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February 18, 2004

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

Subject: Water Quality Control Policy for Developing California's Clean Water
Act Section 303(d) List, December 2003 Draft

Dear Mr. Wilson:

The City of Sacramento Stormwater Program supports the State Board's efforts to establish standard protocols for the 303(d) listing process. A standardized approach will help the state meet its obligations to protect and improve impaired waters in a reasonable and cost-effective way.

We also support the efforts by the State Board staff to establish a technically-sound set of criteria as the foundation of those standard protocols. This is essential in deriving a listing policy that will result in scientifically-supportable listings of impaired waters.

It is very important for the state's 303(d) listings to be scientifically-supportable, because such listing leads to a requirement to develop TMDLs. The TMDL process involves a substantial commitment of resources from the state's regulatory agencies, regulated entities, and citizenry, and should only be undertaken where there is demonstrated due cause, and where the process will result in meaningful improvement in water quality.

There are several major concerns with the December 3, 2003 draft policy.

1. The revised draft policy appears to have abandoned the concept of an Integrated Water Quality Report consistent with the 2001 EPA memorandum that provided guidance for



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integrating the development and submission of Section 305(b) water quality reports and Section 303(d) lists of impaired waters.

In September The California Stormwater Quality Association (CASQA) sent a letter to you commending the SWRCB and its staff for developing a well thought-out standardized process for complying with the reporting and listing requirements of Sections 303(d) and 305(b) of the Federal Clean Water Act. The commendation was based on the July 2003 draft that built on the effort expended on developing the 2002 Revisions to the Clean Water Act Section 303(d) List of Water Quality Limited Segments and the lessons learned during the development of that list. The process employed in developing the 2002 list was a vast improvement over the processes used in the past.

The use of multiple assessment categories in the July Draft Water Control Policy was consistent with EPA guidance and would have provided a much needed mechanism for focusing appropriate resources and attention on the State's waters. Because resources are limited, cost-effective means must be used to address standards that are not met.

2. Two previously separate lists have been included as centerpieces of the 303(d) list. The 2002 listing process included separate TMDLs Completed and Alternative Enforceable Program Lists. Maintenance of these separate lists was provided for in the July draft. Now, they have been included as categories of the 303(d) list. This is contrary to 40 CFR 130.7, which requires that the "process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads..." Section 130.7(b)(1) specifies that "Each State shall identify those water quality-limited segments still requiring TMDLs within its boundaries."

Clearly, once a TMDL has been developed and approved by the U.S. Environmental Protection Agency, development of a new TMDL is no longer needed. Likewise, if alternative enforceable programs consistent with 40 CFR 130.7 (b)(i), (ii), and (iii) have been identified, a TMDL is not needed. Including the TMDLs Completed List and the Alternative Enforceable Programs List may give the environmental community more leverage, but it is not required by either State or Federal regulations and is poor public policy. CASQA asks that you remove the TMDLs Completed category and the Enforceable Program category from the 303(d) List and maintain them as separate lists.

3. The draft policy does not correct a significant flaw in the 2002 303(d) list. That list contains many impairments for which specific pollutants have not been identified. 40 CFR 130.7(a) requires that the process for identifying water quality limited segments still requiring TMDLs include a list of pollutants to be regulated. Somehow the California list has been transformed into a list of impaired waters instead of a list of water quality limited segments still requiring TMDLs.

Inclusion of a water segment on the 303(d) list requires that one or more TMDL be prepared for that segment. However, it is not possible to allocate loads or wasteloads unless specific pollutants have been identified. There are hundreds of listings on the 2002

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303(d) list for which no specific pollutant has been identified. Some of these listings are for conditions, some are for groups of pollutants, and others are for indicators. These listings should be removed from the 303(d) list and placed on a separate list so that specific pollutants can be identified. In our letter of September 12, 2002 to Craig Wilson we suggested a Pollution List as a way of solving this problem. Such a list would correspond to category 4C in the USEPA guidance.

4. Several of the proposed listing factors would facilitate continuation of the problem of water segments being listed without pollutants being identified. For instance, a health advisory (Listing factor 3.1.4) is only an indicator of an impairment unless a pollutant is identified. Also, Section 3.1.6 specifically says that a water segment may be listed for toxicity alone, without a pollutant being identified. Such a segment should not be on the 303(d) list until a pollutant has been identified. In addition, listing factors 3.1.7 (Nuisance), 3.1.8 (Adverse Biological Response), 3.1.9 (Degradation of Biological Populations and Communities), and 3.1.10 (Trends in Water Quality) are more appropriate as listing factors for the 305(b) list than the 303(d) list unless pollutants are identified. Furthermore, listing factor 3.1.11 should be deleted. It will only encourage attempts to list water segments even though no specific pollutants have been identified. That is how our list has grown so large with many segments listed even though pollutants have not been identified.
5. Section 6.1 eliminates the commitment to re-evaluate each water body and pollutant combination on the 2002 303(d) list. The re-evaluation specified in the July draft could have taken as long as three listing cycles, but at least there was a commitment to re-evaluate existing listings. Without such a re-evaluation, many of the legacy listings will become even more questionable.

We also question the aggregation of Data by Reach/Area in Section 6.2.5.6. This section says that, "*Data related to the same pollutant from two or more adjoining segments shall be combined provided that there is at least one measurement above the applicable water quality objective in each segment of the water body. The pooled data shall be analyzed together.*" This appears to mean that if Reach A has the minimum number of required samples and meets a criterion for listing, then reaches B, C, etc. could all be listed if just one sample meets the criterion, through pooling with the Reach A data. This is in conflict with the letter and spirit of the carefully-crafted technical basis for listing laid out in the policy.

7. Per Section 3.1.3 of the revised draft Listing Policy, percentage exceedances are used to establish listing for recreational uses. The language in this section should be clarified to apply specifically to contact recreation. Using existing freshwater beach monitoring data may not be appropriate if the sampling protocol does not adequately represent spatial and temporal variability. Freshwater beach postings should be used as a screening tool only, unless the data are obtained from a monitoring program conducted using a representative sampling protocol.

Impacts on contact recreation uses in freshwater should be evaluated in the context of seasonal and site-specific variation in actual use patterns. For example, freshwater contact recreation is very rare in Sacramento area beaches during cold weather and rainfall events, and during those times contact recreation should not be considered a beneficial use that could be impacted.

Latitude should be allowed to consider actual pathogen data for the receiving water, if it exists, to support either listing or delisting, especially when the exceedance frequency is close to 10%.

8. Sections 3.1.10 and 3.1.11, dealing with Trends in Water Quality and Alternate Data Evaluation, will create loopholes for listing of waters without sufficient data or technical basis.

Miscellaneous clarifications needed

We also request clarification of the following language in the revised draft policy:

- The language regarding use of data older than ten years (Section 6.1) -- the concern here is that listings originally based on such data may have had inadequate scientific basis, and/or may not reflect current conditions and hence may no longer be valid for the water body in question;
- The reference to "photographic documentation" in the last paragraph of Section 6.2.4, as such is not mentioned previously (appears to be an inadvertent holdover from the previous draft policy);
- Descriptions of Spatial Representation (Section 6.2.5.3) and Temporal Representation (Section 6.2.5.4), as the technical meaning of these sections is unclear;
- Section 6.2.5.5, which references the "planning list" (apparent holdover from previous draft).

Thank you for your consideration of these comments.

Sincerely,


Bill Busath, Stormwater Program Manager

cc Maria Solis
Dave Brent