

**CALIFORNIA COUNCIL FOR ENVIRONMENTAL AND
ECONOMIC BALANCE**

100 Spear Street, Suite 100, San Francisco, CA 94105

VIA ELECTRONIC MAIL

August 20, 2004

The Honorable Arthur G. Baggett, Jr.
Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: July 2004 Water Quality Control Policy for Developing
California's Clean Water Act Section 303(d) List
Functional Equivalent Document: CCEEB's Comments on
Precautionary Principle Issue

Dear Mr. Baggett:

The California Council for Environmental and Economic Balance ("CCEEB") is a coalition of business, labor and public leaders that strives to advance collaborative strategies that protect the environment while allowing California's economy to grow. Following are CCEEB's comments regarding the State Water Resources Control Board's ("State Board's") July 2004 Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List Functional Equivalent Document. As explained below, CCEEB urges the State Board to direct staff to delete the current response to comments regarding the precautionary principle at Pages B-47 through B-48 of Appendix B.

At Page B-47 of Appendix B, Staff summarizes comments made suggesting that the draft policy does not "comply" with the "precautionary principle." We were surprised to read Staff's response (at Pages B-47-B-48) to these comments. Instead of simply indicating that neither the State Legislature nor the State Board has adopted the precautionary principle so there is not such a compliance issue, Staff writes that the precautionary principle "is a provision of international law," and that the "FED embodies the spirit of the precautionary principle." Staff writes at some length to present the "relationship" between the draft policy and the Commission of European Communities 2000 guidelines for implementing the precautionary principle.

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With all due respect to Staff, the response is inappropriate. It is our understanding that the Legislature, Cal/EPA and the State Board have **not** adopted the precautionary principle. Staff should not be attempting to set policy via response to comment – particularly on such a controversial issue.

CCEEB believes that the State Board and Cal/EPA's other Boards and Departments exercise, as appropriate, a precautionary approach in developing and implementing the State's environmental requirements and programs. However, CCEEB views the precautionary principle (which appears in various forms, including the Wingspread Statement) as an extreme form of precaution. We have extensive concerns regarding its application. Without going into great length, following are some of those concerns.

- * The application of the principle encourages prohibitions or limitations on activity based on mere allegations of harm.
- * The principle does not allow consideration of benefits.
- * Evidentiary standards are not available for what type, quantity and quality of information would be required to assert a threat of harm or to prove that there is not a risk of harm (setting aside the impossibility of proving a negative in the first place).
- * Its application would create complete regulatory uncertainty for businesses.

We note that Cal/EPA's Advisory Committee on Environmental Justice considered the precautionary principle and held a half-day public meeting regarding it. Even this Committee affirmatively decided to **not** include the precautionary principle in its recommendations to the Secretary of Cal/EPA because Committee discussion and extensive public testimony made transparent the controversial nature of the principle. For example, the Committee heard comments in strong opposition from the American Chemistry Council, the California Black Chamber of Commerce, the California Manufacturers and Technology Association, the Congress of Racial Equality of California, the NAACP Sacramento Chapter, and the Pace Union (Local 8-765) Paper, Allied-Industrial, Chemical and Energy Workers Union.

Accordingly, CCEEB urges the State Board to direct Staff to delete the current response in Appendix B (at pp. B-47 through B-48) related to the precautionary principle. A response that explains why the policy protects the environment and notes that the Legislature and the State Board have not set forth the precautionary principle as applicable policy in California would be appropriate.

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CCEEB appreciates the State Board's consideration of these comments. If you have any questions, please call me at (415) 512-7890, Bob Lucas at (916) 444-7337 or Cindy Tuck at (916) 442-4249.

Sincerely,

VICTOR WEISSER
President

VIA ELECTRONIC MAIL

cc: Members, State Water Resources Control Board
Mr. Tom Howard
Mr. Craig J. Wilson
Mr. Jackson Gualco
Mr. Robert Lucas
Ms. Cindy Tuck
Mr. Craig Johns, Co-Chair, AB 982 PAG

From: Craig J. Wilson
To: Debbie Irvin; Erin Saenz; Melenee Emanuel
Date: 8/23/04 7:59AM
Subject: Fwd: CCEEB'S Comments: Draft Policy for CWA 303 List: FED (Precautionary Principle)

FYI. For the record. CJW

>>> Cindy Tuck <cindyt@cceeb.org> Friday, August 20, 2004 >>>
Attached for the State Board's consideration are CCEEB's comments regarding the July 2004 Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List Functional Equivalent Document. The attached letter relates to the Staff's response regarding the precautionary principle.

CCEEB appreciates the State Board's consideration of these comments.