



Public Informational Document

AMENDMENT TO THE WATER QUALITY CONTROL POLICY FOR DEVELOPING CALIFORNIA'S CLEAN WATER ACT SECTION 303(d) LIST

The goal of the Clean Water Act is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C § 1251(a).) Pursuant to Clean Water Act sections 303(d) and 305(b) (33 U.S.C. §§ 1313(d) and 1315(b)), states are required to report to the U.S. Environmental Protection Agency (U.S. EPA) on the overall quality of the waters of the United States within their state. The "303(d) List" is referred to as the list of a state's impaired waters, or those waters that do not meet applicable water quality standards after the application of certain technology-based controls. States are required to include a priority ranking of such waters, taking into account the severity of the pollution and the uses to be made of such waters, including waters targeted for the development of Total Maximum Daily Loads (TMDLs). The "305(b) Report" is the mechanism by which states report on the health of all the waters of the United States, not just those that are impaired. The U.S. EPA encourages states to combine the 303(d) List and the 305(b) Report, referred to in California as the "Integrated Report." States are required to submit their 303(d) Lists and 305(b) Reports every two years (the listing cycle). (40 C.F.R. § 130.7(d).) The State Water Resources Control Board (State Water Board) administers this portion of the Clean Water Act for the State of California.

On September 30, 2004, by [Resolution No. 2004-0063](#), the State Water Board adopted the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy). The Listing Policy describes the process by which the State Water Board and the nine Regional Water Quality Control Boards (Regional Water Boards) comply with the listing requirements of Clean Water Act section 303(d) and establishes a standard process to develop the list.

Currently, the Listing Policy requires the following two-step board review and approval process for the development of the 303(d) List:

First, the State Water Board and Regional Water Boards solicit all readily available data and information on the quality of surface waters of the State. (Listing Policy, section 6.1.1.) The Regional Water Boards must assemble and evaluate all information submitted, regardless of the manner in which the information is compiled or submitted. (Listing Policy, section 6.1.2.1.) The Regional Water Boards prepare a fact sheet for each water and pollutant combination that is proposed to be included or removed from the 303(d) List. The fact sheets must describe the lines of evidence and use the weight of the evidence approach to evaluate water quality standards attainment. (Listing Policy, section 6.1.2.2.) The Regional Water Boards consider each proposed list change as documented in the water body fact sheets, after providing advance notice and opportunity for the public to comment, and provide written responses to those comments. After consideration of all testimony, the Regional Water Boards approve their recommended listing decisions and submit all documentation of the hearing process and water body fact sheets to the State Water Board. (Listing Policy, section 6.2.)

Next, the Listing Policy requires the State Water Board to evaluate each of the Regional Water Board's fact sheets for completeness and consistency with the Listing Policy and applicable law and consolidate all the Regional Water Boards' lists into a statewide list. Before the State Water Board considers its recommended statewide list, it is required to hold a public workshop, provide advance notice and opportunity for public comment, and review specific listings timely requested for review. The State Water Board submits its recommended 303(d) List and supporting fact sheets to U.S. EPA for approval as required by the Clean Water Act. (Listing Policy, Section 6.3.)

Since 2004, advancements in technology and monitoring programs have significantly increased the amount of data and information on the quality or condition of surface waters submitted to the State Water Board and the Regional Water Boards for listing assessment. Consideration of the extensive and voluminous data and information submitted to the Regional Water Boards would require time and resources far in excess of those available to the Regional Water Boards to fulfill the Listing Policy's protocols within a listing cycle. Consequently, the State Water Board has been unable to submit 303(d) Lists to U.S. EPA every two years for all of California's surface waters. As a result, State Water Board staff proposes to amend the Listing Policy to create a more efficient and successful process for timely submission of the Integrated Report.

The proposed revisions to the Listing Policy include four significant process changes:

First, modify the definition for "readily available information" to mean all information submitted to the California Environmental Data Exchange Network (CEDEN), a website location (www.ceden.org) for sharing and collecting information about the State's waterbodies. If CEDEN cannot accept a particular subset of data, the notice of solicitation will detail the submittal requirements.

Second, clarify that the State Water Board List need not include assessments from all regions as part of every listing cycle. At the beginning of each listing cycle, the State Water Board shall identify, in its notice of solicitation, which Regional Water Boards shall make listing recommendations for that cycle. Regional Water Boards which are "off cycle" may nevertheless make recommended listing changes for high priority data. The U.S. EPA has indicated support for this approach.

Third, add that the State Water Board shall have discretion to administer a Regional Water Board's assessment, evaluation, and listing recommendation process and approval on behalf of that region. This process would occur in cases where a certain region is not or cannot complete their regional integrated report in a timely manner. Having the Regional Water Board staff perform the assessment, evaluation, and listing recommendations is the preferred process due to regional staff knowledge of local waterbodies and Basin Plan objectives.

Fourth, add that after the State Water Board staff consolidates the Regional Water Board list recommendations, the State Water Board Executive Director has the discretion and authority to finalize the proposed 303(d) List and submit it directly to U.S. EPA. The Executive Director shall provide the public with notice of the proposed approval and the opportunity to provide written comments to which the Executive Director shall provide written responses. Alternatively, at the Executive Director's discretion, the consolidated statewide list may be scheduled for a State Water Board meeting for its approval after advance notice to the public and an opportunity to comment is provided. The Executive Director and the State Water Board shall only consider changes to the waters that are timely requested for review (no later than 30 days after the Regional Water Board's approval) unless, at the election of the Executive Director or the State

Water Board other list recommendations are noticed for consideration and comment. The foregoing proposed changes to the Listing Policy involve changes to the process by which the 303(d) List is compiled, promote efficiencies in the manner in which data is solicited and assessed, and streamline the public participation and review process. The proposal will allow for more timely 303(d) List submittals by the State Water Board.

Additionally, the State Water Board adopted the Listing Policy prior to the development of sediment quality objectives. By [Resolution No. 2008-0070](#) (September 16, 2008), the State Water Board adopted the Water Quality Control Plan for Enclosed Bays and Estuaries—Part 1 Sediment Quality, which contains narrative sediment quality objectives to protect benthic communities and human health. In Resolution No. 2008-0700, the State Water Board acknowledged the need to ensure the Listing Policy is updated to be consistent with the adopted sediment quality objectives. Accordingly, the proposed changes to the Listing Policy include amending Section 6.1.3 to correlate with the adopted sediment quality objectives.