

Comment Letter—Listing Policy Amendment due 12.22.2014 Noon



Section 303(d)(1)(A) states:

*Each State shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters. **The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.***

and

Section 303(d)(3) states:

*For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load **with seasonal variations and margins of safety**, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation and for thermal discharges, **at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife.***

With that basis which includes severity of pollution, seasonal variations and margins of safety as well as protection and propagation of a balanced indigenous population of fish, shellfish and wildlife, the following changes are proposed.

YOU STATE:

6.1.1 Definition of Readily Available Data and Information

“Readily available data and information” is data and information that can be submitted to the California Environmental Data Exchange Network (CEDEN), which can be accessed via www.ceden.org. If CEDEN is unable to accept a particular subset of data and information, the State Water Board or the Regional Water Board may accept that data and information if it meets the formatting and quality assurance requirements detailed in section 6.1.4 of the Policy and the notice of solicitation for the current Listing Cycle

COMMENTS:

This database removes that aspect of seasons, safety and protection has hard data cannot reason and distinguish those aspects that make water living.

We do not agree that prior definition and listing of sources should be removed. Interested parties, including the public, is omitted. Needed is current information relative to conditions, not data driven to a point of not being applicable.

This process must equate to a living document which is an aspect of adaptive management.

YOU STATE:

6.1.2 Administration of the Listing Process

6.1.2.1 Solicitation of All Readily Available Data and Information

In its notice of solicitation, the State Water Board shall identify which Regional Water Boards shall administer the listing process for that Listing Cycle and whether the State Water Board will administer a particular Regional Water Board's listing process, pursuant to section 6.2, for that region. If a Regional Water Board is “off cycle” pursuant to the State Water Board's notice of solicitation, that Regional Water Board may administer the process for one or more water segments that would result in a direct listing change from the previous Listing Cycle pursuant to section 6.2. In accordance with the Listing Cycle, the State Water Board and the Regional Water Boards shall seek all readily available data and information on the quality of surface waters of the State. Readily available data and information shall be solicited from any interested party, including but not limited to, private citizens, public agencies, state and federal governmental agencies, non-profit organizations, and businesses possessing data and information regarding the quality of the Region's waters.

COMMENTS:

We disagree that the Listing Cycle should be determined by the State Water Board because not all regions are equal in the amount and condition variability. There are not enough regulations to be representative to the intensity of TMDL such as reflected in the Los Angeles Regional Water Quality Control Board.

Complicated in this issue is the inclusion of the 35 TMDLs in the LAMS4 permit (R4-2012-0175). That iterative process is important and necessary as BMPs are applied to meet TMDL compliance. (Maximum Extent Possible) *MEP should continually adapt to current conditions and BMP effectiveness* (FR Doc No: 2014-13593).

AB 2403 Local government: assessments, fees, and charges has changed the State definition of water to:

*SEC. 2. Section 53750 of the Government Code is amended to read:
53750. For purposes of Article XIII C and Article XIII D of the California Constitution and this article:*

(m) "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source.

BMPs would be a system of public improvements.

YOU STATE:

6.2 Approval of the Regional Water Board's List

At its election, the State Water Board may administer the listing process for each listing cycle. If the State Water Board administers and considers a region's proposed list on behalf of a Regional Water Board, the State Water Board shall adopt the list at a public hearing. Such consideration and adoption shall occur after the State Water Board provides advance notice in the affected region and opportunity for public comment and responds to all comments. The State Water Board's recommendations on behalf of a Regional Water Board shall be consolidated into the statewide list submitted to U.S. EPA with the supporting fact sheets without further consideration.

COMMENTS:

We disagree with "at its election" for a Listing Cycle. LA Regional Water Quality has listed 27 TMDLs and 8 USEPA TMDLs for a total of 35.

The Impairment Categories for the USEPA differ than from this Regional Water Board. Urban Stormwater Management in the United States Table 1-1 Top 15 Categories of Impairment Requiring CWA Section 303(d) Action lists the following top EPA categories:

Mercury 14%
Pathogens 14%

Sediment 11%
Metals (other than mercury) 11%
Nutrients 10%
Oxygen depletion 8%
pH 6%
Cause unknown-biological integrity 5%
Temperature 5%
Habitat alteration 4%
PCBs 3%
Turbidity 3%
Cause unknown 2%
Pesticides 2%
Salinity/TDS/chlorides 2%

LA Regional Water Quality Control Board lists the following categories (RWQCB category **bolded**):

Bacteria 29%
Toxic Pollutants 17%
Trash 17%
Sediment 11%
Metals (other than mercury) 6%
Nutrients 6%
PCBs 6%
Other EPA 6%
Nitrogen 6%
Salinity/TDS/chlorides 3%
Debris 3%

There are major differences in categorization, and consequently this questions as to the data available for terms not used by the EPA. These categories should be included in the every Listing Cycle.

It is more important for Listing Cycles to be analyzed by category and cause than by Water Board. The purpose is to attempt to achieve water quality based on environmental effect.

YOU STATE:

6.3 Approval of Statewide List

The Regional Water Boards propose region-specific recommendations for the section 303(d) list. The State Water Board may receive public comments concerning those listing recommendations that are timely requested for review pursuant to section 6.2 and may make changes to the recommendations prior to submitting the section 303(d) list to U.S. EPA. Because U.S. EPA may change the State Water Board's recommended section 303(d) list, the section 303(d) list is only effective upon U.S. EPA's final approval.

The State Water Board shall evaluate the Regional Water Board's developed water body fact sheets for completeness, consistency with this Policy, and consistency with applicable law. The State Water Board shall assemble the fact sheets and consolidate the approved Regions' lists, into a statewide section 303(d) list.

The State Water Board Executive Director or the State Water Board shall approve the section 303(d) list. 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. Public comment shall be limited to listing recommendations that are timely requested for review pursuant to section 6.2 unless the Executive Director or the State Water Board elects to consider recommendations on other waters. Upon approval by the Executive Director or State Water Board, the statewide section 303(d) list and supporting fact sheets shall be submitted to USEPA for approval as required by the Clean Water Act.

COMMENTS:

State Water Board should release for Public Review and Comment **all** Regional Water Boards specific recommendations.

State Water Board Executive Director should **not** have the sole authority to approve the list. State Water Board should be the authority for approval, especially if the TMDLs are consequential to NPDES permitting such as the LA MS4 permit.

YOU STATE:

7 Definitions

LISTING CYCLE refers to the two-year cycle that the State Water Board submits its section 303(d) list to U.S. EPA for approval.

COMMENTS:

The Final Functional Equivalent Document FED stated the following:

Baseline

For the 1998 section 303(d) list, SWRCB and the RWQCBs staff prepared guidance for the water quality assessment update for reviewing new monitoring information, soliciting information from state and federal agencies, and inviting the public to participate. RWQCBs' staff used the guidelines as the basis for the 1998 listing and delisting of water bodies, prioritizing and scheduling TMDLs, and public noticing procedures.

and

The 1998 section 303(d) list served as the basis for the 2002 section 303(d) list. Listings from 1998 were not reviewed or evaluated, nor were fact sheets developed unless new data was submitted

Two-year cycle appears to be appropriate, but TMDLs should not be neglected and left to stand over years and years without review and applicability. Though it may incur a workload, it is important to translate water quality needs into land uses needs and be used for antidegradation in real-time planning.

TMDLs are now part of Infrastructure, not known to most taxpayers. City of Los Angeles General Plan was originally adopted December 1, 1996; and re-adopted on August 8, 2001. Framework Element, which is the Policy Framework and strategy for long-term growth, has no TMDL recognition; and mitigation is excluded.

TMDLs for the LA Regional Water Quality Control Board were adopted starting in 2002 and phased in by the following percentage:

2002 7%
2003 15%
2004 11%
2005 11%
2006 4%
2007 19%
2008 11%
2009 4%
2010 15%
2011 4%

Taxpayers had passed a local bond for \$500,000,000 to address water quality in 2004 (Proposition O).

In 2010, City of LA estimated additional TMDL project funding needed at \$2.65 billion.

We cannot speak to other cities in the region.

We suggest you add the TMDL information to Cal-Adapt.

Joyce Dillard
SP.O. Box 31377
Los Angeles, CA 90031