

February 17, 2004

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

SUBJECT: Comments on *Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List*

Dear Mr. Wilson:

The City of San Jose (City) would like to thank you for the opportunity to submit comments on the State Water Resources Control Board's (SWRCB's) December 2, 2003 *Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* (303(d) Listing Policy) on behalf of the San José/Santa Clara Water Pollution Control Plant (Plant) and the City of San José Urban Runoff Program.

The Plant provides wastewater treatment services to the cities of San José and Santa Clara, and other cities and agencies within the tributary area. These include the City of Milpitas, West Valley Sanitary District (Cities of Campbell, Los Gatos, Monte Sereno and Saratoga), Burbank Sanitary District, Cupertino Sanitary District (City of Cupertino), Sunol Sanitary District, and Country Sanitation Districts #2 and #3. The Plant service area includes approximately 1.4 million residents and over 16,000 businesses in Silicon Valley.

The City strongly supports the efforts of the SWRCB to update the 303(d) Listing Policy. In particular, the City supports the use of standardized guidelines that follow appropriate scientific/statistical approaches, particularly the requirement for data validation and requirements for data quality and quantity. However, there are proposed policy changes that are of concern to the City. The December draft policy removed the alternative Planning and Monitoring lists which would have allowed a regulatory approach to dealing with water quality issues that did not fit well into the 303(d) impaired waters regulatory scheme. It is our position that the 303(d) list should include only waterbodies where impairment is shown by statistically valid data. The City strongly believes that 303(d) should not be used as an all-inclusive list of all "potentially" impaired waterbodies, and that TMDLs should not be used as the only mechanism to address water quality/impairment issues. More detailed comments are included below.

Planning/Monitoring List

The City strongly objects to the removal of a planning and monitoring list where sufficient data is not available to make an initial determination of impairment, or impairment is found to be unlikely based on an impairment assessment, yet some level of uncertainty may still remain. In these cases, continued monitoring and data collection without formally listing is the only supportable course of action. Further, it is a more responsible use of limited public funds to continue regional monitoring and collect adequate, defensible data before embarking on the more costly TMDL process and its associated implementation costs. One example where continued monitoring may be appropriate is the collection of additional information for legacy pollutants where limited data indicates that levels of the pollutant are already declining, and no new sources exist. The appropriate use of a monitoring list maintains emphasis on the contaminant issue, while allowing limited resources to be properly directed to activities for already listed constituents, while collecting the necessary information to verify impairment issues.

Recommendation: Reinstate the Planning/Monitoring Lists.

Listing Guidance

Statistical Approach: The City strongly supports the use of a standardized statistical approach for data analyses as well as a requirement to clearly document the weight of evidence that is needed to list and de-list a waterbody. Historic listings have at times been made with less than adequate documentation of an actual impairment.

The City also agrees with the proposed policy change that recommends that documentation of impairment must address natural source(s) of a pollutant and explain where human causes can be ruled out as the cause of the water quality limited segment. Listing is not required if exceedances of water quality standards are due to natural causes.

Recommendation: Keep language as proposed.

Listing Based on Trends: Section 3.1.10, uses trends as a mechanism to address antidegradation and specifies various factors that would be considered when assessing trends in water quality. The suggested factors are reasonable, however this section does not specify how much data is required to establish a baseline or how much data should be used to evaluate the trend. Current Regional Monitoring Program (RMP) efforts in the Bay Area have two sampling events per year. The six sampling events that would occur over the three-year period that this section mentions as the minimum amount of data necessary would not be adequate to establish a statistical trend.

Recommendation: Establish a minimum number of samples or a statistical confidence level that must be established before setting a baseline or establishing a trend prior to listing.

Toxicity Identification Evaluation (TIE) Procedure: The TIE procedure is mentioned on page A-5, (C) as an evaluation that identifies the pollutant that contributed to, or caused an observed impact. TIE investigations can lead to conclusions that are incomplete or misleading (e.g. "Causes of Sediment Toxicity to *Mytilus galloprovincialis* in San Francisco Bay California" by Phillips, B.M., B.S., Anderson, J.W. Hunt; B. Thompson, S. Lowe, R. Hoenicke, and R. Tjeerdema). Though copper was implicated in the reported findings, the toxicity in 3 samples was only partially removed by typical copper amelioration techniques. Also, the report concluded that 0.12 ug/L copper was potentially acting synergistically to cause toxicity even though mean oceanic concentrations of copper in the North Pacific Ocean (trace levels) have been reported at 150 ng/kg (approx. 0.15 ug/L). The TIE procedure is only a broad screening tool. Chemical specific data must also be present to verify the source of toxicity conclusively. Pollutants should be positively identified using statistical testing of biological endpoints that can be compared to chemical specific data (EPA criterion or other) for the pollutant believed to be the source of the toxicity.

Recommendation: The results from TIE testing should only be used to develop a more definitive test procedure to confirm the suggested toxicant prior to the development of a TMDL.

Evaluation of Narrative Water Quality Objectives Using Numerical Evaluation Guidelines (section 6.2.3): The Draft Policy allows for the use of numerical evaluation guidelines to evaluate narrative water quality objectives for the protection of beneficial uses. The Policy states, "the guidelines are not water quality objectives and should only be used for the purpose of developing the section 303(d) list." If needed, the guidelines should be an integral part of narrative-to-numerical criteria translators and part of adopting numeric water quality objectives in accordance with Sections 13241 and 13242 of the Water Code prior to 303(d) listing.

Recommendation: Incorporate the "evaluation guidelines" as the initial step of the narrative-to-numerical criteria translator and adopt numeric water quality objectives prior to a finding of impairment and listing. The guidelines should be an integral part of the water quality standard itself and should not be used as separate guidance after water quality standards are adopted since the narrative meaning of the standard may be subject to change.

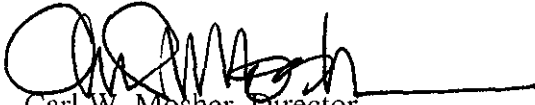
Review of Water Quality Standards: The proposed policy places the review of water quality standards at the time of TMDL development but only in limited circumstances. The City strongly recommends that a review of the applicability of a water quality standard be made part of all TMDL development. The South Bay was listed for copper and nickel and the City funded over \$2.5 million dollars of monitoring and special studies that indicated that the objective was overly protective and needed to be revised; a TMDL was not necessary.

Recommendation: Require that water quality objectives be reviewed for applicability as part of any TMDL development process.

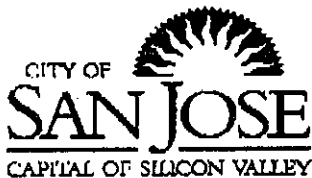
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In addition to submitting these comments, the City of San Jose also joins in and incorporates by reference herein comments that have been submitted on the Draft Water Quality Control Policy for 303(d) List by Tri-TAC and the California Association of Sanitation Agencies (CASA). If you have any questions, please contact Dan Bruinsma at 408-277-2993.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl W. Mosher', with a horizontal line extending to the right.

Carl W. Mosher, Director
Environmental Services Department



FL #22
REC'D
2/17/04

Environmental Services Department

DIRECTOR'S OFFICE

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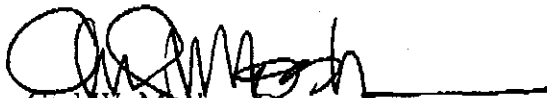
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02/17/2004 10:02:00 FAX 408/277-2993 ENVIRONMENTAL SERVICES
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Sincerely,



Carl W. Mosher, Director
Environmental Services Department



Environmental Services Department

777 North First St., Ste. 300 • San José, CA 95112 • (408) 277-5533 • Fax: (408) 277-3606

Fax

To: Craig J. Wilson	From: Carl Mosher, Director ESD
Fax: 916-341-5550	Pages: 5
Phone: 916-341-5560	Date: 2/17/2004
Re: San José 303(d) List Comments	CC:

Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:** Attached are the City of San José's comments on the Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List.