



California Regional Water Quality Control Board

Central Coast Region



Terry Tamminen
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
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February 13, 2004

Craig J. Wilson
TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Mr. Wilson:

RE: CENTRAL COAST REGIONAL BOARD COMMENTS ON DRAFT WATER QUALITY CONTROL POLICY FOR DEVELOPING CALIFORNIA'S CLEAN WATER ACT SECTION 303(D) LIST, DECEMBER 2003

Thank you for the opportunity to provide comments on the proposed Policy. My staff has worked closely with staff from all the regions to develop the TMDL Roundtable's recommendations for the draft policy and to comment on the various internal versions provided by State Board staff. It appears that the detailed recommendations provided by the TMDL Roundtable have been ignored or overlooked, as my staff still finds significant technical, procedural, and legal problems with the proposed Policy. I suggest that you revisit the TMDL recommendations and consider the comments submitted by the TMDL Roundtable. My staff has similar concerns and we offer a summary and restatement of those concerns here for your convenience.

The proposed Policy is inconsistent and in some parts in conflict with existing water quality standards, the Surface Water Ambient Monitoring Program, and our recently developed TMDL Guidance. The Policy, as proposed, does not reflect the details of many specific water quality standards such as spatial and temporal applicability and frequency and duration of allowed non-attainment. Very limited monitoring programs and data have significantly challenged and constrained previous listing exercises in California. Unfortunately, the proposed Policy exacerbates rather than alleviates this problem. The data requirements of the proposed Policy are vastly beyond those provided by SWAMP, and most troubling is that the proposed policy provides dischargers with a disincentive (a smaller dataset is less likely to result in listing). Our recently developed TMDL Guidance is based on the premise of a lower threshold for listing that is more consistent with existing monitoring programs and resolves concerns about listing errors by calling for confirmation of impairment findings and, if necessary, further assessment as part of a TMDL project.

The issues we consider most critical and indicative of revisions to the policy are the following:

1. Standard Statistical Method and a Weight of Evidence Method

Issue – Over-reliance on binomial method with 10% acceptable exceedance rate as method for determining compliance with water quality standards.

Recommendation – Use the binomial method as an initial screen of numeric data to determine attainment of standards, and use the weight of evidence procedure recommended by the Regions if some evidence contradicts the conclusion reached from the binomial method. Also, allow use other statistical methods to assess attainment where they already exist.

Discussion – The binomial method fails to incorporate important data and information that is relevant to determining compliance with standards: frequency of exceedance allowed by the standard (if any); magnitude of exceedance; frequency and timing of sample collection; trends; changes in land use/watershed activities that might influence pollutant levels; and new federal, State, or local requirements. The currently defined “Alternate Data Evaluation” is unclear or otherwise imposes prohibitive and unnecessary constraints, such as requiring use of a statistical method with a confidence limit and exceedance frequency equivalent to those of the binomial method, and asserting use of the hypothesis that water quality standards are attained. The last constraint essentially conflicts with a weight of evidence approach that calls for analysis when and only when there is some evidence of non-attainment of a standard. The Regional Board staff’s recommendation would ensure that any listing recommendation, in conflict with that suggested by the binomial method, would provide a thorough and complete justification for that listing recommendation.

2. Confusing, Redundant, or Unnecessary Language

Issue – In many places the Policy is confusing, is redundant, or includes unnecessary direction.

Recommendation – The Policy should be brief, non-repetitive, and focused on the requirements State Board wishes to establish to assess the status of the State’s surface waters. Any guidance or suggestions should be developed as separate technical modules (as is being done with the TMDL Guidance).

Discussion – The proposed Policy unnecessarily repeats the same information on the application of the binomial method. In the context of certain water quality information (e.g. bioassessments, nuisance), the repeated reference to the binomial method either does not make sense (how can it be applied to qualitative information? – see section 3.1.7) or raises more questions than it answers (i.e., different listing criteria are applied to the sediment quality guidelines – see section 3.1.6 vs. 3.1.9). Section 3.1 states without justification that data and information collected during a known spill or permit violation shall not be used. Section 6.2.3 states without any justification that it supersedes any regional water quality control plan or water quality control policy to the extent of any conflict when evaluating narrative water quality objectives. An example of unnecessary direction - Sections 6.2.5.3 and 6.2.5.4 provide direction on sample collection, which seems misplaced in a policy on how to assess available information.

3. Proposed Policy goes beyond assessing attainment of standards

Issue – In addition to procedures for assessing attainment of standards, the Policy includes a number of directives related to work planning; identification of the proposed solution for a problem; identification of the cause/source of a problem; and monitoring.

Recommendation – Eliminate burden on Regional Boards beyond performing the assessment of whether water quality standards are being attained.

Discussion – A number of provisions require the Regions to go above and beyond an assessment of California’s surface waters. Having an enforceable programs list requires the Regions to perform a detailed evaluation of the adequacy of a program, in addition to performing a water quality assessment. Determining whether non-attainment of standards is solely due to natural background levels requires an assessment of sources. The Regions are also required to make a distinction between impairments that are

due to pollutants versus pollution, which may require an evaluation that cannot be readily performed with available information. The recently completed TMDL Guidance provides procedures and mechanisms for evaluating and recognizing enforceable programs, and deciding when and how to consider natural sources and pollutants versus pollution.

4. Priority and TMDL Schedules

Issue – The Policy directly links priority setting with specific schedules for TMDL completion.


Recommendation – The priority of a listing and the schedule for a TMDL should be separate. Priorities for addressing all identified impairments should be established. Work planning (stating when an impairment should be addressed) can be dealt with in the context of the USEPA/State Board partnership agreement and each Fiscal Year's work plan.

Discussion - The proposed policy goes beyond the regulations that require the state to list impairments as high, medium, or low and to identify those that are targeted for TMDL development in the next two years. The policy requires the Regional Board to determine whether a TMDL will be used to resolve an impairment; determine when that TMDL will be completed; and assign a completion date consistent with that priority. Scheduling completion of TMDLs involves a program planning effort that goes well beyond the needs of an assessment. The Regions will need to know the estimated level of effort to address each listed water; how the listed water will be addressed per the TMDL (Impaired Waters) Guidance; and the amount of resources available to address different impairment issues. This expansion in scope would bog down the assessment effort and require important planning decisions to be made based on very limited information. Use of the normal program planning processes for identifying how impairments will be addressed is more appropriate than piggybacking on the Listing effort.

We appreciate your consideration of these comments and restate our commitment to work with you and your staff on the development and implementation of an improved policy.

If you have questions, please call Lisa Horowitz McCann at (805) 549-3132 or email her at lmccann@rb3.swrcb.ca.gov.

Sincerely,


Roger W. Briggs
Executive Officer

LM: S:\Shared\TMDLs & Watershed Assessment_TMDL Program\303(d) List\Listing Policy Development\February
Comments to SB\RB 3 Comments 2-13-04.doc

cc: Celeste Cantú, Executive Director
Tom Howard, Chief Deputy Director, State Water Resources Control Board