

# CITY OF LOS ANGELES

CALIFORNIA



ANTONIO R. VILLARAIGOSA  
MAYOR

DEPARTMENT OF  
PUBLIC WORKS

BUREAU OF SANITATION

ENRIQUE C. ZALDIVAR  
DIRECTOR

TRACI J. MINAMIDE  
CHIEF OPERATING OFFICER

VAROUJ S. ABKIAN  
ADEL H. HAGEKHALIL  
ALEXANDER E. HELOU  
ASSISTANT DIRECTORS

1149 SOUTH BROADWAY, 10<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90015  
TEL: (213) 485-0587  
FAX: (213) 485-3939

BOARD OF  
PUBLIC WORKS

COMMISSIONERS

CYNTHIA M. RUIZ  
PRESIDENT

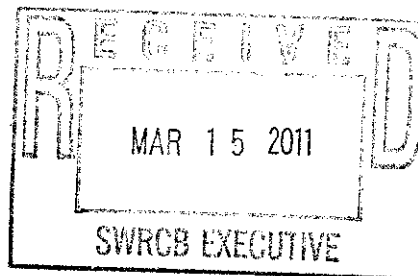
ANDREA A. ALARCÓN  
VICE PRESIDENT

PAULA A. DANIELS  
PRESIDENT PRO TEMPORE

STEVEN T. NUTTER

VALERIE LYNNE SHAW

March 15, 2011



Chris Beegan  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Dear Mr. Beegan:

## **TECHNICAL COMMENTS ON THE PROPOSED AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR ENCLOSED BAYS AND ESTUARIES OF CALIFORNIA, PART 1, SEDIMENT QUALITY OBJECTIVES**

The City of Los Angeles, Bureau of Sanitation (Bureau) appreciates the opportunity to provide technical comments on the proposed amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries of California, Part 1, Sediment Quality Objectives (Part 1 SQOs). The proposed amendments will establish new narrative objectives for resident finfish and wildlife as well as non-substantive and other minor changes to the existing Plan. In recent months, the Bureau has been working with the Los Angeles Regional Water Quality Control Board and the United States Environmental Protection Agency on the development of Total Maximum Daily Loads (TMDLs) for the Los Angeles and Long Beach Harbors. The Harbors TMDL is the first regulatory program to incorporate the recently approved sediment quality objectives (SQOs) for direct effects. Based on this experience, the Bureau is providing the following technical comments that focus on the implementation aspects of the SQOs.

- 1. The objectives for resident finfish and wildlife should be based on the same rigorous development process as the aquatic life objectives originally established in the Part 1 SQOs and the indirect effects (human health) objectives currently under development.**

Recognizing that efforts to develop additional sediment quality objectives were recently redirected to focus on objectives for resident finfish and wildlife, and that there is a court ordered deadline that the State Water Resources Control Board (State Board) must meet, these objectives have not undergone the same rigorous development process as the aquatic life (direct effects) objectives and the human health (indirect effects) objectives currently under development. While implementation procedures for the proposed objectives are included, the requirement to conduct an ecological risk assessment is not as clearly defined or prescriptive as the implementation procedures developed for the other sediment quality objectives. This lack of specificity will result in inconsistencies in the implementation of these objectives throughout the State, counter to the intent of the proposed amendments as stated in the Draft Staff Report.



Development of robust objectives for finfish and wildlife were originally planned to constitute Phase III of the SQOs, pending available resources (See Resolution No. 2008-0070). Given that these objectives will be implemented in regulatory programs such as TMDLs, investing in robust, rigorous, and prescriptive implementation procedures will provide the necessary technical basis to support protection of beneficial uses through the implementation of these objectives.

**Requested Action:** *In the Resolution adopting the proposed amendments to the Part 1 SQOs, include language that commits to the development of a more prescriptive framework for the implementation of these objectives. Suggested language below is based upon the language in Resolution 2008-0070:*

*"The State Water Board recognizes this effort is an iterative process. Staff additionally have initiated a second phase of the sediment quality objectives program (Phase 2), which includes extensive sediment sampling in the Delta; further development of the estuarine chemistry, sediment toxicity, and benthic community indicators; and completion of a more prescriptive framework to address human health and exposure to contaminants in fish tissue. The tools, indicators, and framework developed under Phase 2 will be adopted into the draft plan in 2011. Additionally, Staff will initiate development of a more prescriptive framework to address finfish and wildlife exposure to contaminants in sediment (Phase 3). The tools, indicators, and framework developed under Phase 3 will be adopted into the Plan in 2013."*

**2. The Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (State Listing Policy) must be revised in order to be consistent with the Part 1 SQOs.**

There are inconsistencies between the State Listing Policy and the existing sediment quality objectives in Part 1 as well as the proposed amendments to Part 1. Such inconsistencies include, but are not limited to, Sections 3.6, 3.8, 3.9, 6.1.3, 6.1.5.8 of the Listing Policy. These inconsistencies create confusion in the regulatory framework, particularly in 303(d) listing and delisting decisions and the development and establishment of TMDLs.

The importance of amending the 303(d) listing policy was noted by the State Board in the Resolution that adopted the Part 1 SQOs (Resolution 2008-0070) which states:

*"The State Water Board's Clean Water Act section 303(d) listing policy was adopted prior to the development of SQOs and without the benefit of the scientific evidence supporting their development. The State Water Board recognizes the need to ensure that the listing policy and this plan are consistent. The State Water Board will, therefore, consider amending the 303(d) listing policy in the future to ensure consistency with this plan."*

The Part 1 SQOs (both the existing and proposed objectives) establish objectives that address sediment chemistry, sediment toxicity, benthic community health, wildlife, and finfish. The State Listing Policy approach to these issues is now outdated. Per the Clean Water Act, identifying waters as impaired and thus requiring the development of TMDLs is predicated upon a determination that waters do not meet applicable *water quality standards*, as noted in the Resolution that adopted the State Listing Policy (Resolution No. 2004-0063):

*"Section 303(d)(1) of the federal Clean Water Act (CWA) requires states to identify waters that do not meet applicable water quality standards with technology-based controls alone and prioritize such waters for the purposes of developing Total Maximum Daily Loads (TMDLs) [40 Code of Federal Regulations (CFR) 130.7(b)]"*

Resolution 2008-0070 also directed State Board staff to initiate appropriate proceedings to amend the State Listing Policy by February 2009. The amendments to the Listing Policy are therefore two years

Chris Beegan  
March 15, 2011  
Page 3

past due. As these inconsistencies continue in the regulatory framework, it will become increasingly more difficult for regulators and the regulated community to identify the State's intent on defining what constitutes the protection of beneficial uses. As there are numerous TMDLs currently being reevaluated and developed that address sediment quality issues, time is of the essence for the State Board to consider the necessary amendments to the Listing Policy. The Bureau is available willing to assist State Board staff in this effort.

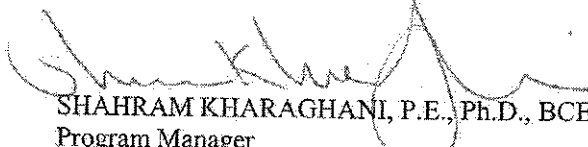
***Requested Action:*** *In the Resolution adopting the proposed amendments to the Part 1 SQOs, include language that commits to the development of amendments of the State Listing Policy to ensure consistency between the Listing Policy and the Part 1 SQOs. Suggested language is based upon Resolution 2008-0070:*

*As stated in Resolution 2008-0070, the State Water Board's Clean Water Act section 303(d) listing policy was adopted prior to the development of SQOs and without the benefit of the scientific evidence supporting their development. The State Water Board recognizes the need to ensure that the listing policy and this plan are consistent. The State Water Board will, therefore, initiate development of amendments to the 303(d) listing policy to ensure consistency with this plan. Amendments to the 303(d) listing policy will be considered for adoption in 2011.*

The Bureau appreciates State Board efforts on these SQOs, and looks forward to working with the State Board on the SQOs and related issues.

Thank you for your consideration of these technical comments. If there any questions, please feel free to call Donna Toy-Chen at (213) 485-3928.

Sincerely,

  
SHAHRAM KHARAGHANI, P.E., Ph.D., BCEE  
Program Manager

ECZ:SK:DT:LC  
WPDCR 8832

- c: Renee Purdy, California Regional Water Quality Control Board – Los Angeles Region  
Enrique Zaldivar, Bureau of Sanitation/EXEC  
Traci Minamide, Bureau of Sanitation/EXEC  
Varouj S Abkian, Bureau of Sanitation/EXEC  
Adel Hagekhalil, Bureau of Sanitation/EXEC  
Alex Helou, Bureau of Sanitation/EXEC  
Shahram Kharaghani, Bureau of Sanitation/WPD  
Donna Chen, Bureau of Sanitation/WPD  
Mas Dojiri, Bureau of Sanitation/EMD  
Omar Moghaddam, Bureau of Sanitation/RAD  
Hassan Rad, Bureau of Sanitation/RAD