

Item 9
405

Executive Advisory Committee Stormwater Program – County of Los Angeles

September 30, 2004

Arthur G. Baggett Jr., Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Changes and Comments Regarding the Final Policy of Developing California's Clean Water Act 303(d) List and Functional Equivalent Documents

Dear Mr. Baggett:

The Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Executive Advisory Committee (EAC) represents the interests of municipal permittees regulated under Los Angeles Regional Water Quality Control Board (LARWQCB) Order No. 01-182. The EAC provided comments at the February 5, 2004 workshop and in an August 25, 2004 letter. We appreciate having this opportunity to provide comments on recent changes to the California 303(d) Listing and De-listing Policy and the accompanying Functional Equivalent Documents (FED).

The Los Angeles County Permittees continue to appreciate the effort of Board Staff in attempting to standardize the listing and delisting process so that future lists may be more deliberate and focused on problems that warrant our shared correction efforts. While we disagree with some stakeholders on specific issues, this clarification document increases public confidence that the 303(d) listing process will not be undertaken in an arbitrary manner and contributes to reducing the tension associated with this divisive process.

1. Listing Criteria Review Prior to TMDL Development.

The EAC acknowledges the effort of Board Staff in addressing our comments, but there have been obvious abuses of the past 303(d) listing process that have squandered millions of dollars in scarce public resources for successful delisting efforts; which necessarily implies that the original listing was unnecessary. Permittee comments have previously referenced listings and proposed TMDLs based on 1 "hit" in 200 negative samples. The EAC was just notified of a draft sediment toxicity TMDL, which is to be disseminated next week, that was apparently initiated based on 1 Striped Mullet collected in 1993. While the Board Staff can fairly reference resource limitations for not spending tens of thousands of dollars in validating anomalous data, the argument is hollowed by forcing the Permittees to expend orders of magnitude more public resources in correcting it.

2. Impaired Reach Designation.

The EAC appreciates that staff has reiterated, in its response to our comments, your intent that samples and listing be representative of the reach being designated. Unfortunately, we believe that the draft Los Angeles River Metals TMDL does not share this intent, since many unlisted reaches were identified and loads allocated without impairment data

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A clear statement reiterating your intent in this focal policy document would contribute to avoiding future misunderstandings. Similar misunderstanding and loss of intentions have contributed to the diminishing trust between agencies, which out of necessity should be working together and contributing to a common set of water quality objectives.

3. Reconstitute the July Draft Unbiased Binomial Distribution.

Unless a positive sample value can be consistently replicated (from the same sample) or is significantly above the detection limit, two hits in 24 samples remains overly protective. In many cases, CTR values push, or even exceed, the limits of analytical chemistry. Artifacts of sampling, analytical, calibration, matrix interference, and even statistical bias influence results. This has been demonstrated repeatedly in confirmation and reproducibility quality assessments and most environmental professionals have experience with ir-replicable positives. Replicates of bacterial analyses in particular are notoriously ir-replicable and we are still assessing the impact of recreation on water quality. Data collected for the Rio Hondo Watershed Management Plan indicated that bacteria in the upstream "reference" sites greatly exceeded bacterial objectives and was far and away more contaminated than downstream-urbanized reaches. While first negating the significance of this finding because of its proximity to a "swimming hole", the Plan then went on to advocate that more watershed reaches should be opened to recreational swimming. The EAC will shelve this challenging conundrum for another discussion, but the point remains that bacterial data is highly variable and subject to random biological events from small children and other wild animals.

4. Listings Must Connect Conditions to a Specific Pollutant and Source.

Again the EAC appreciates the attempt by Board Staff to address our prior comments on this issue, however just because regulations allow a TMDL to be based on toxicity, it does not imply that they should be based on toxicity. In some local waters (Ballona Creek) efforts to control uncharacterized toxicity endpoints will dilute or inhibit efforts to address clearly identified and overlapping challenges such as legacy pesticides and metals. If metals or pesticides are the source of toxicity, that is where our efforts should be focused, not on chasing specters hiding among clearly definable objectives.

As with prior opportunities for comment, the EAC and local MS4 permittees appreciate this opportunity to provide input on the 303(d) listing delisting policy. If you wish to discuss this issues raised in this comment letter, or seek the further input from the EAC in assisting your Board with developing a more cooperative policy, please feel free to contact me at 562-904-7102.

Sincerely,



Desi Alvarez, P.E.

Chair, Executive Advisory Committee