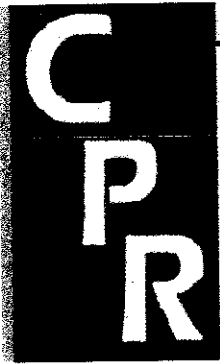


COALITION FOR PRACTICAL REGULATION

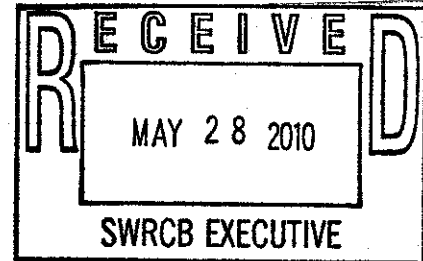
"Cities Working on Practical Solutions"



28 May 2010

Via Electronic and U.S. Mail

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Email: commentletters@waterboards.ca.gov



Subject: Comment Letter – 2010 Integrated Report/Section 303(d) List

Dear Chair Hoppin and Members of the Board:

On behalf of the Coalition for Practical Regulation (CPR), an *ad hoc* group of 40 cities within Los Angeles County that have come together to address water quality issues, I would like to submit the following comments regarding the proposed 2010 Integrated Report/Section 303(d) List of Water Quality Limited Segments for California.

First, CPR commends the Water Boards for updating the 303(d) List within the context of the Integrated Report. This approach presents a more comprehensive assessment of water quality within the State. In addition, we would like to acknowledge the Regional Water Boards for generally following the Listing/Delisting Policy established by the State Water Board. CPR would like particularly to acknowledge improvement in the area of delisting, due to Regional Board staffs' application of the Delisting Policy.

State Board staff previously recommended correcting past mistakes by delisting erroneously listed water segment-pollution combinations. These proposed corrections included listings for which data used to list a pollutant was actually from a different water body, listings for which an insufficient number of samples exceeded the CTR criteria, listings for which biological impacts documented were not associated with toxicity or pollutant concentrations, listings for which the listing was based on faulty data, and listings for which data used to list a waterbody could not be

ARCADIA
ARTESIA
BALDWIN PARK
BELL
BELL GARDENS
BELLFLOWER
CARSON
CERRITOS
COMMERCE
COVINA
DIAMOND BAR
DOWNEY
GARDENA
HAWAIIAN GARDENS
INDUSTRY
IRWINDALE
LA CAÑADA FLINTRIDGE
LA MIRADA
LAKEWOOD
LAWDALE
LYNWOOD
MONTEREY PARK
NORWALK
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA
POMONA
RANCHO PALOS VERDES
ROSEMEAD
SANTA FE SPRINGS
SAN GABRIEL
SIERRA MADRE
SIGNAL HILL
SOUTH EL MONTE
SOUTH GATE
SOUTH PASADENA
VERNON
WALNUT
WEST COVINA
WHITTIER

found. CPR is pleased to note that the Los Angeles Regional Water Board staff recognized the validity of those State Board suggestions. Many of the proposed delistings in Region 4 were the result of recognizing that there were flaws in the original listings. The delisting of waterbody-segment combinations that do not need to be addressed allows permittees to better focus water quality resources on real issues.

CPR is pleased to see that the subcategories of Water Quality Limited Segments Being Addressed by USEPA-Approved TMDL and Water Quality Limited Segments Being Addressed by Action Other than TMDL are being utilized in the 2010 Integrated Report/Section 303(d) List. Use of these subcategories implements suggestions made in the *State Guidance for Addressing Impaired Waters* and provides encouragement to municipalities attempting to make improvements and comply with regulations.

However, CPR continues to be concerned that additional work is required to ensure that the State's 303(d) List becomes a focused and technically defensible instrument. The proposed 2010 Integrated Report/Section 303(d) List continues to include listings for conditions where actual pollutants have not been identified. Requiring permittees to treat for a condition rather than specific pollutants is problematic at best; if Water Board staff and permittees do not have an understanding of *what* should be controlled, and, by extension, how it should be controlled, any attempts at source control or treatment will be unfocused and are unlikely to be successful.

One group of listings for a condition that should be deleted immediately from the proposed 2010 303(d) List is the group of listings for benthic macroinvertebrate bioassessments added to the Region 4 303(d) List of Impaired Waters just before the July 6, 2009 public hearing on the list. As noted by the County Sanitation Districts of Los Angeles County at the hearing, these listings, based on the Southern California Coastal Index of Biological Integrity (SoCal IBI), are inconsistent with State Policy. The Water Control Policy for Developing California's Clean Water Act Section 303(d) List (Listing/Delisting Policy) states that water bodies should be listed for degradation of biological populations only if they have significant degradation relative to reference sites. In this case, listings were made in the absence of appropriate reference sites. The SoCal IBI does attempt to incorporate reference conditions, but there were no comparable low elevation reference sites when the Los Angeles Regional Water Board voted to add the benthic macroinvertebrate bioassessments to the 303(d) List. Furthermore, as noted by the Sanitation Districts, the scientific community acknowledges that the SoCal IBI has not been validated for low-gradient streams. In addition, the index is not appropriate for modified channels. Therefore, CPR strongly supports the Sanitation Districts' request that decisions on benthic macroinvertebrate community impairments not be made during this listing cycle. Instead, the Water Boards should work with scientists and stakeholders to resolve the numerous outstanding issues and consider impairments of benthic macroinvertebrate communities in the next listing cycle.

Further, the 303(d) List still contains listings that are based on *potential* future uses rather than probable future uses. As CPR has stated in the past, potentiality is an unreasonably broad concept on which to base listings. Erroneous listings such as these could trigger TMDLs for uses that do not exist and are not likely to exist and would be an extremely costly mistake that could potentially waste millions, if not billions, of dollars.

CPR requests that the State Water Board direct its staff and the Regional Water Boards to search out and remove any additional erroneous historic listings that were based on potential rather than probable future uses, and to remove all historic listings of conditions for which causative pollutants have not been identified. Given the absence of rules for listing before the Listing/Delisting Policy was adopted in September 2004, earlier listings were sometimes inconsistent, poorly documented, and approved by the State Board without careful review. Additional work remains to ensure that all of the past listings are valid, supported by appropriate documentation, and based upon the application of a consistent set of standards. Further, because the determination of impairments is based on core beneficial uses associated with each waterbody segment, the beneficial uses defined in State and Regional Water Quality Control Plans should be thoroughly reviewed and revised, as necessary, before the next update to the 303(d) List.

In addition, CPR has a specific question about the ammonia listings for Los Cerritos Channel in Region 4. During a meeting with stakeholders in the Los Cerritos Channel Watershed and Los Angeles Regional Water Board staff, Peter Kozelka from USEPA Region IX indicated that the channel would likely be delisted for ammonia during the current update to the 303(d) List. However, Los Angeles Regional Water Board staff recommended that this pollutant-segment combination not be delisted because, although zero of the 22 samples exceeded the one-hour objectives for ammonia, the sample size was too small; a minimum of 28 samples would be needed for delisting. The City of Long Beach has more than 28 samples, but the additional samples had not been submitted to the Regional Water Board. At the Regional Water Board hearing on the Integrated Report, Mr. Kozelka testified that USEPA would not be proceeding with a TMDL for ammonia in the Los Cerritos Channel because the channel was not impaired for ammonia. Subsequently, USEPA was provided a data set containing 54 data points for ammonia in Los Cerritos Channel. USEPA has since indicated that it is discussing a finding of non-impairment with the plaintiffs in *Heal the Bay, et al. v. Browner, C. 98-4825 SBA, March 23, 1999*. CPR understands that the City of Long Beach is submitting this data to the State Water Board to support delisting of ammonia in the Los Cerritos Channel. We therefore request that the State Water Board delist ammonia in the Los Cerritos Channel from the 2010 Integrated Report/Section 303(d) List. Delisting will remove any confusion about whether a TMDL is required.

In conclusion, CPR acknowledges previously recommending that the State Board maintain leadership of the 303(d) listing process, but we are pleased to see the improvements made by the Regional Water Boards in their application of the Listing/Delisting Policy. There are corrections and refinements yet to be made, but the

proposed 2010 Integrated Report/Section 303(d) List represents a step in the right direction. Developing a sound scientific basis for listing decisions is essential in order to focus resources on solving real water quality problems.

Thank you for the opportunity to provide these comments on the proposed 2010 Integrated Report/Section 303(d) List of Water Quality Limited Segments for California. We recognize that preparation of the next list has already begun, and we look forward to continuing efforts by the State and Regional Water Boards to improve the list.

Sincerely,

COALITION FOR PRACTICAL REGULATION

A handwritten signature in cursive script, appearing to read "Larry Forester", written in black ink.

Larry Forester
CPR Steering Committee
City Council Member, City of Signal Hill

cc: CPR Steering Committee
CPR Members