

**California Regional Water Quality Control Board  
Santa Ana Region**

**September 7, 2007**

**ITEM: 13**

**SUBJECT: Public Hearing on the Proposed Basin Plan Amendment to Incorporate Total Maximum Daily Loads (TMDLs) for Organochlorine Compounds for San Diego Creek, Upper Newport Bay and Lower Newport Bay - Supplemental Staff Report**

**DISCUSSION**

On December 1, 2006 and April 20, 2007, public workshops were conducted by the Regional Board to receive evidence and testimony on a proposed Basin Plan amendment to incorporate Total Maximum Daily Loads (TMDLs) for organochlorine compounds (OCs) for San Diego Creek, and Upper and Lower Newport Bay. Board staff also presented a status update regarding the TMDLs during the March 2, 2007 Regional Board meeting. Based on consideration of the comments received, the proposed Basin Plan amendment, which includes the proposed TMDLs for the OCs, targets, wasteload allocations (WLAs), load allocations (LAs), and a plan of implementation, has been revised. This supplemental staff report discusses those revisions.

The comments received during the April 20, 2007 public workshop focused to a large extent on recommendations for changes to or clarification of the tasks identified in the proposed TMDLs Implementation Plan (IP). Other comments questioned the adequacy of Board staff's CEQA analysis of the proposed amendment, particularly in light of a recent court decision (*City of Arcadia v. State Water Resources Control Board* (2006)) that found that the Los Angeles Regional Board had failed to fulfill all applicable CEQA requirements in its adoption of a trash TMDL.

To address these comments, Board staff recommends changes to the proposed implementation plan, as shown in the final draft Basin Plan amendment (Attachment 2 to tentative Resolution No. R8-2007-0024). Attachment A to this staff report shows these and other minor changes to the proposed amendment in strike-out and underline format. The changes are discussed briefly below.

To assure that applicable CEQA requirements are fulfilled, Board staff prepared a Substitute Environmental Document (SED)(July 25, 2007), including an Environmental Checklist, an analysis of reasonably foreseeable methods of

compliance with the proposed TMDL Basin Plan amendment, the evaluation of the potential environmental effects of implementation of these methods and mitigation measures, and an analysis of alternatives. (The Environmental Checklist included in the SED replaces the Checklist included in the November 17, 2006 Organochlorine Compounds TMDLs technical report, which was presented at the December 1, 2006 workshop.) The SED (Attachment B to this staff report) was distributed and made available on the Regional Board website on July 25, 2007.

Requisite notices regarding the Regional Board's hearing and proposed action on this matter have been filed. A Notice of Filing and Public Hearing was circulated 45 days in advance of the September 7, 2007 public hearing.

As discussed in detail in the SED, Board staff found that the implementation of reasonably foreseeable methods of compliance with the organochlorine compounds TMDLs has the potential to result in significant adverse environmental effects with respect to certain Air Quality, Biological Resources, Noise, Transportation/Traffic, and Utilities and Services considerations. While mitigation measures can be employed to substantially lessen the potentially significant impacts identified in the SED, the effects cannot be wholly avoided (i.e., reduced to less than significant levels). However, despite the occurrence of significant unavoidable environmental effects associated with the TMDLs, Board staff believes that there exist certain overriding economic, social, and other considerations for approving the TMDLs that staff believes justify the occurrence of those impacts and render them acceptable. Public Resources Code section 21081(b), and CEQA Guidelines section 15093 require the Regional Board to adopt a "statement of overriding considerations" before approving a project with significant environmental effects, where the Regional Board has concluded that such effects remain significant and unavoidable notwithstanding the incorporation of all mitigation measures and alternatives found to be feasible. In accordance with these requirements, Board staff has prepared the "CEQA Findings of Fact and Statement of Overriding Considerations" for the proposed TMDLs (Attachment 1 to Resolution No. R8-2007-0024). Board staff recommends that the Board adopt these findings and the Statement of Overriding Considerations.

#### **Proposed Revisions to the Recommended TMDL Implementation Plan:**

Recommended changes to the proposed implementation plan are as follows:

1. Task 7 of the proposed implementation plan provides the opportunity for interested stakeholders to participate in a Working Group that would be responsible for the development and implementation of a Work Plan. The Work Plan would address implementation of control actions and investigations necessary to comply with the organochlorine compounds TMDLs, and integrate those actions/investigations with the requirements

of other established and pending TMDLs for San Diego Creek and the Newport Bay watershed (e.g., the established Sediment TMDL and the metals and other toxic substance TMDLs). (U.S. EPA has established other toxic substance TMDLs for the Newport Bay watershed; Regional Board staff is working on Basin Plan amendments that would incorporate these TMDLs, with implementation plans, in the Basin Plan.) The language in Tasks 1, 2 and 3 has been revised to clarify the manner in which compliance with the organochlorine compounds TMDLs would be required for Working Group and non-Working Group members. These revisions are shown in underline/strikeout form in Attachment A, Tasks 1-3, pages 18-24. The changes are for clarification purposes only and do not represent substantive modifications of the earlier implementation plan.

2. Task 7 requires the Working Group to consider the other tasks identified in the implementation plan in developing the Work Plan. Stakeholders requested that the specific expectations of this effort be clarified.

In response, the language in Task 7 has been revised to specify: (a) that all the tasks identified in the implementation plan must be considered by the Working Group, except Task 1, which requires action by the Regional Board, and Task 4, which requires action by the Regional Board and the MS4 permittees based on established MS4 permit requirements; and (b) If one or more of the applicable implementation tasks is not proposed for inclusion in the Work Plan, or where modifications of these tasks/schedules are recommended, a written description and justification must be provided with the draft Work Plan submittal.

Note that the Work Plan would be implemented only upon Regional Board approval at a public hearing, providing the opportunity for public input.

These revisions are shown in underline/strikeout form in Attachment A, Task 7, page 30.

3. A number of changes have been included in Task 4 (see Attachment A, pages 24-26):
  - a. References to the Caltrans NPDES permit have been added, since construction BMP requirements apply to Caltrans construction activities. (This reference was also added to Table NB-OCs-14 (page 16 of Attachment A).)
  - b. Certain stakeholders expressed concern about the potential adverse environmental effects of enhanced BMPs and suggested that these potential effects should be considered before their inclusion in the Orange County Stormwater Program Construction Runoff Guidance Manual and/or the Caltrans Storm Water

Management Plan. The language in Task 4 has been revised to provide for this evaluation.

- c. Initially, this task specified that “Upon completion of needed outreach and training concerning the requirements of the SWPPP Improvement Program, applicable SWPPPs that do not adequately address the Program requirements shall be considered inadequate and enforcement shall proceed accordingly” (see Attachment A, page 25, second paragraph). This language has been changed by deleting the reference to outreach and training, since no Regional Board staff resources are available to provide it (changes necessary to reflect this modification are also reflected in Table NB-OCs-13; see page 14 of Attachment A). Further, the language has been revised to reflect that the Regional Board would have enforcement responsibility.
4. For the purposes of clarity, a footnote has been added to Table NB-OCs-13 that specifies that the date for compliance with the TMDLs is no later than December 31, 2015.

Attachments to this supplemental staff report, and to tentative Resolution No. R8-2007-0024 are listed below. Written responses to comments received at least two weeks prior to this public hearing will be prepared (Attachment C to this staff report).

**Attachments to September 7, 2007 Supplemental Staff Report**

<b>ATTACHMENT</b>		<b>TITLE</b>
Attachment A		Redline Version of Proposed Changes to April 20, 2007 BPA
Attachment B		Substitute Environmental Document
Attachment C		Response to Comments Document
	Attachment C1	Response to Flow Science, Inc. Reports
	Part A - DDT	
	Part B - Chlordane	
	Part C - Toxaphene	
	Attachment C2	Response to Dec 1, 2006 Public Workshop Comments
	Attachment C3	Response to Peer Review Comments
	Attachment C4	Response to State and Federal Agency Comments
	Attachment C5	Response to Local Agencies/Municipalities Comments
	Attachment C6	Responses to Local Stakeholder Groups Comments
	Attachment C7	List of References Cited
Attachment D		Flow Science Reports
	Attachment D1	DDT
	Attachment D2	Chlordane
	Attachment D3	Toxaphene
Attachment E		Responses solicited from outside experts re Drs. Byard and Tjeerdema commentaries
Attachment F		Peer Review Letters
Attachment G		Comment Letters received after Dec 1, 2006 Public Workshop
Attachment H		Comments from Regional Board Workshops
Attachment I		Electronic mail correspondence with Regional Board staff

**Attachments to Tentative Resolution No. R8-2007-0024**

<b>ATTACHMENT</b>	<b>TITLE</b>
Attachment 1	CEQA Findings of Fact and Statement of Overriding Considerations
Attachment 2	Final Draft San Diego Creek and Upper and Lower Newport Bay Organochlorine Compounds TMDLs Basin Plan amendment

**RECOMMENDATION**

Regional Board staff recommends that the Regional Board approve Resolution No. R8-2007-0024, adopting (1) the Findings of Fact and Statement of Overriding Considerations shown in Attachment 1 to the Resolution; and, (2) the amendment shown in Attachment 2 to the Resolution to incorporate organochlorine compounds TMDLs and implementation plan for San Diego Creek, Upper and Lower Newport Bay into the Basin Plan.