

Construction Industry Coalition on Water Quality

February 18, 2004

SENT VIA: *US Mail*
Fax- (916) 341-5550

Craig J. Wilson, Chief
TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
PO 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:

On behalf of the more than 3,300 member companies of the Construction Industry Coalition on Water Quality (CICWQ), we would like to thank the State Water Resources Control Board (State Board) for this opportunity to comment on the Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Draft Policy).

CICWQ is comprised of the four major construction and building industry trade associations in Southern California. These include the Associated General Contractors of California (AGC), the Building Industry Association of Southern California (BIA/SC), the Engineering Contractors Association (ECA) and the Southern California Contractors Association (SCCA). These organizations work collectively to provide the necessary infrastructure and support for the region's business and residential needs.

The membership of CICWQ is comprised of construction contractors, labor unions, landowners, developers, and homebuilders throughout the region and state. All segments of the coalition are potentially impacted by the Draft Policy, including construction employees who rely on jobs in the State, landowners within the State's boundary and potential builders attempting to satisfy the ever-growing demand for housing.

CICWQ is very supportive of the State Board's efforts to develop new ways for improving our quality of life through improved water quality. We strongly support the State Board's goal of establishing a standardized approach for assigning water bodies to the state's 303(d) list. We endorse the inclusion of requirements for data quality and quantity, requirements for consistent and statistically valid data evaluations, and implementation provisions. However, the building and construction industries want to ensure that these efforts are practical, achievable and effective. Therefore, we ask that you consider the following comments on the Draft Policy and



that you work with CICWQ to find solutions that will protect jobs, housing and water quality for the residents in our region.

1. We strongly support the inclusion of a "planning/monitoring" list. The Draft Dec. 2003 Listing Policy removed the "planning/monitoring" list, which was in the original July draft policy. A planning list is important for:

- Cases where the impairments are undetermined (e.g., unknown toxicity)
- Cases where data are insufficient to determine if impairment exists
- Cases where water quality standards may be inappropriate

Water bodies on the planning list would need to be further studied before being placed on the 303(d) list if impaired or de-listed if not impaired. Use of a planning list has been strongly recommended by the National Academy of Sciences (NAS) in its report to Congress and would avoid inappropriate listings, unnecessary TMDLs, and unwise use of resources.

2. We are concerned with provisions in the draft policy that would allow listings based on "pooled data." As currently written, a segment of a water body could be placed on the 303(d) list if only one sample from that segment exceeded water quality criteria and if samples in adjacent segments exceeded criteria. We request that the draft policy be amended so that each water segment is required to be evaluated independently.

3. We recommend that the Board require re-evaluation of each water body identified on previous 303(d) lists. Many listings made on the 1998 and 2002 303(d) lists may be inappropriate because of:

- Inadequate data quantity or quality
- Evidence that natural sources have caused or contributed to the impairment
- Water quality standards upon which listings are based are inappropriate

To ensure that TMDLs are conducted where appropriate and necessary, we request that the Board require a re-evaluation of each water body identified on the 2002 303(d) list. This recommendation is consistent with the July 2003 draft policy and assists in prioritizing scarce state resources.

4. We are concerned that two sections of the draft policy (*Trends in Water Quality* and *Alternate Data Evaluation*) create loopholes for listing water bodies that are not based on sound data quality and quantity requirements and statistically valid data evaluations. For example, trends in water quality may be linked to hydrologic conditions (e.g., drought) rather than increases in pollutant loading or degradation of water quality conditions. We encourage the State Board to carefully address these concerns and develop a policy that ensures that objective methods are used to evaluate impairments and that 303(d) listings are both scientifically defensible and appropriate.

5. We are also very concerned that the Draft Policy would allow RWQCBs to make listing decisions utilizing sediment quality guidelines that have been developed in other jurisdictions (see Section 6.2.3, Item 1). California is currently in the process of developing sediment quality objectives (SQO), but a policy guidance document will probably not be available for review until August 2005. Expert scientific and advisory panels are assisting in the SQO development process. Also, sediment toxicity is heavily influenced by site-specific factors (e.g., organic carbon content, acid volatile sulfides, sediment grain size) and guidelines developed in other jurisdictions are not legally promulgated standards within California. Therefore, this approach is inappropriate and would not result in scientifically sound listing decisions. Thus, we request that the SWRCB modify the draft policy so that listing decisions be based upon actual measurements of sediment toxicity or upon properly adopted SQO.

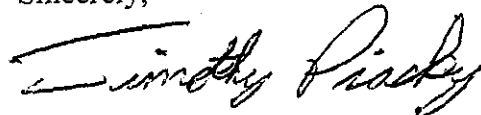
Conclusion:

We commend the State Board for addressing several important issues in the Draft Policy, however CICWQ respectfully requests that the State Board give further review to several issues, as outlined above, and make modifications that will assure that California achieves the highest standard of water quality protection consistent with state and federal legal requirements. CICWQ would be pleased to discuss these issues in greater detail at any time and assist State Board staff with making any of the recommended modifications.

We are confident that, by working together, CICWQ can assist you in achieving balance that will greatly improve water quality while also meeting our other State obligations and needs. We thank you for your consideration of our comments.

If you have any questions, please call me at (909) 396-9993 x215.

Sincerely,



Timothy Piasky
Director of Environmental Affairs