# City of Newport Beach
# Coastal/Bay Water Quality Citizens Advisory Committee Minutes

**Date:** May 13, 2010
**Time:** 3:00 p.m.
**Location:** Fire Conference Room

1. **Welcome/Self Introductions**
   **Committee Members present:**
   Chairwoman/Council Member Nancy Gardner
   Council Member Ed Selich
   Dennis Baker
   George Drayton
   Tom Houston
   Jim Miller

   **Guests present:**
   Amanda Carr, Chief, Water Quality Planning, OC Watersheds
   Ray Heimstra, Orange County Coastkeeper
   Roger Mallett, Newport Bay Naturalists and Friends
   Monica Mazur, Newport Beach resident
   Jack and Nancy Skinner, SPON

   **Staff present:**
   Dave Kiff, City Manager
   Tracy McCraner, Administrative Services Director
   Bob Stein, Assistant City Engineer
   John Kappeler, Code and Water Quality Division Manager
   Shirley Oborny, Administrative Assistant

2. **Approval of Previous Meeting's**
   The minutes from the March 11, 2010, meeting were approved.

3. **Old Business**
   **(a) Bay and Ocean Bacteriological Test Results**
   Monica Mazur reviewed the latest bacti reports.

4. **New Business**
   **(a) Fecal Coliform TMDL**
   Ms. Carr provided a PowerPoint presentation (attached) that gave background information on how this TMDL was developed.

   Mr. Kappeler asked why a lot of enterococcus work is being done for a fecal coliform TMDL. Ms. Carr said the Regional Board feels that because the EPA gave enterococcus standards, they apply as well and they have better health-risk tracking. She said her organization would be making a recommendation to change the language of the TMDL when it's updated. Mr. Heimstra said there's draft basin plan language that will be

submitted in June. The Regional Board may implement the enterococcus standards on a best professional judgment.

Ms. Carr said the next step in the development of the TMDL plan is to get review and feedback from the funding TMDL partners.

Mr. Skinner voiced his concern that Newport Beach hasn't had much input into the plan until today. He thinks 99% of it will involve issues that occur around the harbor. Ms. Carr responded that the City has received a lot of information from Mr. Kappeler that will go into sections of the plan. She said the City saw the February draft as well and has provided more input than the rest of the contributing partners. She reiterated that the plan is a work in progress.

Continuing, she said through the process they have learned that natural sources in the bay play a huge role in the bacteria levels. She also said there have been other TMDLs that were developed later than this one that have these sort of concepts and as such they are recommending that this TMDL needs to be revised to take those factors into consideration. The goal is to make a more practical and pragmatic TMDL.

In response to Mr. Stein's concern that not all the TMDLs can be tackled at the same time, Ms. Carr said if a TMDL has an implementation plan, then it has a higher priority. Selenium is an issue the Regional Board is paying a lot of attention to. With the nutrient issue; however, they are recommending to the Regional Board that it be a lower priority. Those kinds of planning conversations are taking place in an attempt to help focus their energies.

Mr. Skinner asked what the status is on the dichlorodiphenyltrichloroethane (DDT) issue. Ms. Carr said that TMDL has been passed by the Regional Water Quality Board and is under consideration at the State Water Resources Control Board. After it has passed there it becomes State law. She said that he would be allowed to submit his presentation to the State Board.

**(b) Santa Ana Delhi Channel Integrated Pollution Reduction Project**

Mr. Kiff introduced Mr. Mallett of the Newport Bay Naturalists and Friends. They are proposing a study to correct the highly contaminated but low flowing water coming out of the Delhi Channel. He explained that there was a settlement in which The Irvine Company was to pay $1.5 million to help improve the conditions at Big Canyon and $1.5 million to the Delhi Channel. The settlement says if the money is not used for the Delhi Channel, it could be put toward Big Canyon.

Mr. Mallett said none of the bacteria/toxics in the Delhi Channel are being addressed right now. He explained that Costa Mesa and Santa Ana are just a short distance away upstream. His group would like to find out what's happening there and what solutions could be achieved by working with the individual cities and schools, but without interfering with flood control planning. It's a technical and complex issue.

Ms. Skinner asked what the initial $1.5 million would be used for. Mr. Mallet said it's needed for somebody to collect documents, perform a detailed analysis of what gaps there are, perform water quality testing where it's missing, etc.

Mr. Drayton asked what the dry season flow was like. Mr. Mallet said there is a fresh water flow. Dry weather measures would need to be taken and sewage diversion vs. storm water. Mr. Heimstra added that some of that information is available as a result of a storm water task force he participates in. He said he supports a large plan such as the one Mr. Mallet is advocating for. The key would be to get buy-in from flood control and other agencies affected.

Mr. Kiff said the only solution he can envision, especially to the summer time flow, is a diversion. His question is whether the City should do that and if so, when. He prefers to have the Big Canyon Creek project completed first.

Chairwoman Gardner said the Delhi Channel has been identified by the Watershed Executive Committee for diversion. She asked how that would fit into Mr. Mallet's plan. He said the Nitrogen Selenium Management Plan (NSMP) has moved forward with some of these things. He said they would need to revisit the stakeholders they visited a year ago to see if the plan they're suggesting is still valid or whether certain developments have occurred which would put this project on hold.

Mr. Houston said he thinks *Defend the Bay's* bias would be to use monies appropriated more for physical solutions than for studies. He agreed with Mr. Kiff's suggestion to finish Big Canyon first. Ms. Stein said Plan B of the Big Canyon Creek restoration might cost around $50,000 per year for 15 years.

Mr. Skinner said he's concerned that any natural processes upstream would be extremely expensive to create and not likely to decrease bacteria counts.

Chairwoman Gardner suggested Mr. Mallett and his group talk with Ms. Carr and Mr. Heimstra to find out what information they have, and then come back to this committee with an update.

**(c) National Pollutant Discharge Elimination System (NPDES) Permit Mandates**

Mr. Kappeler distributed a handout (attached). He said the City received its fourth revision to the permit last year. The differences between the second and third revisions and the third and fourth revisions were dramatic. When San Diego received its revision to its fourth permit the difference was even greater. He said the Regional Boards are not allowed to place more regulation on permittees than what's allowed by the Clean Water Act. San Diego submitted a claim to the State Commission on mandates (bullet points on page 1 of attachment). The Commission agreed and said the State must reimburse the cities for these costs or suspend the requirements. He said there are five areas of the City's permit (page 2 of attachment) in which the Orange County Council has decided are above and beyond what's required in the Clean Water Act. He said Orange County cities are interested in getting involved in the process; however, it's a slow process.

**(d) Newport Bay Copper Reduction Program**

Mr. Stein said he has updated a draft resolution for the committee's review (attached). In response to Council Member Selich's question about what the cost differential is between copper and non-copper boat paint, Mr. Heimstra said it's the cost of scraping the paint off the bottom of the boat.

Ms. Skinner suggested having boat owners who have tried the new paint come and speak at the City Council meeting.

In response to Mr. Miller's question about whether any large harbors have been required to use non-copper paint, Mr. Heimstra said there's currently a TMDL for Shelter Island in San Diego to reduce the copper level in its water. It doesn't mandate how they're supposed to do that so they're focusing on the non-copper paint. Ms. Carr added that it's headed that way in Orange County because all the harbors have a problem with copper. She thinks the resolution is a great first step.

The committee agreed to submit the draft resolution to the City Council for approval.

5. **Public Comments on Non-Agenda Items**

   Mr. Skinner said the Health Department is presenting a biofilm study in San Diego in a couple of weeks. The publication would be released in a month.

6. **Topics for Future Agendas**

   **(a) Update on the Integrated Watershed Planning Efforts**
   **(b) Bacteriological Dry-Weather Runoff Gutter Study (Phase III)**
   **(c) NBTV – Waterwise**
   **(d) Adopt A Beach Program & Beach Clean-up**
   **(e) OCTA Measure M**
   **(f) Upper Newport Bay "Road Show"**
   **(g) Sea Lions in Newport Harbor**
   **(h) Coastal Dolphin Research Program**
   **(i) Big Canyon Reservoir Tour**
   **(j) Newport Bay Stormdrain Metals Study**
   **(k) Boat Cleaning Best Management Practices**

   Mr. Houston suggested having Lt. Mark Long come to a meeting and talk about live aboards, pump out stations and other water quality issues. He thinks it would be a good opportunity to get him involved. Chairwoman Gardner asked Chris Miller, Harbor Resources Division Manager, to coordinate the meeting.

7. **Set Next Meeting Date**

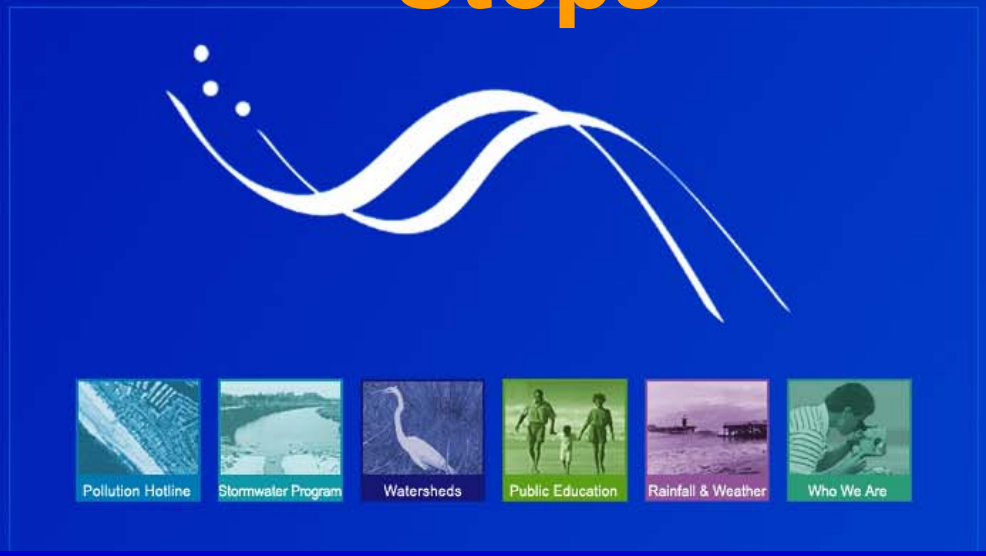
   The next meeting was set for June 10, 2010.

8. **Adjournment**

   The meeting was adjourned at 4:44 p.m.

OC Watersheds Program

# Newport Bay Fecal Coliform TMDL: Status Update and Next Steps




Amanda Carr, OC Watersheds Program

City of Newport Beach Coastal/Bay Water Quality Citizens Advisory Committee

May 13, 2010

# Overview

- Fecal Coliform TMDL Overview
- TMDL Tasks Status
- Recent/Current Projects
  - Prop. 13 Source Identification and Characterization Study
  - Prop. 13 Source Management Plan
  - Source Monitoring Program
- Next Steps
- Other Newport TMDLs Status

OC Watersheds Program

# Fecal Coliform TMDL

- The fecal coliform TMDL was adopted in 1999 to improve bacterial quality, reduce public health risks and improve water contact recreational activities in the Bay.
- TMDL developed a prioritized, phased approach to achieving load allocations which recognizes the complexity of the bacterial quality problem, the paucity of relevant data on bacterial sources and fate, the expected difficulties in identifying and implementing appropriate control measures and uncertainty regarding the nature and attainability of the SHEL use in the Bay.
- REC-1 Compliance by 2014
- SHELL Compliance by 2019
- 9 major implementation tasks

# Fecal Coliform Implementation Plan/Schedule Tasks

- Develop a Routine Monitoring Program - 1/2000
- Develop a Water Quality Model for Bacterial Indicators - 9/2001
- Conduct Beneficial Use Assessments
  - REC-1 - 9/2001
  - SHELL - 8/2004
- Develop and conduct Source Identification and Characterization Plans
  - The Dunes Resort - Summer 2004 UCI
  - Urban Sources – July 2009 UCI
  - Agricultural Sources - Fall 2003 UCCE
  - Natural Sources – July 2009 UCI

# Fecal Coliform Implementation Plan/Schedule Tasks

- ☑ Conduct an evaluation of the Vessel Waste Program – 9/2001; Fall 2004 UCI
- Develop and conduct a TMDL, WLA and LA Evaluation and Source Monitoring Program
- Complete an updated TMDL Report

OC Watersheds Program

# Recent Projects:

## Prop. 13 Newport Bay Fecal Coliform Source Identification Study – Dr. Stan Grant, UCI

- Objective: Identify and quantify the contribution of urban and natural sources of fecal indicator bacteria (FIB) impairment in Newport Bay.
- Status:
  - Studies and field sampling conducted from 2005-2007;
  - Draft report submitted to Regional Board and TAC Nov 2007
  - Final Report submitted to Regional Board July 2009
- Key Findings:
  - Preliminary findings on a limited data set indicate 45% - 65% (depending on location) of the enterococci bacteria in Newport Bay and its tributaries are species that are potentially from non-fecal sources, such as growth on decaying plant material.
  - Water quality along the shoreline in Lower Bay is strongly modulated by the tides. This tidal signature, together with the association between elevated FIB concentrations and depressed salinity, suggest that runoff flowing into storm drains in Lower Bay may adversely impact water quality along the shoreline in Lower Bay.
  - Model predictions indicate that, for all but the largest 90th percentile of storms, water quality violations attributable to FIB loading from San Diego Creek and Santa Ana Delhi Channel are confined to Upper Bay.

# Recent Projects:

## Prop. 13 Source Management Plan – EOA, Inc.

- Objective: Evaluate and prioritize sources of fecal coliform bacteria, evaluate existing best management practices (BMPs) in Bay, and to prepare a Fecal Coliform TMDL Source Management Plan (SMP).
- Status:
  - Draft SMP distributed for review and comment – 2/2009
  - Final Source Management Plan submitted to Regional Board – 11/2009; Prop. 13 Grant submittal approved – 4/2010
- Next Steps:
  - TMDL Funding Partner review and comment; Revise SMP as necessary
  - Newport Bay stakeholder/public review and comment; Revise SMP as necessary
  - Inclusion in Revised TMDL Report

# Recent Projects:

## Prop. 13 Source Management Plan

- Priority Areas Identified:
  - Dry Weather: 33rd St. Channel, Newport Blvd. Bridge, Bayside Dr. Beach, Vaughn's Launch, 38th St. Beach, Ski Zone, 10th St. Beach
  - Wet Weather: All Sites – Priority 1: 4 sites; Priority 2: 6 sites; Priority 3: 28 sites; Priority 4: 2 sites
- Recommendations:
  - BMPs: Sanitary Surveys; Continued Irrigation Control Efforts, Ordinance Enforcement and Public Education
  - Further Studies: Biofilms; Santa Ana Delhi Sanitary Survey; Source Identification at Priority Areas; Natural Source Quantifications
- Potential Impacts to the City of Newport Beach
  - Continue current/increased level of effort: Ordinance enforcement, irrigation control, public education
  - Cost-share with Newport Bay TMDL Funding Partners

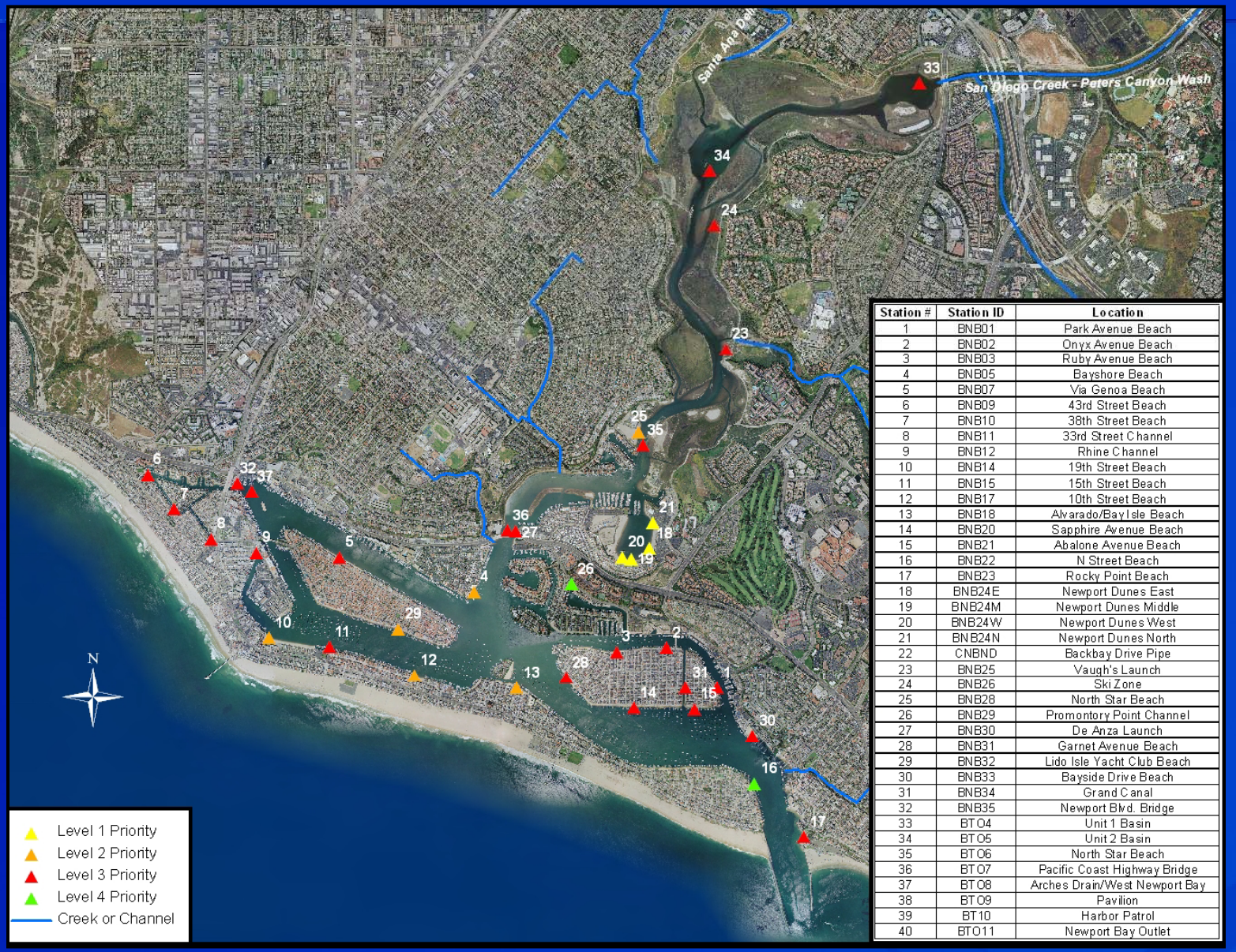
# Dry Weather Priority Areas


| Station # | Station ID | Location |
|---|---|---|
| 7 | BNB10 | 38th Street Beach |
| 8 | BNB11 | 33rd Street Channel |
| 12 | BNB17 | 10th Street Beach |
| 23 | BNB25 | Vaugh's Launch |
| 24 | BNB26 | Ski Zone |
| 30 | BNB33 | Bayside Drive Beach |
| 32 | BNB35 | Newport Blvd. Bridge |
| 33 | BTO4 | Unit 1 Basin |
| 34 | BTO5 | Unit 2 Basin |
| 37 | BTO8 | Arches Drain/West Newport Bay |

OC Watersheds Program

County of Orange California

# Wet Weather Priority Areas




| Station # | Station ID | Location |
|---|---|---|
| 1 | BNB01 | Park Avenue Beach |
| 2 | BNB02 | Onyx Avenue Beach |
| 3 | BNB03 | Ruby Avenue Beach |
| 4 | BNB05 | Bayshore Beach |
| 5 | BNB07 | Via Genoa Beach |
| 6 | BNB09 | 43rd Street Beach |
| 7 | BNB10 | 38th Street Beach |
| 8 | BNB11 | 33rd Street Channel |
| 9 | BNB12 | Rhine Channel |
| 10 | BNB14 | 19th Street Beach |
| 11 | BNB15 | 15th Street Beach |
| 12 | BNB17 | 10th Street Beach |
| 13 | BNB18 | Alvarado/Bay Isle Beach |
| 14 | BNB20 | Sapphire Avenue Beach |
| 15 | BNB21 | Abalone Avenue Beach |
| 16 | BNB22 | N Street Beach |
| 17 | BNB23 | Rocky Point Beach |
| 18 | BNB24E | Newport Dunes East |
| 19 | BNB24M | Newport Dunes Middle |
| 20 | BNB24W | Newport Dunes West |
| 21 | BNB24N | Newport Dunes North |
| 22 | CNBND | Backbay Drive Pipe |
| 23 | BNB25 | Vaugh's Launch |
| 24 | BNB26 | Ski Zone |
| 25 | BNB28 | North Star Beach |
| 26 | BNB29 | Promontory Point Channel |
| 27 | BNB30 | De Anza Launch |
| 28 | BNB31 | Garnet Avenue Beach |
| 29 | BNB32 | Lido Isle Yacht Club Beach |
| 30 | BNB33 | Bayside Drive Beach |
| 31 | BNB34 | Grand Canal |
| 32 | BNB35 | Newport Blvd. Bridge |
| 33 | BTO4 | Unit 1 Basin |
| 34 | BTO5 | Unit 2 Basin |
| 35 | BTO6 | North Star Beach |
| 36 | BTO7 | Pacific Coast Highway Bridge |
| 37 | BTO8 | Arches Drain/West Newport Bay |
| 38 | BTO9 | Pavilion |
| 39 | BT10 | Harbor Patrol |
| 40 | BTO11 | Newport Bay Outlet |

OC Watersheds Program

County of Orange California

# Current Projects:

## Source Monitoring Plan

- Objective: Develop a recommended Newport Bay Revised Routine Fecal Indicator Bacteria (FIB) Monitoring Program and FIB Source Monitoring Program through the evaluation of existing FIB data and priority areas, sources and pathways identified through the Newport Bay Fecal Coliform Source Management Plan.
- Status:
  - Currently in development, with OCHCA and City of Newport Beach staff consultation

OC Watersheds Program

# Next Steps

- Remaining TMDL Tasks:
  - Develop and conduct a TMDL, WLA and LA Evaluation and Source Monitoring Program
    - Status: Currently under development
  - Complete an updated TMDL Report
    - Status: Anticipated FY10-11
- Remaining TMDL Issues:
  - Shellfish Harvesting Beneficial Use

# Other TMDLs Update

- Sediment TMDL: Annual Report submitted Feb. 2010; currently meeting TMDL targets
- Selenium TMDL: Regional Board adoption anticipated Fall/Winter 2010
- Nutrient TMDL: Regional Board revision of TMDL anticipated in FY2010-11; currently meeting TMDL targets
- Metals/Copper TMDL: still under Regional Board development

# Questions?

Amanda Carr
Chief, Water Quality Planning
OC Watersheds

714-955-0650
amanda.carr@ocpw.ocgov.com

OC Watersheds Program

CASQA
CALIFORNIA STORMWATER QUALITY ASSOCIATION

Water Quality NEWSFLASH

DEDICATED TO THE ADVANCEMENT OF STORMWATER QUALITY MANAGEMENT, SCIENCE AND REGULATION

***April 19, 2010*** ***Number 2010-08***

**Reimbursable Mandates - *San Diego 2008 test claim mostly successful*** – On March 26, 2010, the *Commission on State Mandates* issued a key decision regarding the 2007 San Diego MS4 permit that could impact other MS4 permits. The Commission determined that certain permit requirements were state mandates, meaning the requirements exceed Clean Water Act requirements and the co-permittees do not have adequate fee authority to fund the mandates. As state mandates, (without local funding), the State must either fund the cost of complying with the mandates or suspend the mandates. The program components found to be unfunded are:

- street sweeping & reporting
- conveyance system cleaning & reporting
- educational component
- watershed activities & collaboration in the Watershed URMP
- Regional Urban Runoff Management Program
- program effectiveness assessment
- long-term effectiveness assessment
- all permittee collaboration

The Commission determined that the following two activities in the test claim exceeded federal law but were not reimbursable because the permittees have adequate fee authority: *hydromodification management plan* and *low-impact development*. One key finding by the Commission was that it is irrelevant whether permittees were voluntarily performing the activity (e.g., street sweeping). Because they are now mandated, a permittee has no discretion to stop the activity and thus it is subject to the unfunded mandates process. (More information: *Guide to the State Mandate Process*)

**All permit requirements are still in effect**: the San Diego permittees must continue implementing the permit until action by the legislature, court, or Water Boards. The reimbursement process is complex, involving the Commission, the legislature, and the State Controller. The State appropriation to fund the claims typically occurs through the Annual Budget Act, which includes the mandates reported to the Legislature by the Commission. If the Legislature does not provide funding, it is required to suspend the mandate. (Alternatively, if funding is deleted, the claimants may file an action for declaratory relief in the Superior Court of the County of Sacramento to have the mandate declared unenforceable.) Reimbursement is retroactive to the fiscal year before the fiscal year in which the test claim was filed or the effective date of the permit, whichever is later.

Each MS4 permit is considered a unique regulatory action (executive order), and thus this decision does not directly affect similar requirements in other permits. Other permittees wanting to request reimbursement for state mandates must do so 12 months following the executive order (permit) or within a year of incurring costs, whichever is later. The State Water Board's Office of Chief Counsel is preparing a memo on the effect of the San Diego decision. In addition, the State Water Boards are considering challenging this decision in state court, as well as challenging an earlier decision on a more limited test claim on the Los Angeles stormwater permit. (Article)

*Water Quality NewsFlash* is a bi-weekly update of stormwater and related news for CASQA members, co-sponsored by Caltrans Stormwater Program as a public education and outreach partnership. *Verify information before taking action on these bulletins*. Contact CASQA at info@casqa.org or (650) 366-1042 with questions. Posted online in the members-only section at: www.casqa.org. 

**RESOLUTION 2010-___**

A RESOLUTION OF THE CITY OF NEWPORT BEACH
ENDORSING A PROGRAM TO ENCOURAGE THE
USE OF COPPER-FREE BOAT BOTTOM PAINTS
~~REDUCTION OF COPPER DISCHARGES~~
~~INTO LOWER NEWPORT BAY (NEWPORT HARBOR)~~

**WHEREAS,** the natural beauty of the bay contributes to our local economic vitality and maintaining healthy marine habitats in Newport Harbor strengthens the bay's value, and

~~can contribute to a sustainable local economic vitality from recreational fishing and beneficial uses to citizens, and~~

~~**WHEREAS,** studies have shown that copper concentrations in Newport Harbor may be at levels that impact beneficial uses throughout Newport Harbor, and~~

**WHEREAS,** elevated copper concentrations in harbors ~~-~~can adversely impact aquatic life, ~~including aquatic life within Newport Harbor~~, and

**WHEREAS,** a comprehensive study in San Diego Bay showed that copper from boat bottom paints in Shelter Island Marina made up 98 percent of the total copper load, and

**WHEREAS,** EPA suggests that bottom boat paints are the largest contributor of copper to Newport Bay with an estimated discharge of more than 50,000 pounds of copper a year, and

~~copper concentrations have been proven to exceed the US Environmental Protection Agency's mandated sediment and water criteria in significant parts of Newport Harbor, and~~

**WHEREAS,** Newport Harbor is listed as an impaired water body under Section 303(d) of the Clean Water Act in part because of excessive copper concentrations in the sediment; and

**WHEREAS,** the California Regional Water Quality Control Board, Santa Ana Region~~,~~ is in the process of developing a Total Maximum Daily Load (TMDL) for Newport Harbor that would set daily limits on copper inputs to the Harbor as well as require a clean-up program to remove legacy levels of copper in Harbor sediments, and

~~**WHEREAS,** copper contained in vessel anti-fouling bottom paint has been proven to be the primary source of copper deposition to the harbor, and~~

**WHEREAS,** the City of Newport Beach is participating in an education program to inform boat owners of ~~the~~ viable options for switching to ~~and~~ cost~~-~~effective, copper-free anti-fouling paint substitutes~~options available~~,

~~**NOW THEREFORE BE ITRESOLVED** by the City Council of the City of Newport Beach that it hereby recommends that Newport Harbor's boat owners seek out and voluntarily use non-toxic vessel bottom paint for vessels moored and docked throughout Newport Harbor; and be it also~~

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of Newport Beach hereby encourages all boat owners to ~~act proactively by~~ take~~ing~~ advantage of the available educational and outreach opportunities ~~available~~ to identify and voluntarily change to ~~–~~non-toxic, copper-free ~~alternative~~ anti-fouling vessel bottom paint. ~~for future use.~~

**ADOPTED** this XXth day of MONTH, 2010.

KEITH CURRY
Mayor of Newport Beach

ATTEST:

LEILANI BROWN
City Clerk