



## THE CITY OF SAN DIEGO

April 16, 2012

Electronic Submission: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814



Subject: Comment Letter – California Ocean Plan Amendments – Marine Protected Areas

Dear Ms. Townsend:

The City of San Diego, Transportation & Storm Water Department (City) appreciates the opportunity to provide comments on the proposed amendments of the Ocean Plan to implement State Board Resolutions 2010-057 and 2010-103 designating State Water Quality Protection Areas (SWQPAs) to protect State Marine Protected Areas (Marine Protection Areas) dated February 23, 2012. The City agrees with the principal purposes of the proposed amendment as to “establish criteria for designating State Water Quality Protected Areas” and “to protect water quality in these areas.” However, the proposed amendment lacks a clear rationale for designation of new SWQPAs, and requirements to initiate Ocean Plan (OP) monitoring efforts in all SWQPAs is premature given the numerous efforts currently underway and still being reviewed in Areas of Special Biological Significance (ASBS). Points of general concern are highlighted below and further detail is provided in the attached Comment Table.

The City’s primary concern is that available data have not been analyzed sufficiently to justify such an extensive and costly effort outside the current ASBS; therefore, this amendment is premature. A more thorough evaluation of current ASBS should be completed to determine if intensive monitoring is warranted in other Marine Protection Areas. Approving these amendments in their current form will require high capital and maintenance solutions that will result in the expenditure of limited public funds. Continued municipal support for these programs requires some demonstration that taxpayer dollars are being used cost effectively and with proven benefits. This program, as proposed, will draw resources away from other necessary storm water quality programs and projects that are also designed to protect surface water quality. The City is advocating for reasonable requirements based on the best available science and prioritization to improve water quality in the areas most in need.

When adopting water quality objectives in the water quality control plans, California Water Code Section 13241 requires that economic considerations be considered. This analysis is lacking. Since 2005, the City of San Diego has spent approximately \$400,000 annually to monitor water quality at the La Jolla ASBS outfall locations and receiving water. The likelihood of impacts to



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resident biota related to chemical contaminants in runoff is still unclear despite these large efforts and expenditures. Resources to protect these vital assets need to be directed prudently by prioritizing areas of known or reasonable potential concern. The City requests that the State Board provide documentation justifying why these intensive efforts at locations outside of current ASBS are justified during this time of limited resources.

Second, the proposed amendments make municipalities potentially liable for exceedances caused by sources not under their control, such as aerial deposition, constituents naturally occurring in groundwater, and approved regulated pesticides, which are regulated by the California Department of Pesticide Regulation (DPR) and US EPA. The City requests that constituents that are clearly beyond the control of municipalities be exempted from compliance-related actions, as was done in recent TMDLs.

Finally, the Draft Ocean Plan Amendment constitutes an unfunded mandate that will require the State to reimburse the City and other municipalities to comply with these requirements. The Federal Clean Water Act (CWA) includes no requirements regarding monitoring as proposed in this amendment. Municipalities lack the authority to raise fees to pay for this program without voter approval pursuant to Proposition 218 and Proposition 26, and voter approval is not readily forthcoming in this economic climate.

The City is a proactive steward for the protection of beneficial uses of our waters and takes great pride in the many efforts implemented to successfully improve water quality through aggressive identification and abatement of key pollutant sources. The City looks forward to continue working with the State Board and regional partners on developing and implementing regulations that will improve water quality conditions using scientifically based and cost-effective approaches. Consideration of the points provided above is greatly appreciated. In particular, the City strongly recommends the State Board prioritize and focus more extensive efforts on the few discharges and constituents of potential concern that have been identified in available studies to date (e.g. Bight 08, ASBS, and NPDES reporting) before going forward with proposed additional monitoring requirements for all Marine Protection Areas.

If you have additional questions, please contact Ruth Kolb at (858) 541-4328 or at [rkolb@sandiego.gov](mailto:rkolb@sandiego.gov).

Sincerely,



Kris McFadden  
Deputy Director

Attachment: City of San Diego Comment Table

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Jeanine Townsend  
April 16, 2012

cc: Almis Udrys, Deputy Director, Office of the Mayor  
Garth K. Sturdevan, Interim Director, Transportation & Storm Water Department  
Ruth Kolb, Program Manager, Transportation & Storm Water Department  
Andre Sonksen, Program Manager, Transportation & Storm Water Department  
Heather Stroud, Deputy City Attorney

**Section-Specific Comments (City of San Diego): California Ocean Plan Proposed Amendments – Marine Protected Areas (State Board Resolutions 2010-057 and 2010-103)**

#	Page	Section	Topic	Comments
<b>General Comments Regarding Proposed Amendments</b>				
1	41-43	Section 7 Proposed Amendments – Implementation Provisions	The Draft Ocean Plan Amendment may constitute an unfunded mandate	An unfunded mandate will require the State to reimburse the City and other municipalities to comply with these requirements. The Federal Clean Water Act (CWA) requires the development of an Ocean Plan; however, there are no requirements regarding monitoring as proposed in this amendment. Municipalities lack the authority to raise fees to pay for this program without voter approval pursuant to Proposition 218 and Proposition 26.
2	41-43	Section 7 Proposed Amendments – Implementation Provisions	The City is concerned that available data have not been analyzed sufficiently to justify such an extensive and costly effort outside current ASBS; and thus the release of this amendment is thus premature	According to the proposed amendment, SWQPAs (under a new category called General Protection, and referred to as SWQPA-GP), will require monitoring the full OP Table 1 (formerly Table B) suite of chemistry and toxicity pre and post storm. The proposed monitoring requirements are similar to those drafted and implemented recently for discharges to ASBS. Substantial information has now been gathered statewide, including numerous studies by the City. A limited summary of data has been provided in the PEIR for the ASBS exceptions. Results from several studies highlighted in the PEIR document suggest little to no effect on biological communities at several intertidal locations where outfalls exist in ASBS. In addition, at the request of the State Board Ocean Unit staff, the southern California ASBS dischargers, with the Southern California Coastal Waters Research Project, spent three years and over \$1M to assess 14 ASBS locations against reference station conditions. Very few clear differences in constituent concentrations were noted between ASBS with and without discharges. A more thorough evaluation of current ASBS should be completed to determine if intensive monitoring is warranted in other MPAs. Furthermore,

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				<p>Lessons learned from current ASBS monitoring should subsequently be used to focus monitoring on key constituents of known concern, as opposed to a status quo blanket monitoring programs for all OP Table 1 constituents.</p>
3	41-43	<p>Section 7                      Proposed Amendments – Implementation Provisions</p>	<p>This program, as proposed, will dramatically increase costs and draw resources away from other necessary storm water quality programs and projects</p>	<p>The City highly recommends that a prioritization process for selection of sites and a reduced suite of analyses (compared to Ocean Plan Table 1) be included based on reasonable potential (i.e. discharges of concern), and available historical data. A targeted approach in areas deemed a priority is more cost effective and will provide the dischargers with the ability to conduct more thorough evaluations. The City agrees that an initial survey of all discharges to receiving waters is important, but simple visual observations and photo documentation <i>in lieu</i> of extensive sampling and analysis can provide a simple cost-effective method to help prioritize sites where future efforts may be needed most.</p> <p>The magnitude of additional monitoring generates a disincentive for dischargers to seek more thorough and meaningful monitoring methods, in addition to not effectively prioritizing effort at sites of greatest potential threat. The widespread constrained and costly approach proposed will inevitably lead to the least expensive, least representative, and least informative monitoring methods (i.e., single grab samples strategically timed). These efforts will still be very costly, but will unfortunately provide little headway on understanding the potential for true receiving water impacts as we have been finding to date in many of the regulatory-driven efforts already underway across the State.</p>
4	41-43	<p>Section 7                      Proposed Amendments –</p>	<p>Economic considerations are lacking yet required under Water Code Section 13241 when</p>	<p>Currently the City of San Diego spends approximately \$400,000 annually to monitor water quality at 3 ASBS outfall locations. The likelihood of impacts to resident biota related to chemical contaminants in runoff is still unclear despite these large efforts and expenditures. Resources to protect these vital assets need to be directed prudently by prioritizing areas of known or reasonable potential</p>

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		Implementation Provisions	adopting water quality objectives	concern. The City requests that the State Board provide documentation justifying why these intensive efforts at locations outside of current ASBS are justified during this time of limited resources.
5	42-43	Section 7 Proposed Amendments – Implementation Provisions 5(c)(1) and 5(c)(5)	A receiving water dilution zone must be considered for compliance purposes in marine receiving water environments influenced by freshwater runoff, as allowed in Ocean Plan Appendix I Definition of Terms.	The specific sampling point in the receiving water is not clear under this or prior proposed amendments. Freshwater discharges to marine environments will create conditions in the immediate zone of influence that are not tolerable by marine species, regardless of storm water cleanliness.  A surface discharge dilution zone is allowed by the Ocean Plan, and is ecologically meaningful in a dynamic coastal environment (see Section III C 4.D). The current guidance allows for a dilution factor based on site-specific conditions and observations. For ecologically meaningful results, the City strongly recommends that the amendment clarify that samples should be collected in a mixing zone where marine species can tolerate the receiving water salinity
6	43	Section 7 Proposed Amendments – Implementation Provisions 5(c)(6)	A clear "weight of evidence" approach, consistent with State Board policies, is lacking in the proposed amendment.	The trigger for additional monitoring and BMP efforts should not be based on a single line of evidence alone. The City requests that compliance triggers be based on a multiple-line-of-evidence approach that integrates all available toxicity, chemistry, and biological measurements. A single minimal exceedance of a water quality objective (e.g. 10% over the objective for copper), should not result in immediate follow-up activities if there is no toxicity, and benthic communities do not suggest impairment due to runoff sources.  Ocean environments are much too complex to meaningfully regulate based on a single chemical concentration line of evidence approach, in particular for episodic non-point source discharges. An approach similar to the recently developed Sediment Quality Objective methods for the State of California should be considered, in particular given the proposed Ocean Plan requirements to

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				<p>collect data for all three of these metrics (chemistry, biology, and toxicity). This is intensive and expensive monitoring, so it needs prioritization with a focus on those areas of primary concern as described in General Comments #2 and #3.</p>
7	41-43	<p>Section 7 Proposed Amendments – Implementation Provisions</p>	<p>Proposed amendments are inconsistent with recent TMDLs which include exemptions for sources that are not controllable by municipalities</p>	<p>Examples of sources not controllable by municipalities include aerial deposition, constituents naturally occurring in groundwater, and approved regulated pesticides, such as synthetic pyrethroids that are regulated by the California Department of Pesticide Regulation and US EPA. The City requests that constituents that are clearly beyond the control of municipalities be exempted from compliance-related actions.</p>
8	42-43	<p>Section 7 Proposed Amendments – Implementation Provisions 5(c)(1) and 5(c)(5)</p>	<p>Chronic Toxicity in Stormwater</p>	<p>Current monitoring methods and compliance limits need re-evaluation for episodic non-point source discharges. EPA whole effluent toxicity test methods and Ocean Plan objectives were developed for <u>continuous</u> point source discharges, but are now being applied to short-term storm water and other non-point source events. Meaningful sampling locations and mixing zones need further consideration for episodic events as described in Comment #5. Toxicity test exposures and test duration also need further consideration (i.e. the requirement to perform a 7-day chronic test on a storm water sample that may exist in the environment for only minutes or hours).</p>
9	42-43	<p>Section 7 Proposed Amendments – Implementation Provisions</p>	<p>Intertidal/subtidal biological surveys</p>	<p>The use of intertidal and/or subtidal biological surveys is included as a line of evidence to evaluate cumulative impacts related to individual discharges. The City agrees with the use of this important line of evidence. However, biological assessments to tease out potential effects and trends related to discharges (as opposed to natural fluctuations and changing oceanographic conditions) are extremely challenging and expensive. Therefore, sites need to be carefully</p>

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		5(c)(4)		prioritized to focus resources productively. The inconclusive results for many of the ASBS intertidal biological studies mentioned in the 2011 PEIR document highlight and exemplify this concern.
10	38	CEQA Review and Analysis - Other Discharges Section 5.7.4.3	Golf courses are highlighted as a high threat category requiring a prohibition on discharges without justification	Many activities that occur on golf courses are subject to other conflicting regulations (i.e. DPR as described above) that are not controllable by municipalities. Golf courses are also regulated under the Industrial and Commercial Inspection Program in the MS4 Permit, Order R9-2007-001, which requires implementation of BMPs to the maximum extent practicable. BMPs to reduce runoff and enhance water quality from the Torrey Pines Golf Course are actively in place and have been extremely successful. A recent survey of the beach below the Torrey Pines Golf Course failed to find any discharges entering the receiving environment during dry weather. Given the runoff control and water quality enhancement activities already required for golf courses, the City strongly recommends that golf courses be eliminated as a high threat category requiring prohibition of discharges.
<b>Miscellaneous Edits of Note</b>				
11	36	Section 5.7.2	CEQA Review and Analysis – Protecting MPA	Staff Recommendation references Section 5.4. Should reference Section 5.7.3.
12	38	Section 5.7.4.3	CEQA Review and Analysis – Protecting	First paragraph, last sentence – “thorough” is misspelled

City of San Diego Draft Ocean Plan Amendment Comment Table – MPA (Feb 23, 2012 Draft)  
 Submitted April 18, 2012

#	Page	Section	Topic	Comments
			MPA	2 <sup>nd</sup> bullet following the first paragraph – “golf” is misspelled
13	39	Section 5.8	CEQA Environmental Impact Analysis	Second paragraph, third sentence – “alteration” is misspelled. Currently “alternation of the environment” Third paragraph, third to last sentence hanging sentence “However, staff cannot foresee which MPAs will be selected for designation as SWQPAs or when...?”