider adopting an amendment to the Basin Plan incorporating the TMDLs for indicator bacteria at Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay.
- PUBLIC NOTICE: In accordance with federal Clean Water Act regulations [Code of Federal Regulations Title 40 section 25.5] and State Water Resources Control Board (SWRCB) California Environmental Quality Act (CEQA) implementation regulations [California Code of Regulations Title 23 section 3777], the Notice of Filing of the written technical report and Notice of Public Hearing for this Basin Plan amendment were provided by newspaper publication in the San Diego Union Tribune and Orange County Register on February 22, 2008 (Supporting Document 3). The Notices were also distributed to interested persons by email on February 19, 2008 and available on the Regional Board's website on February 22, 2008.
- DISCUSSION: A public hearing on Tentative Resolution No. R9-2008-0027 (Supporting Document 2) was held on April 9, 2008. Tentative Resolution No. R9-2008-0027 is a proposed amendment to the Basin Plan to incorporate indicator bacteria TMDLs for Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay.
- The shoreline segments of Baby Beach and Shelter Island Shoreline Park are impaired for recreational beneficial uses by indicator bacteria and are on the Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List).

In accordance with Clean Water Act section 303(d) and as an important step in restoring water quality and recreational beneficial uses at these bacteria-impaired shorelines, a TMDL must be developed and incorporated into the Basin Plan. Ensuring that the beaches in the Region are safe for swimming, surfing, boating, and other recreational uses is one of the highest priorities for the Regional Board.

Today this TMDL project represents a success story in the making. As a result of the Regional Board's action to initiate this project and the MS4 Dischargers implementation of numerous effective measures to reduce bacterial loads, significant improvements in bacterial water quality at these two shorelines have been realized.

The draft Technical Report, tentative Resolution and draft Basin Plan amendment were released for formal public comment on February 22, 2008, 48 days before the April 9, 2008 public hearing. The purpose of the formal comment period and the April 9, 2008 public hearing was to give the public ample opportunity to provide comments and testimony on the proposed TMDL Basin Plan amendment.

Formal written comments have been submitted by San Diego Coastkeeper, the City of Dana Point, and the County of Orange in advance of the public hearing. At the public hearing, oral testimony was given by San Diego Coastkeeper, the City of Dana Point, the County of Orange, and the US Environmental Protection Agency.

### **Significant Issues**

The significant issues raised by the Regional Board members and stakeholders during the April 9, 2008 public hearing consist of the following:

- 1) *Accounting for and Abating Illegal Discharges of Sewage from Boats, Marinas, and Other Sources.* Because illegal discharges of sewage are never authorized, they should not be given an actual allocation of any portion of the TMDL. They are, however, accounted for in the TMDL by assigning them a wasteload allocation of zero, which means they must be eliminated. Assignment of a zero wasteload allocation is the most stringent allocation possible and is an appropriate way to account for illegal discharges in the context of a TMDL.

In addition, illegal discharges of sewage are also likely accounted for in the total load allocation for natural and background sources, which includes all identified, as well as unidentified and unquantified bacteria loads. To the extent that illegal sewage discharges were occurring (during the time period used to calculate the existing loads and TMDLs), they would be included in the total load allocation for natural and background sources because, at this time, it is not possible to distinguish between the legal (e.g., waterfowl) and illegal portions of the total background bacteria load. In a general way, the inadvertent inclusion of illicit discharges serves to over-estimate the total background load and, thereby, underestimates the load coming from the MS4. This in turn reduces the percentage load reduction required of the MS4 dischargers.

As mentioned above, TMDLs are not intended to regulate illicit discharges of sewage. There are, however, direct regulatory mechanisms by which the Regional Board and the MS4 dischargers can abate illicit sewage discharges. The appropriate regulatory tool for the Regional Board is to enforce its Basin Plan Prohibitions against unregulated dischargers of sewage (e.g., boat owners); and/or to enforce its waste discharge requirements against regulated dischargers (e.g., sewage treatment or collection system owners/operators).

MS4 dischargers on the other hand are required under their MS4 permit to enforce all applicable local ordinances prohibiting illicit discharges of sewage into and from the MS4. Public education is another critical responsibility under the MS4 permit. The Technical Report and draft Basin Plan amendment were revised to provide more discussion about how illegal discharges are accounted for in the TMDL and on effective regulatory measures that can be taken by the Regional Board and MS4 Dischargers to abate sewage discharges.

- 2) *Additional Information About the TMDL Implementation Plan.* More information on the TMDL Implementation Plan, (section 10 of the Technical Report) has been added to further describe (a) the appropriate regulatory mechanisms available to the Regional Board to abate illicit discharges of sewage from boats and other nonregulated and regulated sources; (b) the many measures already implemented by the MS4 Dischargers to reduce bacteria loads from a variety of sources; (c) the

actions that may be taken by the Regional Board and MS4 Dischargers to control nonpoint sources of bacteria loading; and (d) the potential future applicability of the natural sources exclusion approach (NSEA) to this project after all anthropogenic sources of bacteria have been controlled. (The NSEA Basin Plan amendment was adopted by this Board on May 14, 2008.)

3) *Prioritizing This and Other Bacteria TMDL Projects.*

Initiated in 2003, this project was originally part of a single Regionwide TMDL project designed to address all of the 38 bacteria impaired waters in the San Diego Region. In the years preceding, and at the time the Regionwide project was initiated, bacterial contamination of public swimming beaches was an important and high profile concern throughout Southern California. Beach closures were common newspaper topics and the need to take action to restore safe recreational beneficial uses at public beaches (i.e., adopt TMDLs for bacteria impaired waters) was a high priority of this Regional Board and several elected officials and state legislators.

The waters included in the Regionwide project had frequent exceedances of water quality objectives for indicator bacteria and had been officially designated as impaired on the state's Clean Water Act section 303(d) List. The Regionwide project was eventually broken into four smaller projects by waterbody types and this project is the second in the series of four bacteria TMDL projects that will come before you for adoption. The first and largest project incorporating TMDLs into the Basin Plan for Beaches and Creeks (aka, Bacteria Project I) was adopted by this Board in December 2007.

Today, following the development of this TMDL project, it is now known that there should be no MS4 load reductions needed at Shelter Island Shoreline Park during wet or dry weather conditions. In the case of Baby Beach, load reductions are required during dry weather for all three indicator bacteria and for one of the three indicators during wet weather. The marked improvement in water quality is the result of a concerted and effective effort by the MS4 Dischargers to implement measures to reduce bacteria loads at these shoreline segments.

4) *Responding to Stakeholder Comments.* Prior to public release, the development of the Shelter Island Shoreline

Park and Baby Beach TMDLs took place over a three-year period in consultation with a stakeholder advisory group (SAG). Comments received from stakeholders during the SAG review process (December 2004 to February 2008) were responded to orally and informally at SAG meetings.

The formal public comment period began February 22, 2008 and will remain open until the Board takes action on the TMDLs at today's meeting. In accordance with public participation requirements and past protocol for rulemaking, written responses were only prepared for oral testimony received during the April 9, 2008 public hearing and for written comments received during the 97-day period between February 22 and May 28, 2008 (15 days before the June 11, 2008 Board meeting) (Supporting Document 4).

The tentative Resolution and draft Basin Plan amendment (Supporting Document 2) and Technical Report and appendices (Supporting Document 5) have been revised to address the issues raised during the April 9, 2008 public hearing and the formal written comments and oral testimony received since February 22, 2008. There were no substantive or technical changes made to the draft Technical Report or draft Resolution and Basin Plan amendment that would alter the TMDLs, wasteload allocations, or load allocations. However, certain language in the draft Basin Plan amendment was revised for consistency with the Reference System and Antidegradation Approach / Natural Sources Exclusion Approach Basin Plan amendment adopted by this Board on May 14, 2008. In addition, numerous revisions were made to the Technical Report and Implementation Plan to provide more clarification and additional information on the topics mentioned in Significant Issue 2 above.

Throughout the three year development period of this TMDL project, the municipalities have taken effective steps to reduce the bacteria levels at these shorelines, which have resulted in significant improvements in water quality. This TMDL process is demonstrating that the MS4 municipalities can successfully restore the recreational beneficial uses of impaired shoreline segments.

KEY ISSUES:

1. Formal written responses have been prepared to all formal written comments and oral testimony received in advance of and during the public hearing.
2. Although clarifications and additional information were added, no substantive changes were made to the draft Technical Report or proposed Resolution and Basin Plan amendment.
3. This project represents a collaborative success story for the Regional Board and MS4 Dischargers. Over its three year development, the responsible MS4 Dischargers have made significant progress towards attaining water quality standards at these two impaired shorelines. In addition to maintaining or augmenting their existing bacteria control efforts, the dischargers will also be required to conduct ongoing monitoring to demonstrate attainment and consistent compliance with water quality standards. Assuming that the current trends continue, the Regional Board fully expects it will eventually be able to recommend delisting (removal) of these two shorelines from the state's Clean Water Act section 303(d) List of impaired waters. Restoration of an impaired water body to a condition in which it is once again meeting water quality objectives and fully supporting its beneficial uses (with subsequent delisting from the section 303(d) List) is the ultimate goal and purpose of the Regional Board's TMDL program.

LEGAL CONCERNS:

None.

SUPPORTING  
DOCUMENTS:

1. Location Map.
2. Tentative Resolution No. R9-2008-0027 and Attachment A, Draft Basin Plan Amendment (underline/strikeout version).
3. Notice of Public Hearing and Notice of Filing, dated February 19, 2008.
4. Responses to Public Comments (Appendix N to the Technical Report).
5. Technical Report and Appendices A through M, dated June 11, 2008 (underline/strikeout version).

RECOMMENDATION(S): Adoption of Tentative Resolution No. R9-2008-0027 is recommended.