UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901



February 19, 2015

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

**Comment Letter - Statewide Bacteria Objectives – Scoping Comments.**

EPA Region 9 supports the State Boards efforts to adopt the U.S. EPA 2012 Recreational Water Criteria. We provide the following comments based on the staff recommendations highlighted in the Informational Document: Public Scoping Meeting for Proposed Statewide Water Contact Recreation Bacteria Objectives Amendments to Water Quality Control Plans for Inland Surface Waters, Enclosed Bays and Estuaries and the Ocean Waters of California (January 7, 2015).

**Element 1: Bacteria Indicators**
EPA supports the recommendation to use E. coli as an indicator for freshwater and enterococcus for marine waters. We would also support the state using only enterococcus for all waters of the state. We are concerned with the statement in the Staff report that "The statewide objectives would supersede those contained in basin plans, to the extent a conflict existed, *unless the statewide amendments expressly provide that those conflicting objectives shall remain in effect*"(italicized for emphasis). We can only support alternate objectives if they provide a level of protection that is equal to or greater than that which is provided by the EPA 2012 Recreational Criteria.

**Element 2: Level of Public Health Protection for Illness Rate for Marine and Fresh Waters**
EPA could support the State in choosing either the U.S. EPA's estimated illness rate of 36 NGI per 1,000 or the U.S. EPA's estimated illness rate of 32 per 1,000. The 36 NGI rate is consistent with EPA 1986 and the illness rate implicit in the States existing standards. We recommend the State evaluate the cost and benefit of reducing the apparent illness rates to 32 NGI in their deliberations.

**Element 3: Address Natural Sources of Bacteria Levels**
EPA has approved the use of the reference system/antidegradation approach as a water quality standard pursuant to section 303(c) of the CWA when it is part of a bacteria TMDL. The State Board should consider whether reference systems/antidegradation approaches are still needed given the allowance of 10% exceedance of the STV and the State Board's plan to suspend the bacteria objectives during high flows. Similarly the need for a natural source exclusion may be obviated by provisions in U.S. EPA 2012 RWQC which provide a framework for setting alternate criteria in areas with little to no anthropogenic sources.

**Element 4: High Flow Suspension of Objectives for Fresh Waters**
Any suspension of the REC water quality objectives would need to be administered through a variance or use attainability analysis (UAA) to change or modify the beneficial use designation (e.g. Limited REC1). Both are changes to the water quality standards requiring EPA approval under CWA 303(c). The State Board may want to consider a categorical UAA where one or more of the 131.10(g) factors apply statewide to a certain class of waters.

**Element 5: Compliance Schedules and Interim Requirements**
EPA concurs with the staff recommendation about compliance schedules and interim requirements being established by Regional Water Board permit writers in accordance with the Compliance Schedule Policy (Resolution No. 2008-0025).

**Element 6: Calculation of Effluent Limits for POTWs**
The U.S. EPA 2012 RWQC recommends "that permitting authorities use an effluent limit derivations approach that considers both the geometric mean (GM) and statistical threshold value (STV) in the limit calculations, and which results in short- and long-term effluent limits that derive from and comply with all applicable criteria expressions." We expect the State and Regional Boards would follow these recommendations in developing effluent limits for discharges to REC1 waters. For example, some states are considering the use of the STV as a daily maximum limit and the GM as a monthly limit.

**Element 7: Mixing Zones for Point Sources**
EPA can accept the staff recommendation to allow Regional Boards to use the existing mixing zone policies in their basin plans. State Board may want to consider developing a policy on the use of mixing zones for bacteria in areas where the REC1 use exists.

**Element 8: Averaging Periods to Determine Compliance**
U.S. EPA 2012 RWQC states that "The waterbody GM should not be greater than the selected GM magnitude in any 30-day interval. There should not be greater than a ten percent excursion frequency of the selected STV magnitude in the same 30-day interval."

We suggest the removal of the recommendation for a minimum number of samples. As discussed in U.S. EPA 2012 RWQC "The number of samples, to be collected by a state in determining if WQS have been exceeded, is not an approvable element of a WQS package (Florida Public Interest Research Group vs. EPA, 2007). Therefore states should not include a minimum sample size as part of their criteria submission. When identifying sampling frequency as part of a state's monitoring plan, a state may consider that, typically, a larger dataset will more accurately characterize the water quality in a waterbody, which may result in more meaningful attainment determinations. Therefore, EPA is recommending that states conduct at least weekly sampling to evaluate the GM and STV over a 30-day period and encourages more frequent sampling at more densely populated beaches."

**Element 9: Effluent Monitoring and Reporting Frequency**
EPA concurs with the staff recommendation that effluent monitoring requirements and reporting frequency continue to be addressed by Regional Boards as they administer permits on a case by case basis.

**Element 10: Analytical Methods to Measure Bacteria Indicators**
Contrary to staff recommendations, we highly recommend specifying the analytical methods for bacteria indicators. We do not believe that any method of determining bacteria densities as approved by a Regional Board should be acceptable. We recommend that the State specify that only U.S. EPA approved methods be acceptable. EPA's regulations in 40 CFR §131.11(b)(1) provides that "In establishing criteria, states should (i) Establish numerical values based on (i) 304(a) Guidance; or (ii) 304(a) Guidance modified to reflect site-specific conditions; or (iii) Other scientifically defensible methods." U.S. EPA 2012 RWQC recognizes that new science and technologies can change rapidly. EPA has developed companion documents to the U.S. EPA 2012 RWQC which the State may find useful in the development of any alternative indicators or methods. If a state adopts WQS using alternative indicator/method combinations, EPA will review those standards, including any technical information submitted to determine whether such standards are scientifically defensible and protective of the primary contact recreation use.

**Element 11: Allow for a Variance, Seasonal Suspension or Limited REC 1**
Any suspension of the REC water quality objectives would need to be administered through a variance or use attainability analysis (UAA) to change or modify the beneficial use designation (e.g. Limited REC1). As discussed under element 4, these could be categorical UAAs. Both are changes to the water quality standards requiring EPA approval under CWA 303(c).

The State Water Board should also be updating any exceptions (i.e., variances) it has issued to NPDES dischargers for bacteria indicator standards. An example of this is SFPUCs 1979 exception to total and fecal coliform objectives in the Ocean Plan for the Oceanside CSO permit.

Thank you for the opportunity to provide comments. The EPA would like to continue to work with the state on its' development of revised statewide bacteria objectives. If you have any questions, please feel free to contact me at (415) 972-3462 or fleming.terrence@epa.gov.

Sincerely,

Terrence Fleming

Terrence Fleming,
Water Quality Assessment Section