



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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October 27, 2011

IN REPLY PLEASE



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 County of Los Angeles.

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

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Enc.

cc: Chief Executive Office (Dorothea Park)
County Counsel (Judith Fries)

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

Thank you for the opportunity to comment on the proposed Basin Plan Amendment to incorporate the Santa Monica Bay Nearshore and Offshore Debris Total Maximum Daily Load (TMDL). The comments below are submitted on behalf of the County of Los Angeles (County). The County submitted these and other comments to the Regional Water Quality Control Board, Los Angeles Region (Regional Board), in a letter dated September 13, 2010. To the extent that those comments have not been adequately addressed by the Regional Board, the County hereby incorporates them by reference. Additionally we are also bringing the following comments to the attention of the State Water Resources Control Board (State Water Board).

1. TMDL is not an appropriate regulatory method to address discharges of plastic pellets

Through the adoption of Assembly Bill 258¹ (AB 258) in 2007, the State Legislature amended the California Water Code and established a regulatory program specifically to address preproduction plastic debris. It is imperative that preproduction plastic pellets be addressed through the regulatory mechanisms adopted pursuant to that bill. The TMDL program is not a proper regulatory vehicle to address plastic pellets, at least not until the State Water Board determines that addressing plastic pellets through TMDLs such as this one is an appropriate regulatory method.

Neither the Regional Board nor the State Water Board currently has the authority to include plastic pellets into a TMDL. AB 258, as set forth in Water Code § 13367, provides that the State Water Board and the Regional Boards shall implement a program to control discharges of preproduction plastic from point and nonpoint sources [Water Code § 13367(b)(1)]. It further provides that State Water Board shall determine the appropriate regulatory methods to address the discharges from these point and nonpoint sources.

To our knowledge, the State Water Board has not yet determined the appropriate regulatory methods to address these discharges. Specifically, the State Water Board has not yet determined that TMDLs that impose obligations on municipal stormwater permittees are an appropriate regulatory method to address these discharges. Without this determination, the State Water Board or the Regional Board has no authority to include plastic pellets in this TMDL. (Although Water Code § 13367(h) provides that nothing in Water Code § 13367 limits the authority of the State Water Board or the Regional Boards to establish requirements in addition to best management practices for the elimination of these discharges, this provision only allows Regional Boards to establish requirements in addition to best

¹ http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0251-0300/ab_258_bill_20071014_chaptered.pdf

management practices in permits issued to facilities that handle or discharge preproduction plastic pellets. Regional boards, however, cannot adopt a regulatory method, such as this TMDL, until the State Board has determined that such a method is appropriate.)

The County supports the reduction or elimination of the discharge of plastic pellets into waters of the State. However, given that the sources of plastic pellets are solely industrial facilities, and that these facilities are known to the State, the best and most efficient way to address impairments due to plastic pellets is through the Industrial General Permit (IGP) instead of TMDLs. Also, because plastic pellets observed in a given watershed are not necessarily limited to sources in that watershed as they can be transported from watershed to watershed or region to region, a watershed-based TMDL is not the appropriate regulatory tool to effectively address the problem.

In its response to these concerns, the Regional Board stated that “while there are limited circumstances under which impairment may be addressed by a single regulatory action, in this case because there are multiple sources that may be causing and/or contributing to the impairment, a TMDL is the appropriate first step.” We believe this statement is incorrect. The sources of pre-production plastic pellets are solely industrial facilities, which manufacture, handle, or use them. This was clearly recognized in AB 258.

Enforcement of AB 258 through the IGP would be the proper vehicle for effectively addressing the impairment caused by plastic pellets in the Santa Monica Bay. Therefore, we request that the State Water Board remand the TMDL to the Regional Board and direct the Regional Board to remove the plastic pellets from the proposed TMDL.

2. Municipal Separate Storm Sewer System (MS4) permittees should not be responsible for plastic pellets

The County also commented to the Regional Board in 2010 that while the proposed TMDL clearly identifies industrial facilities as the source of plastic pellets and assigns associated waste load allocations (WLAs) to those facilities, the TMDL inappropriately requires MS4 permittees to conduct monitoring, inspections, and clean-up of spills for plastic pellets. In response, the Regional Board classified the requirement of submitting a Plastic Pellet Monitoring and Reporting Plan (PMRP) into three categories, depending on the land use and the presence of industrial facilities that manufacture, handle, or transport plastic pellets within the jurisdictions boundary. Although it was an improvement to the original proposal, we still believe it is not appropriate to place any type of monitoring, inspection, and clean-up responsibilities on MS4 permittees at all. Monitoring and cleanup of plastic pellets spills should be the sole responsibility of the plastics industry and should be enforced through the IGP program. Plastic industry facility inspections should be conducted by a regulatory authority who collects fee from holders of the IGP for the purpose of stormwater inspection and regulatory compliance [Water Code

§13260(d)(2)(B)(iii)], in which case, the State and regional water quality control boards have a responsibility to fulfill that role.

The County requests that the State Water Board remand the TMDL to the Regional Board and direct the Regional Board to remove all MS4 permittee responsibilities associated with plastic pellets.

3. The schedule for submitting trash monitoring and reporting plan (TMRP) should be extended to a minimum of one year

The proposed TMDL covers a much larger geographical area than any of the TMDLs previously developed for the Los Angeles region, consisting of about 420 square miles of land area draining to the Santa Monica Bay, 55 miles of shoreline with 44 beaches, and several miles into the ocean. The proposed TMDL also directly affects about 19 Phase I municipal stormwater permittees. Based on the County's experience in implementing other TMDLs, it is not possible to develop an adequate TMRP within a six-month time frame for a TMDL of this scale. This is because the development of the TMRP would require coordination with multiple agencies throughout the watershed and the execution of interagency agreements.

Therefore, the County requests that the State Water Board make a nonsubstantive change to the proposed TMDL by extending the timeline for developing monitoring plans, as identified in Tables 7-34.2 and 7-34.3 of the proposed Basin Plan Amendment, from six months to one year.