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Attached are the Corps' comments on the listing policy in so far as it relates to the use of Sediment Quality Guidelines (SQG).

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February 11, 2004

Craig J. Wilson, Chief
Monitoring and TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Mr. Wilson:

**COMMENTS ON THE WATER QUALITY CONTROL POLICY FOR DEVELOPING
CALIFORNIA'S CLEAN WATER ACT SECTION 303(d) LIST**

The Bureau of Sanitation, City of Los Angeles (City) appreciates the opportunity to comment on the State Water Resources Control Board's (SWRCB) draft of the Water Quality Control Policy for Developing California's Clean Water Act §303(d) List of impaired waterbodies (Listing Policy). The waterbodies of the region are significant resources, and their protection and preservation are a high priority for the City. As such, cleanup of impaired waterbodies is an important issue, and the City is committed to supporting the State Water Resources Control Board and our Regional Water Quality Control Board (RWQCB) in their efforts to improve the quality of our waterways.

The City submitted comments on the 2002 §303(d) list at a SWRCB hearing in November 2002. Those comments contained recommendations that can be applied to the Listing Policy. Some of the comments were addressed in the first draft of the Listing Policy, released in July 2003. However, the second draft of the Listing Policy (December 2003) has major changes, and, upon review, the City has the following comments:

1. Structure of the Lists

a. Restore the Planning and Monitoring Lists to the Listing Policy:

One of the recommendations by the National Academy of Sciences (NAS) was to have a "Preliminary List" for waterbodies with insufficient data, which would include waterbodies prioritized for increased monitoring to verify impairment or non-impairment status. In various

stakeholder meetings up through July 2003, SWRCB staff has acknowledged the importance of this NAS recommendation by proposing Planning and Monitoring Lists for waterbodies with insufficient data to determine if they are, in fact, impaired and must therefore be included on the 303(d) list. However, in the latest draft of the Listing Policy, the Planning and Monitoring Lists were discarded. The City disagrees with this change and recommends that the Planning and Monitoring Lists be restored to the Policy, preferably by combining the Lists into one Preliminary List.

The U.S. EPA also supports the NAS recommendations in the Integrated Water Quality Monitoring and Assessment Report Guidances for the 2002 and 2004 listing cycles. The NAS watch list has been implemented in the past in other states, e.g., Florida. The City has also voiced support of this concept in the past when commenting on the 2002 §303(d) list.

City staff suspects that the Planning and Monitoring Lists were deleted in this latest draft due to concerns raised by some stakeholders that the cleanup of waterbodies might be forestalled or otherwise delayed while they are on the Planning or Monitoring List. In order to ensure that waterbodies included on such as list be evaluated in a timely manner, the City suggests that the inclusion of a Preliminary List be accompanied by further discussion to address the following implementation issues:

1. How long can a waterbody remain on the Planning or Monitoring List?
2. What should be done with the waterbody if the allowed duration on the Preliminary List has passed?
3. How many samples must be collected from each waterbody on a Preliminary List before the next listing cycle?

b. Separate the Alternative Enforceable Programs List from the §303(d) List:

In the December 2003 draft of the Listing Policy, the SWRCB proposes to make the Alternative Enforceable Programs List a subset of the §303(d) list instead of being a separate list, as proposed in the past. The City recommends that the two lists be separated, provided: 1) that the enforceable programs have shown evidence of success; and, 2) cleanup using a given enforcement program will result in achieving standards by the next listing cycle, as required by federal regulations. Separation from the §303(d) List acknowledges that alternative programs are an acceptable way to address impaired waters in a timely manner, without the need to devote additional resources to TMDL development.

2. Require a Review of Prior Listings Based on the Elements Specified in the Policy:

Some listing decisions in the past have been made with an insufficient number of samples or information. In addition, some listings were based on subjective information, without support from numerical, statistically significant amounts of data. Old listings often did not have a written rationale, and therefore no transparency in the listing process. Essential reports were often missing, with only photocopies of spreadsheets without quality assurance documentation on file. For these reasons, the City recommends that old listings be reviewed, using the Listing Policy as guidance, to provide transparency to the listing process. Although we recognize

resource limitations of the SWRCB and RWQCBs, this review should be done in some reasonable time frame, e.g., three listing cycles, as presented in the previous draft of the Listing Policy. Agencies and the concerned public can help provide assistance in prioritizing the review process. In light of current resource problems, it has been suggested that an application process can be instituted, so that the waterbodies of greatest concern can be addressed first. The City supports this approach. One of the consensus items of the AB982 Public Advisory Group, which provided input to the development of this Listing Policy, was to improve transparency to the listing process. A review of the older listings would be an important step in the right direction.

3. Promulgate the Guidance Documents used to Provide Numeric Criteria for Listing:

In past listing cycles, RWQCBs throughout the State made listing decisions based on numeric values from peer-reviewed guidance in lieu of standards or water quality objectives. This has been done in other States, as well. However, the use of guidelines that have not been reviewed by affected stakeholders and the general public raises questions about the applicability of such standards to specific regions and special conditions or characteristics of waterbodies. The City, therefore, recommends that only guidances approved and referenced by Basin Plan amendments be used in making listing decisions. Such guidances would thus be subject to the public review and comment process, ensuring that guidances are applicable to our waterbodies. Promulgation helps with planning; cities know the requirements for cleanup of waterbodies in advance, and can budget resources for the future without concern of being blindsided by new studies referenced at each listing cycle. Promulgation and documentation of numeric guidelines in Basin Plans ensures transparency of the listing process.

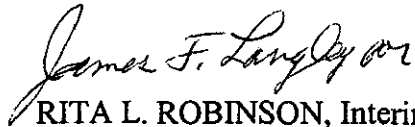
4. Associate Pollutants to a Waterbody Prior to TMDL Development:

The City agrees and supports the provision in the proposed Listing Policy that a pollutant must be identified prior to TMDL development. TMDLs cannot be done without load or wasteload allocations unless a pollutant is identified. Therefore, studies may be necessary, such as a toxicity identification/evaluation (TIE), to identify pollutants prior to TMDL development if numeric exceedances of criteria are not readily evident. Identification of pollutants also applies to subjective lines of evidence, such as algae observations. The City also agrees with the Policy that listing decisions will not be made using subjective observations as the sole line of evidence. Pollutant identification studies ensure that listings are correct, and allow the public to distinguish waters requiring TMDLs from other impaired waterbodies that do not require TMDLs.

Mr. Craig J. Wilson
February 11, 2004
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The City appreciates and thanks the SWRCB and its staff for the effort they have put forth in drafting the 303(d) Listing Policy and addressing previous issues that have been raised. Thank you for the opportunity to submit comments. If there are any questions, please call Ms. Donna Toy-Chen, TMDL Section Manager, at (213) 473-8567, or her staff lead for 303(d) listing, Mr. Clayton Yoshida, Senior Chemist, at (213) 473-8569.

Sincerely,



RITA L. ROBINSON, Interim Director
Bureau of Sanitation

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