



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

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Sent via Electronic Mail to commentletters@waterboards.ca.gov

Felicia Marcus, Chair, and Members
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
c/o Ms. Jeanine Townsend, Clerk to the Board

Subject: Comments on Proposed Amendments to the Water Quality Control Policy for Developing the Clean Water Act Section 303(d) List

Dear Chair Marcus and Board Members,

The California Association of Sanitation Agencies (CASA) appreciates the opportunity to provide comment on the proposed approval of amendments to the Water Quality Control Policy for Developing the Clean Water Act Section 303(d) List (hereafter “proposed amendments”). CASA is a statewide association representing more than 100 municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, clean energy and water recycling services to millions of Californians. CASA members are directly impacted by changes to the 303(d) List, and thus any amendments to the Listing Policy have the potential to significantly affect our members as well.

The proposed amendments involve four procedural changes to the current 303(d) listing process, as well as a fifth item amending Section 6.1.3 to correlate with the adopted sediment quality objectives (SQOs). The four procedural changes include: (1) re-defining the term “readily available information” to mean all information submitted to the California Environmental Data Exchange Network (CEDEN); (2) specifying that the 303(d) List is not required to include assessments from all regions in every listing cycle; (3) providing discretionary authority for the State Water Board to administer a Regional Water Board’s listing process if the Regional Water Board fails or elects not to do so; and (4) approval of statewide list procedures and granting the State Water Resource Control Board (State Water Board) Executive Director the discretion and authority to finalize the proposed 303(d) List and submit it directly to U.S. EPA.

Subject to the clarifications outlined below, CASA supports incorporation of the SQOs as well as the first three of these changes in concept. However, we have significant concerns regarding the fourth proposal identified: approval of list-procedures and delegation of approval authority to the State Water Board Executive Director. CASA’s detailed comments on each of the proposed amendments are as follows:

Sediment Quality Objectives

CASA supports incorporating the SQOs into the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List. More specifically, we support the addition of language into "Section 6: Policy Implementation", which directs Regional Water Boards to use the methods and procedures outlined in the SQOs. However, CASA believes the SQO language is essential not only to Policy Implementation, but to listing and de-listing as well. Therefore, we request the same language be inserted as specific factors in "Section 3: California Listing Factors" and "Section 4: California Delisting Factors" in order to ensure the SQOs are applied correctly as part of the Listing Policy.

(1) Definition of "Readily Available information" and CEDEN Input

The proposed amendments modify the definition of "readily available information" to mean all information submitted to the California Environmental Data Exchange Network (CEDEN). If CEDEN cannot accept a particular subset of data, the proposed amendments state that the State and Regional Water Boards *may* accept the data and information if it meets the formatting and quality assurance requirements detailed in the notice of solicitation for the current listing cycle. (**Proposed Listing Policy at Section 6.1.1**) While we appreciate that submittal and maintenance of relevant information in a centralized database can help streamline the listing and de-listing process, the amendments are written in such a way that the State and Regional Water Boards appear to have the discretion whether or not to use any data that cannot be uploaded into CEDEN. A stakeholder could encounter a circumstance where valuable information important to a listing or de-listing decision cannot be uploaded into CEDEN, and the State or Regional Water Board can opt not to accept that data for whatever reason. Therefore, CASA suggests that the proposed amendments state that the State and Regional Water Boards must accept the data as long as there is compelling justification as to why it cannot be uploaded to CEDEN and quality assurance requirements are met.

As a side note, the State Water Board requires National Pollutant Discharge Elimination System (NPDES) permittees to submit receiving water monitoring data to the California Integrated Water Quality System Project (CIWQS). In order to avoid duplicative efforts, CASA would like to emphasize the importance of the State Water Board developing and implementing a program that will automatically transfer NPDES monitoring data reported in CIWQS into CEDEN. Additionally, the State Water Board should migrate all data used for previous 303(d) listing evaluations into CEDEN in order to ensure consistent and holistic assessments in the future.

(2) Changes to 303(d) Listing Cycle

The proposed amendments specify that the 303(d) List is not required to include assessments from all regions for every listing cycle. Instead, at the beginning of each listing cycle, the State Water Board will identify which Regional Water Board(s) should make listing recommendations for that cycle. (**Proposed Listing Policy at Section 6.1.2.1**) Currently, all nine Regional Water Boards assess waters in their jurisdiction every listing cycle. In general, CASA believes that providing the authority for Regional Water Boards to process 303(d) List

changes on a rotating basis and not every single listing cycle is a positive change to the Listing Policy. Most of the straightforward listings have already been completed, and as such, it is inefficient and unnecessary for Regional Water Boards to conduct a formal listing process every single cycle. CASA requests, however, that the State Water Board solicit new data corresponding to each listing cycle, including the initial roll-out of the new listing cycles proposed in the California Integrated Report Update released in November 2013¹. The last data solicitation period was 2010, and thus by the third rotation of the proposed listing cycle, several years of new data will be available for analysis.

Our other main concern with this new approach is that water bodies for which dischargers are seeking to *de-list* a water body could be inhibited if the region in question is on an “off-cycle.” The proposed amendments do contain a provision whereby a Regional Water Board that is “off-cycle” may administer the process for one or more water segments that would result in a direct listing change from the previous Listing Cycle. (**Proposed Listing Policy at Section 6.1.2.1**) However, there is no similar provision that might allow similar handling for a water body-specific de-listing proposal. Thus, we request that the Board consider including a mechanism in the Listing Policy for stakeholders to request consideration of listing changes off-cycle.

(3) State Water Board Option to Administer Listing Process

The amendments would provide the State Water Board with the discretion to administer a Regional Water Board’s assessment, evaluation, and listing recommendation process and approval on behalf of that region. (**Proposed Listing Policy at Section 6.2**) It is our understanding that change is designed to enable State Water Board staff to process listing updates in those regions where staff resources are limited. In general, CASA supports this change as it will help streamline the overall listing and de-listing process.

(4) Approval of Statewide List-Procedures, Delegation of Authority to Executive Director

Language was added to the Listing Policy to explain the procedures necessary for approval of the Statewide 303(d) List. (**Proposed Listing Policy at Section 6.3**) CASA supports the addition of this language to describe the process required for approval of the list; however, we believe two steps require modification. First, the proposed amendments state that the State Water Board *may* receive public comments concerning the Regional Water Board’s proposed region-specific recommendations that are timely requested. It is important and necessary that stakeholders have the opportunity to provide comments. Therefore, this sentence should be revised to read “the State Water Board *shall* provide an opportunity for public comments”. Second, the proposed amendments state that before the Executive Director or the State Water Board approves the section 303(d) list, the State Water Board shall provide advance notice and opportunity for public comment. CASA agrees with this process, but request that the sentence read “...shall provide advance notice, opportunity for public comment, *and written*

¹ California Integrated Report [Clean Water Act Sections 303(D) and 305(B)] Update; Nick Martorano, Chief of Surface Water Quality Assessment Unit, State Water Resources Control Board; November 12, 2013.

response to comments.” This addition ensures that an important step in the process, the State Water Board’s response to comments, is fulfilled.

Finally, the proposed amendments would grant the State Water Board Executive Director the discretion and authority to finalize the proposed 303(d) List and submit it directly to U.S. EPA. **(Proposed Listing Policy at Section 6.3)** CASA has significant concerns with this modified provision. Currently the State Water Board is required to hold a public hearing on the final Statewide 303(d) List and to take a formal vote on any final decision made in regard to that list. Any listing changes are subject to State Water Board review, public notice and comment, and final approval. The existing process has provided interested parties (including CASA members) with two distinct opportunities to address a proposed new or revised listing or de-listing, accompanied by appropriate notice when a listing proposal moves from the Regional Water Boards to the State Water Board. Under the proposed amendments, the Executive Director would be authorized to finalize any 303(d) listing recommendations and hold public comment and public hearings without State Water Board involvement and without a final State Water Board vote. Moreover, review of particular listing recommendations at the State Water Board level would be “waived” unless an interested party made a timely request for State Water Board review. Thus, interested parties will need to proactively submit a request for State Water Board review of the listing or de-listing decision in question in order to have an opportunity to comment. Converting the existing public, formal process into an administrative approval wholly delegated to the Executive Director eliminates an important step in the process and reduces overall transparency.

We appreciate that the proposed amendments require the Executive Director to provide the public with notice of the proposed approval and an opportunity to provide written comments, and that under the revised policy the Executive Director could still set the listing decisions for a State Water Board meeting for its approval. However, delegating such authority to the Executive Director removes an important level of checks and balances. Moreover, many parties rely upon the written State Water Board response to comments, and it is not clear that the Executive Director or State Water Board staff would be required to provide such responses under the proposed amendments. These amendments also provide the Executive Director with the ultimate authority to hear challenges to the Regional Water Boards’ listing decisions without any guaranteed redress to the State Water Board itself as part of a public hearing process. CASA opposes this change and would prefer to maintain the existing process for State Water Board review of listing recommendations. In the alternative, CASA requests the State Water Board add a provision allowing an interested party to request State Water Board review of the Executive Director’s decision.

Thank you for the opportunity to provide comment, and please do not hesitate to contact me at alink@casaweb.org or (916) 446-0388 with any questions or concerns.

Sincerely,



Adam D. Link, CASA Director of Government Affairs