



425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

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October 26, 2011

Charles R. Hoppin, Chair
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Dear Mr. Hoppin:

SUBJECT: PORT OF LOS ANGELES COMMENTS TO THE STATE WATER RESOURCES CONTROL BOARD ON THE DOMINGUEZ CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS TOXIC POLLUTANTS TMDL

The Port of Los Angeles (Port) appreciates the opportunity we have been afforded over the last several years by the U.S. Environmental Protection Agency Regional 9 (EPA) and the Los Angeles Regional Water Quality Control Board (LARWQCB) to participate in the development of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Load (TMDL). Attached is our State Water Resources Control Board Toxic Pollutants TMDL comment submittal package, which consists of our three prior letters to the LARWQCB, detailed comments for this submittal in a binder with table of contents, as well as a CD containing the same comments and the back-up material that the Port submitted to LARWQCB prior to the May 5, 2011 hearing on the TMDL.

We wish to highlight here two of the most significant issues of concern to the Port regarding this Toxic Pollutants TMDL:

Our first major concern is the way the TMDL compliance methodology handles the bedded sediments. No effort was made to determine whether toxics contained in sediments are transferred to or from the water body, and if so, at what rate. Without a sound understanding of this transfer dynamic, bedded sediments are treated as a source of contaminants in the TMDL equation. Since load and waste load allocations for all other non-sediment sources far exceed the TMDL, in order to compensate, the compliance burden is fully assigned to the load allocation for sediments. This means



that the only way to achieve compliance is through continuous dredging to remove sediment mass regardless of the actual contribution of bedded sediments to toxicity in harbor waters. A more pronounced problem is that the TMDL targets cannot be met even after all bedded sediments have been removed from the harbor so long as other inputs continue. For example, there is inadequate analysis and understanding of the source contribution from aerial deposition, and no attempt was made to estimate reductions or put forward reduction strategies. This is a key area requiring additional technical study in order to more fairly determine the source reductions potentially assigned to sediments.

As we have pointed out previously, the actions required by the TMDL could ultimately result in unintended consequences and net environmental harm. Large amounts of dredging could arbitrarily be required, which would destroy the healthy ecosystem already in place in the harbor as well as cause significant air quality, traffic, and other environmental impacts. Along these lines, our attached submittal includes the comments we have prepared regarding the environmental analysis in the Substitute Environmental Document.

Furthermore, it makes no sense to dredge contaminated sediments in the harbor until upstream sources of contamination are controlled. Newly dredged areas will simply become recontaminated. A primary example of this significant problem involves legacy contaminants that are found in sediments in the Dominguez Channel Estuary, an eight mile saltwater reach of channel immediately upstream of Consolidated Slip, a high priority contaminated site in the harbor. There is evidence to show that sediments from the Estuary are transported into Consolidated Slip and the rest of the harbor. It is imperative that this TMDL identify and engage all responsible parties to address ongoing inputs in order to prevent further contribution to legacy contamination and re-mobilization of sediments within the harbor.

Our second major concern is that the TMDL's approach to addressing the fish consumption advisory impairment is based on incomplete science regarding bioaccumulation of contaminants into fish tissue and serious new penalties for failure to address the impairment were introduced very late in this rule making process:

- i) New language related to fish tissue has resulted in a significant change to the TMDL. At the May 5, 2011 TMDL adoption hearing, the following language was added to the TMDL without any opportunity for public review or comment:

“If at any point during the implementation plan, monitoring data or special studies indicate that load and waste load allocations will be attained, but fish tissue targets may not be achieved, the Regional Board shall reconsider the TMDL to modify the waste load and load allocations to ensure that the fish tissue targets are attained.”

The implication of this added language is that fish tissue-related sediment targets for Los Angeles and Long Beach harbors, which are already unrealistically low, could be lowered at any time, even though there is inadequate evidence to ascertain the degree to which harbor sediments are contributing to the fish tissue toxicity. We ask that this language be removed in light of the inadequate understanding of the bioaccumulation processes. Further, the following specific steps are essential to a realistic and achievable TMDL.

- ii) The TMDL does not take into account that fish populations in the harbor very likely receive contaminant loadings from sources other than harbor sediments. Given the extensive foraging range for many of the species of concern (e.g. white croaker, halibut, etc.), a major source is likely the highly contaminated sediments found on the Palos Verdes Shelf. The TMDL, as written, could require actions that are outside the control of the currently named responsible parties, potentially resulting in significant expenditure of resources with little to no effect on tissue contaminant levels. Technical studies are planned to better understand foraging behavior and specifically what portion of contaminant uptake may be attributable to foraging in the harbor area.
- iii) The fish tissue-related targets set in the TMDL disregard the most recent guidance from OEHHA, namely that Advisory Tissue Levels are more appropriate to protect human health than are the obsolete Fish Contaminant Goals. We have attached detailed comments on this point.
- iv) We strongly urge that the TMDL be modified to set interim targets for sediment contaminant levels consistent with cleanup levels established for the PV Shelf, as fish movement between the two areas precludes their evaluation/regulation in isolation. This will set a protective interim goal while scientific studies are conducted to better inform/refine contaminant transfer estimates and will provide a more meaningful path toward reducing fish consumption risk.

- v) The TMDL should explicitly require incorporation of Sediment Quality Objectives (SQO) Part II (indirect effects) endpoints and methodology when the SQO Part II is adopted as State policy. Applying the indirect effects methodology will establish a site-specific relationship between sediment-based contaminants and fish tissue contaminant burdens to more accurately reflect the potential contribution of harbor sediments to fish tissue toxicity. The Basin Plan Amendment, referring to an alternate means of compliance with the bioaccumulative part of the TMDL, states, "Demonstrate that the sediment quality condition protective of fish tissue is achieved per the Statewide Enclosed Bays and Estuaries Plan, as amended to address contaminants in resident finfish and wildlife". However, the "resident finfish and wildlife" amendment is only a narrative and does not include risk assessment methodology.

On a more process-oriented note, we request that the deadline for submission of the Sediment Management Plan for Los Angeles and Long Beach harbors be extended from 24 months to 35 months to mirror the extension granted for submittal of the monitoring plan, which was extended from 9 months to 20 months during the May 5, 2011 LARWQCB hearing. The draft Sediment Management Plan depends on data from the monitoring program and 4 months is not a feasible timeframe to incorporate this essential data. We will need to use the data from the monitoring program to draft the Sediment Management Plan.

Water and sediment contamination in the Dominguez Watershed and greater harbors area is a regional problem that requires regional solutions. An example is found in the DDT problem. While DDT was only produced outside the harbor (upstream in the Dominguez Watershed), and production halted nearly 40 years ago, DDT has now spread throughout the harbor. Long-term, meaningful remedies will only come with the participation of all responsible parties. It is imperative that all stakeholders work together to improve the science used to inform upcoming TMDL implementation and compliance activities, particularly in the first 6 years prior to the designated TMDL re-opener. Monitoring activities, as well as special studies, will be critical to improving the science behind this TMDL.

The Port of Los Angeles in conjunction with the Port of Long Beach has actively participated in the stakeholder process, and contributed to rule making by conducting extensive data collection and analysis; developing hydrodynamic and water quality models; and providing extensive technical review comments, all with the goal of

providing constructive solutions and improving the TMDL methodology. We look forward to continued interaction with the LAWRQCB throughout the implementation process.

If you have any questions regarding our overall comment submittal, please call Ms. Kathryn Curtis (310) 732-3681.

Sincerely,



CHRISTOPHER CANNON
Director of Environmental Management

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ADP No.: 970203-532
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Enclosure

cc: Sam Unger, LARWQCB Executive Officer
Peter Kozelka, U.S. EPA Region 9
Shahram Kharaghani, City of LA Bureau of Sanitation, WPD
Rick Cameron, Port of Long Beach