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COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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October 27, 2011

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P O Box 100
Sacramento, CA 95812-2000

Dear Ms. Townsend

COMMENT LETTER - SANTA MONICA BAY MARINE DEBRIS TOTAL MAXIMUM DAILY LOAD

Thank you for the opportunity to comment on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate the Santa Monica Bay Nearshore and Offshore Debris Total Maximum Daily Load. Enclosed are comments submitted on behalf of the Los Angeles County Flood Control District. The Los Angeles County Flood Control District also concurs with the comments submitted by the County of Los Angeles and hereby incorporates them by reference.

We look forward to your consideration of our comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov

Very truly yours,

GAIL FARBER
Director of Public Works

A handwritten signature in blue ink that reads "Gary Hildebrand".

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

El:jtz

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Enc.

IN REPLY PLEASE



**COMMENTS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
ON THE PROPOSED AMENDMENTS TO THE WATER QUALITY CONTROL PLAN
FOR THE SANTA MONICA BAY NEARSHORE AND OFFSHORE DEBRIS
TOTAL MAXIMUM DAILY LOAD**

1. The proposed TMDL should not name the LACFCD as a responsible party.

The proposed TMDL does not assign a Waste Load Allocation (WLA) to the LACFCD but states that the LACFCD “may be held responsible with a jurisdiction and/or agency for non-compliance” under certain situations where certain actions or lack of actions by the LACFCD would be construed as “causing or contributing to a responsible jurisdiction and/or agency to be out of compliance with its interim or final [WLA]” (Basin Plan Amendment, p. 6).

In its letter to the Regional Board dated September 13, 2010, the LACFCD commented that the proposed TMDL should not name the LACFCD as one of the responsible parties. None of the land areas draining to the LACFCD storm drains that empty into the Santa Monica Bay are under the jurisdiction of the LACFCD. The drains themselves function solely as a conveyance for urban and stormwater runoff from upstream entities and do not generate any of the pollutants of concern at issue in the TMDL. Because the LACFCD does not control land uses within the municipalities or industrial facilities within the municipalities, it has no feasible means of preventing the pollutants at issue flowing from those land uses and facilities from entering its facilities and the Santa Monica Bay.

In responding to this comment, Regional Board staff stated that the LACFCD has authority over portions of the MS4 and that some of the key compliance strategies for the trash TMDL rely on installations within the LACFCD’s infrastructure. Given this fact, this TMDL should be consistent with and incorporate the approach of the Los Angeles River Trash TMDL (Regional Board Resolution No. 2007-012 and State Board Resolution No. 2008-0024). The TMDL, however, does not do so. The Regional Board’s staff response to comments does not explain why a different approach should be used when the comments themselves recognize that the debris which is the subject of this TMDL is a type of trash.

Consistency benefits all parties. This TMDL for debris near-shore and offshore of Santa Monica Bay is addressing trash. There is no reason why this TMDL should not be consistent with the other Trash TMDLs which are currently being implemented. Accordingly, this TMDL should use the same language that was used to incorporate the Trash TMDL into the Los Angeles County Municipal Stormwater Permit with respect to the obligations of the LACFCD or other entities that control MS4s. That language is as follows:

“Any Permittee whose compliance strategy includes full or partial capture devices and who chooses to install a full or partial capture device in the MS4 physical infrastructure of another public entity is responsible for obtaining all necessary permits to do so. If a Permittee believes it is unable to obtain the permits needed to install a full or partial capture device within another Permittee’s MS4 physical infrastructure, either Permittee may request the Executive Officer to hold a conference with the Permittees.” (NPDES CAS004001, Order No. 01-182 Amended on December 10, 2009 by Order R4-2009-0130, p. 82)

This language should replace the first full paragraph on page 6 of the Basin Plan Amendment beginning with “Flood control districts” and ending with “final Waste Load Allocations.”

Accordingly, the LACFCD requests that the State Water Board make this clarifying change. Alternatively, the State Board should remand the proposed TMDL to the Regional Board and direct the Regional Board to revise the TMDL to remove any reference to the LACFCD and instead, insert the language above for consistency with the Los Angeles River Trash TMDL and its subsequent incorporation into the Los Angeles County MS4 Permit.

2. The LACFCD’s responsibility should be limited to granting access permits for installation of trash capture devices

The language set forth above should be substituted for the language on page 6 of the Basin Plan Amendment. If the State Water Board should nevertheless go forward and keep the language currently on page 6, then subparagraph (ii) of that language should be clarified or removed. Subparagraph (ii) states that the flood control districts may be held responsible with a jurisdiction and/or agency for non-compliance where the flood control district has:

“not fulfilled its obligations under its MS4 permit regarding proper BMP installation, operation and maintenance for purposes of TMDL compliance within the MS4 physical infrastructure under its authority, thereby causing or contributing to a responsible jurisdiction and/or agency to be out of compliance with its interim or final Waste Load Allocations.” (Basin Plan Amendment Page 6, subparagraph (ii))

This language is unclear and could be erroneously interpreted to suggest that the LACFCD is responsible for installing Best Management Practices (BMPs) to comply with the proposed TMDL within the MS4 physical infrastructure. Also, this language could easily be misconstrued as LACFCD being liable with any jurisdiction under the TMDL, in the event that a jurisdiction do not comply with the TMDL. However, the TMDL recognizes that the LACFCD is not assigned a wasteload allocation, and is not required to install BMPs to address those wasteload allocations.

Implementation of BMPs is the obligation of the permittees who have jurisdiction over and control the sources of the trash within their jurisdiction.

In this regard, the LACFCD is already required to cooperate with these other jurisdictions in the timely installation and maintenance of their full or partial trash control devices in the MS4 physical infrastructure that is under its authority as set forth in subparagraph (i). Subparagraph (ii) is therefore unnecessary and should be removed. Alternatively this subparagraph should be clarified to make clear that this TMDL is not imposing any new obligations on flood control districts to implement BMPs.

3. The LACFCD should not be required to submit a Plastic Pellets Monitoring and Reporting Plan (PMRP)

The proposed TMDL names the LACFCD as one of the parties responsible for submitting a PMRP. Unlike municipalities, the LACFCD has no jurisdiction over industrial facilities or activities related to the manufacturing, handling, or transportation of plastic pellets. We request that flood control districts be removed from the requirement to submit PMRP under this TMDL as shown below (the strike-out portion to be removed):

“Jurisdictions and agencies identified as responsible jurisdictions for point sources of trash in this Santa Monica Bay Debris TMDL and in the existing Malibu Creek and Ballona Creek Trash TMDLs, ~~including the Los Angeles County Flood Control District and the Ventura County Watershed Protection District,~~ shall either prepare a Plastic Pellet Monitoring and Reporting Plan (PMRP), or ...” (BPA Page 8)