

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 3979.11

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11353

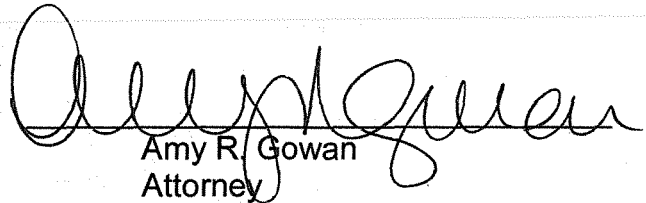
OAL Matter Number: 2019-0307-05

OAL Matter Type: Regular (S)

This action, submitted pursuant to Government Code section 11353, amends the Water Quality Control Plan for the Santa Ana River Basin. On August 2, 2017, the California Regional Water Quality Control Board, Santa Ana Region, adopted Resolution No. R8-2017-0041 to incorporate Total Maximum Daily Loads for selenium in freshwater for Newport Bay Watershed. The State Water Resources Control Board approved the amendment under Resolution No. 2018-0014 on September 20, 2018.

OAL approves this regulatory action pursuant to section 11353 of the Government Code.

Date: April 19, 2019


Amy R. Gowan
Attorney

**For: Holly Pearson
Acting Director**

**Original: Eileen Sobeck, Executive
Director**

Copy: Terri S. Reeder

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2019-0307-05S	

For use by Office of Administrative Law (OAL) only

2019 MAR -7 P 2:40
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 19 2019

1:40 pm

AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board	AGENCY FILE NUMBER (if any) 2018-0041
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Santa Ana RWQCB BPA, Selenium TMDLs, Newport Bay Watershed	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3979.11
	AMEND
TITLE(S) 23	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Gov't Code 11353</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>Upon Approval (Gov't Code 11353)</u>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Terri S. Reeder	TELEPHONE NUMBER (951) 906-1899	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) terri.reeder@waterboards.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Hope Smythe</i>	DATE 02/20/2019
TYPED NAME AND TITLE OF SIGNATORY Hope A. Smythe, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 19 2019

Office of Administrative Law

Concise Summary of Regulatory Provisions

TITLE 23. Waters

Division 4. Regional Water Control Boards

Chapter 1. Water Quality Control Plans, Policies, and Guidelines

Article 8. Santa Ana Region

The following section 3979.11 is to be added to Title 23 of the California Code of Regulations:

On August 4, 2017, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) adopted Resolution No. R8-2017-0014, amending the Water Quality Control Plan for the Santa Ana River Basin to incorporate Total Maximum Daily Loads (TMDLs) for selenium in freshwater, Newport Bay watershed, Orange County, California (Basin Plan amendment). The State Water Resources Control Board (State Water Board) approved the Basin Plan amendment under Resolution No. 2018-0041 on September 20, 2018.

Resolution No. R8-2017-0014 establishes TMDLs for Selenium in three freshwater drainage systems in the Newport Bay watershed: Santa Ana-Delhi, San Diego Creek, and Big Canyon Wash subwatersheds. The TMDLs address exceedance of the California Toxics Rule (CTR) chronic water quality criterion for selenium and potential impairments to fish and birds via bioaccumulation in the freshwater portions of the watershed. Tissue-based targets for the protection of aquatic life (fish) and aquatic dependent wildlife (birds) are included in the TMDLs, as well as CTR-based water column targets. The objective of this amendment is to reduce levels of selenium in the watershed to protect water quality and potentially impaired beneficial uses.

The TMDL allocations are assigned to urban runoff, groundwater cleanup and dewatering dischargers and other National Pollutant Discharge Elimination System (NPDES) permittees, agriculture, open space, and rising groundwater. The allocations apply only during dry weather conditions (year-round) and are expressed as semi-annual arithmetic means (April 1 through September 30 and October 1 through March 31).

The TMDLs provide compliance options, including best management practices (BMP) - based compliance, to be incorporated into relevant NPDES permits. The compliance options are included as part of the assumptions and requirements of these selenium TMDLs. Compliance schedules are included that reflect the phased TMDL structure, the individual requirements for each Regulated Party, and the adaptive management process, including periodic reevaluations of the selenium TMDLs (e.g., TMDL re-openers). Final compliance with the TMDLs is to be achieved as soon as possible but no later than thirty years from the Reconsidered TMDL effective date. This timeframe considers the existing challenges and lack of available reasonably feasible treatment

technologies/BMPs for selenium and therefore provides adequate but reasonable time to identify, design, and implement approaches in the future.