

**State of California
California Regional Water Quality Control
Board Santa Ana Region**

October 16, 2020

ITEM: 13

SUBJECT: Executive Officer's Report

1. Status of Prohibition of Onsite Wastewater Treatment System (Septic System) Discharges in Quail Valley

As you recall, on January 16, 2020 the Santa Ana Water Board adopted a Basin Plan Amendment that expanded exemptions to the prohibition of discharges from new septic systems in Quail Valley (Quail Valley Amendment). The Quail Valley Amendment was subsequently approved by the State Water Board (April 7, 2020). Upon State Water Board approval, Santa Ana Water Board developed and completed the administrative record for the amendment to the Basin Plan for submittal to the Office of Administrative Law (OAL) on August 4th. OAL reviewed the administrative record and approved the Quail Valley Amendment on September 14, 2020. Santa Ana Water Board staff sent out a public notice to interested parties on the Septic Systems email list and posted the notice to the Santa Ana Water Board website on September 15th. The public notice discusses the approval of the administrative record for the Quail Valley amendment by OAL, explains that the changes to the prohibition approved in January are effective, and also includes a map of the areas affected by the Quail Valley amendment.

Santa Ana Water Board staff are in the process of organizing a Task Force to work on identifying funding options for further sewer systems in Quail Valley. This will include Santa Ana Water Board Member involvement and thus Staff will keep the Board updated on the progress.

2. Status of the Proposed Basin Plan Amendments (BPA) to Incorporate Copper (Cu) Total Maximum Daily Load (TMDLs) and Action Plans for Zinc (Zn), Mercury (Hg), Arsenic (As) and Chromium (Cr) for Newport Bay into the Basin Plan

Upper and Lower Newport Bay are impaired for copper (Cu) and Board staff have developed Cu TMDLs (and Action Plans for other metals). These TMDLs are highly controversial. A summary of Board staff actions follows.

In 2002, USEPA established Toxics Total Maximum Daily Loads (TMDLs) for Upper and Lower Newport Bay (and San Diego Creek). The need for these TMDLs was based on a data assessment conducted by USEPA. USEPA established the TMDLs pursuant to federal Clean Water Act, Section 303(d), which generally requires that

TMDLs be developed when there is a demonstration of water quality standards impairment. Water quality standards include beneficial uses, narrative and numeric water quality objectives intended to protect those beneficial uses, and the antidegradation policy. TMDLs specify the total load of a pollutant that can be discharged to a water body without causing violations of standards, and allocate a part of that total allowable load to each significant identified source.

USEPA's TMDLs included Metals TMDLs for dissolved copper (Cu), cadmium (Cd), lead (Pb) and zinc (Zn) for Upper Newport Bay and San Diego Creek, and for dissolved Cu, Pb and Zn for Lower Newport Bay. USEPA found that the largest source of Cu to the Bay was Cu antifouling paints (AFPs) on boat hulls.

Section 303(d) assessments are subject to periodic review, update and approval, including by the Regional Water Board, State Water Board and USEPA. In 2006, State Water Board staff conducted an extensive impairment analysis of individual metals in both the Upper and Lower Bay, including As, Cd, Cr, Cu, Pb, Hg, Ni, Ag and Zn. All metals examined in both the Upper and Lower Bay were designated as DO NOT LIST decisions, except for Cu which was designated as LIST on the section 303(d) list of impaired water bodies for both Upper and Lower Newport Bay. (State Water Board staff also conducted a 303(d) analysis of individual metals for San Diego Creek (Reach 1), and all metals examined in San Diego Creek were designated as Do Not List on the 303(d) list (Cu, Cd, Pb, Zn, Ni, As, Ag, Hg).) In subsequent section 303(d) assessments, dissolved Cu continues to exceed the chronic numeric water quality criterion established in USEPA's California Toxics Rule (CTR).

In 2010, Santa Ana Water Board staff conducted an independent Metals Impairment Assessment for metals based on the State Water Board's State Listing Policy (SLP) assessment methodology to determine impairment. Again, only dissolved Cu exceeded the CTR chronic criterion. Santa Ana Water Board staff found no impairment for Cd or Pb in the Upper or Lower Bay, or Zn in the Upper Bay, unlike USEPA's findings in 2002. Santa Ana Water Board staff's findings are consistent with subsequent, approved 303(d) assessments.

Santa Ana Water Board staff developed proposed Basin Plan Amendments to incorporate Cu TMDLs for Upper and Lower Newport Bay into the Basin Plan. The largest source of Cu to the Bay continues to be Cu AFPs on boat hulls. These proposed Cu TMDLs require the reduction of Cu discharges from Cu AFPs, and require responsible parties to develop their own implementation plan(s) and schedule(s) for Santa Ana Water Board approval that include strategies to achieve the TMDLs "as soon as possible but no later than 12 years". Reasonably foreseeable strategies to achieve needed Cu reductions from boat hulls include the use of best management practices (BMPs) such as soft cloths during hull cleaning, reduced frequency of hull cleaning, the use of a container/filter method for hull cleaning, and conversions from Cu to alternative AFPs. (Note that pursuant to a maximum leach rate regulation issued by the Department of Pesticide Regulation (DPR), as of June 30, 2020 Cu AFPs must have a leach rate at or below 9.5 ug/cm²/d to be sold or used. The implementation of this regulation, which has begun, may result in some

reduction of Cu discharges from Cu AFPs to the Bay where current Cu AFPs in use exceed the maximum leach rate.)

Santa Ana Water Board staff also developed proposed Action Plans for Zn, Hg, As and Cr, due to exceedances of sediment guidelines by Zn and Hg, and fish/mussel tissue guidelines by Zn, As, and Cr. Continued monitoring and evaluation are required for both the proposed TMDLs and Action Plans.

Santa Ana Water Board staff conducted CEQA Scoping meetings in August 2015 to receive comments on the issues that should be addressed in the environmental documentation for the proposed TMDLs and Action Plans. In addition, an informational item regarding the proposed BPAs was presented to the Santa Ana Water Board in August 2015. The TMDLs and Action Plans were then scheduled for an adoption hearing at the Santa Ana Water Board meeting in October 2016, but due to the extensive comments, the adoption hearing was changed to a TMDL workshop. Another adoption hearing was scheduled for October 2018, but there were many comments requesting additional stakeholder meetings. Accordingly, two public workshops were held in May 2019.

The proposed Cu TMDLs are highly controversial. Extensive comments from stakeholders were received in October 2016 and August 2018. Santa Ana Water Board staff have been in the process of revising the Basin Plan Amendment documents, including the Amendment, the Substitute Environmental Document (SED) and Metals Staff Report, based on these comments, and completing Response to Comments documents. Staff anticipate returning to the Santa Ana Water Board for an adoption hearing in late 2020/early 2021.

3. Board Staffing Updates

Program Cuts: In my November 3, 2017 Executive Officer's Report, I provided an update on staffing for two new regulatory programs: the Cannabis Program and the Oil and Gas Program. Under the Cannabis Program, the Santa Ana Water Board added five staff which provided regulatory oversight for the Santa Ana Water Board as well as the Los Angeles and San Diego water boards. One staff person was added under the Oil and Gas Program.

Unfortunately, both programs have suffered budgetary cuts. The Cannabis Program staff has been reduced to 2 staff and there are no funds to support the Oil and Gas Program in the region. Consequently, three Cannabis Program staff and one Oil and Gas Program have been redirected into existing vacancies with the Santa Ana Water Board.

I am continuing to work with the Assistant Executive Officer as well as the three Division Chiefs to determine impacts to the two programs that suffered funding cuts.

COVID Related Staff Reductions: In response to a Governor's Office directive that requires each state agency to provide five percent of its workforce to help the California Department of Public Health (CDPH) with COVID-19 contact tracing efforts,

three of our full time staff have been temporarily redirected to assist CDPH. We expect these reassignments to last six to nine months.

In addition, the Governor has also mandated a 10 percent reduction in overall staff resources during fiscal year 20-21 in order to compensate for the COVID-19 pandemic effects on the State budget. This in effect requires all staff to take two days off per month. Again, there are program impacts from this reduction which have been factored into our commitments for this fiscal year.