



December 17, 2014

*Sent via Electronic Mail to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)*

Felicia Marcus, Chair members  
State Water Board 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 Southern California Alliance of Publicly Owned Treatment Works (SCAP) 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”). SCAP is a regional association representing 82 municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, clean energy and water recycling services to more than 19 million southern Californians. SCAP members are directly impacted by changes to the 303(d) List, and therefore 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 Board fails or elects not to do so; and (4) 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.

While we support, in general, the first three proposed amendments, we have significant concerns regarding the fourth proposal, which delegates approval authority to finalize the proposed 303 (d) List to the State Water Board Executive Director. SCAP’s concerns on proposed amendments (1) and (4) are as follows:

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**(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 notice of solicitation will detail the submittal requirements. (Proposed Listing Policy at Section 6.1.1)

There appears to be no remedy for the circumstance where a stakeholder encounters difficulty in uploading pertinent information into CEDEN, which opens up the possibility that information could be excluded at the discretion of the State and Regional Boards. SCAP suggests that at the very least, the proposed amendments include a mechanism for stakeholders to submit relevant data that may not be able to be uploaded into CEDEN.

**(4) Delegation of Authority to Executive Director**

This proposed amendment 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) SCAP members have 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 Board review, public notice and comment, and final approval. The existing process has provided interested parties, as well as stakeholders, 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 Board involvement and without a final State Board vote.

While the proposed amendments require the Executive Director to provide the public with proper notice and an opportunity to provide written comments, delegating such authority to the Executive Director removes an important level of checks and balances. These amendments also provide the Executive Director with the ultimate authority to hear challenges to the Regional Boards’ listing decisions without any guaranteed redress to the State Board itself as part of a public hearing process. SCAP opposes this change and would prefer to maintain the existing process for State Board review of listing recommendations. At a minimum, the State Board should include a provision allowing an interested party to request State 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 [jpastore@scap1.org](mailto:jpastore@scap1.org) or (760) 479-4121 with any questions or concerns.

Sincerely,



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John Pastore, Executive Director