

COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"

10/25/06 BdMtg Item 10
303(d) List
Deadline: 10/20/06 5pm



Via Fax and U.S.

802

20 October 2006
Mail

Honorable Tam Doduc, Board Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Attn: Song Her, Clerk to the Board

**Subject: Comment Letter – 2006 Federal Clean Water Act (CWA)
Section 303(d) List**

Dear Chair Doduc and Members of the Board:

On behalf of the Coalition for Practical Regulation (CPR), an *ad hoc* group of 43 cities within Los Angeles County that have come together to address water quality issues, I would like to submit the following comments regarding the proposed Revision to Federal Clean Water Act Section 303(d) List of Water Quality Limited Segments for California.

First, CPR would like to thank the State Board for taking control of the Listing/Delisting Policy. We commend the Board for improvements it has made to the 303(d) listing process since centralizing the process at the State Board. Your staff has worked diligently to develop a more technically sound and transparent listing process. They have requested and reviewed data and developed a voluminous file of fact sheets supporting recommended listings and delistings. We would especially like to thank State Board staff for recommending delisting of segment-pollutant combinations that had been listed based on potential rather than probable future uses.

We still have concerns regarding some aspects of the 303(d) list, especially older listings that have not been thoroughly reviewed, including listings for conditions where pollutants have not been identified and listings based on potential uses that might not have been apparent without a review of Basin Plans. However, the list has been greatly improved since State Board staff was given responsibility for its development.

Staff recommends correcting past mistakes by delisting erroneously listed water segment-pollution combinations. These corrections include listings for which

ARCADIA
ARTESIA
BALDWIN PARK
BELL
BELL GARDENS
BELLFLOWER
BRADBURY
CARSON
CERRITOS
COMMERCE
COVINA
DIAMOND BAR
DOWNEY
GARDENA
HAWAIIAN GARDENS
INDUSTRY
IRWINDALE
LA CANADA FLINTRIDGE
LA MIRADA
LAKEWOOD
LAWDALE
MONROVIA
MONTEBELLO
MONTEREY PARK
NORWALK
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA
POMONA
RANCHO PALOS VERDES
ROSEMEAD
SANTA FE SPRINGS
SAN GABRIEL
SIERRA MADRE
SIGNAL HILL
SOUTH EL MONTE
SOUTH GATE
SOUTH PASADENA
VERNON
WALNUT
WEST COVINA
WHITTIER

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data used to list a pollutant was actually from a different water body, listings for which an insufficient number of samples exceeded the CTR criteria, listings for which biological impacts documented were not associated with toxicity or pollutant concentrations, listings for which the listing was based on faulty data, and listings for which data used to list a waterbody cannot be found.

We are particularly pleased to see the recommended delistings for water segment-pollution combinations where current data have demonstrated that the applicable water quality standards are not exceeded, the delistings for conditions where actual pollutants have not been identified, and delistings based on potential beneficial uses. If implemented, these recommendations will signify real progress in establishing the 303(d) list as a technically solid basis for setting water quality improvement priorities in California. Further, these recommendations indicate that Staff acknowledges the importance of the 303(d) list being developed and maintained as one characterized by scientific integrity. Staff indicates through these recommendations that they understand that the current 303(d) list is flawed, and we appreciate their efforts to further remedy this situation.

CPR again recommends that the subcategory of Water Quality Limited Segments Being Addressed be more widely utilized. Use of this subcategory for segments being addressed by actions other than TMDLs would implement suggestions made in the *State Guidance for Addressing Impaired Waters* and would provide encouragement to municipalities attempting to make improvements and comply with regulations. It will also facilitate the development of partnerships that will further assist in water quality improvement efforts.

We are concerned that additional work may be required to ensure that the 303(d) list becomes a focused and technically defensible instrument. This list still may contain historic listings that were made before the State Board staff was given responsibility for developing the 303(d) list and that were based on potential future uses rather than probable future uses. As the State Board staff has realized, potentiality is an unreasonably broad concept on which to base the 303(d) list. CPR requests that the Board direct Staff to search out and remove any additional erroneous historic listings by Regional Boards that were based on potential rather than probable future uses and remove all historic listings by Regional Boards of conditions for which causative pollutants have not been identified.

Given the absence of rules for listing before the Listing/Delisting Policy was adopted in September 2004, and the inconsistent, often poorly documented, earlier listings proposed by Regional Board staffs and ratified by the State Board without careful review, listings for which rigorous supporting data is missing should not be preserved in the name of the "Precautionary Principle."

CPR supports a continued division of labor in which the State Board develops the 303(d) list and the Regional Boards focus on water quality standards, the development of TMDLs, and other

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programs to address impaired waters and ensure that beneficial uses are attained. This system provides the most effective allocation of resources and should remain in place.

CPR requests that the State Board reconsider an earlier decision to revert to the previous practice of Regional Boards developing the information on which listing decisions are based. The current Listing/Delisting Policy states that:

“Subsequent to the 2004 listing cycle, SWRCB shall evaluate RWQCB-developed water body fact sheets for completeness, consistency with this Policy, and consistency with applicable law. The SWRCB shall assemble the fact sheets and consolidate all the RWQCB lists into the statewide section 303(d) list.” (p. 26)

This assignment of primary responsibility to the Regional Boards would be problematic in several ways. Some groups may feel that they can influence Regional Boards more than they can the State Board. In addition, it would be a reflection of a desire on the part of the Regional Boards to develop policy, which is inappropriate. The State Board is supposed to set policy and the Regional Boards are supposed to implement it.

Thank you for the opportunity to provide these comments on the proposed Revision to Federal Clean Water Act Section 303(d) of Water Quality Limited Segments for California. We recognize that as soon as the 2006 303(d) List is adopted, preparation of the 2008 list will begin, and we look forward to the State Board's continuing efforts to improve the list.

Sincerely,



Larry Forester
Mayor, City of Signal Hill
COALITION FOR PRACTICAL REGULATION

cc: CPR Steering Committee
CPR Members