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COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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JAMES F. STAHL
Chief Engineer and General Manager

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Via Electronic and U.S. Mail

Mr. Craig J. Wilson, Chief
Monitoring and TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100



303 (d) Deadline:
1/31/06

Dear Mr. Wilson:

Comments on State Board's Proposed 2006 Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments

The County Sanitation Districts of Los Angeles County (Districts) are pleased to provide you with our comments regarding the State Water Resources Control Board's (State Board) proposed 2006 Update of the Clean Water Act Section 303(d) List of Water Quality Limited Segments (303(d) List). The Districts are a consortium of 24 independent special districts serving the wastewater and solid waste management needs of over 5 million people and 3,300 industries in Los Angeles County, California. The Districts serve 78 cities and unincorporated areas within the County. We currently operate and maintain over 1,300 miles of trunk sewers and 11 wastewater treatment plants that collectively treat over 500 million gallons per day of wastewater. Of the 11 wastewater treatment plants, 7 discharge to inland surface waters, 1 discharges to the ocean (on the Palos Verdes Shelf), and 3 discharge to land and/or supply water for water recycling purposes. The Districts submitted data and information to the State Board in June 2004 in response to the State Board's data solicitation for the 2006 303(d) List (Data Solicitation). The Districts submitted additional data at the request of the State Board in December 2004. The Districts also participated in the State Board's workshop on the proposed 303 (d) list held in Southern California on January 5, 2006.

First and foremost, the Districts want to take this opportunity to commend the State Board on this revision of the 303(d) list. In applying the recently adopted 303(d) Listing Policy, the State Board's 303(d) listing process is noticeably more transparent and consistent, and the proposed listing decisions in most cases have a well-documented, rigorous and scientifically valid basis (especially when compared with many of the listing decisions made in the past, particularly for a number of items placed on the list prior to the 2002 listing cycle). Although the Districts did not agree with every aspect of the Listing Policy, its use in developing the proposed 2006 303(d) list has markedly improved the overall listing process. Additionally, we wish to commend you and your staff for your excellent work on this extremely important effort to update the 303(d) list.

Overview

The Districts' specific comments on the Proposed 2006 303(d) List are contained in several attachments and enclosures. A brief overview of the watersheds to which the Districts' wastewater treatment plants discharge (including location maps), is provided in Attachment 1. Our complete comments on specific listings of concern are contained in Attachment 2 and our comments and recommendations on specific waterbodies are summarized in Table 1. The Districts have reviewed the Staff Report and fact sheets supplied by the State Board in various categories (List, Delist, Do not list and Do not delist) for the waterbodies to which our facilities discharge and we agree with the State Board on some proposed changes to the list and disagree on other listings. We have laid out our reasoning for listings where examination of the evidence has led to a different conclusion than that currently proposed by the State Board in Attachment 2.

We wish to begin by bringing to the attention of the State Board the fact that, based on our review of the data and fact sheets released for public comment, we have found that a number of water bodies proposed for inclusion on the 2006 303(d) list are attaining water quality standards, and therefore qualify for delisting (or alternatively, do not qualify for listing, if they are not already on the 303(d) list). We believe that it is very important for the State Board to follow-up on this information and make changes to the proposed 2006 303(d) list where appropriate, since it is certainly good news when water bodies are meeting standards, and the implications of erroneous listings are substantial. In several instances, we reached a different conclusion than staff because we were able to identify additional data that, when considered together with the data considered by the State Board, demonstrate attainment. In all instances, we believe that these data meet the definition of "existing and readily available data," and therefore must be considered by the State Board. *See* State Water Resources Control Board, Water Quality Control Policy For Developing California's Clean Water Act Section 303(d) List (Listing Policy), p. 17 (Section 6.1.1) (stating that "at a minimum, readily available data and information includes . . . receiving water monitoring data from discharger monitoring reports"); *see also* 40 CFR § 130.7(b)(5). In most cases, these data were collected as part of NPDES permit monitoring requirements and were submitted to the Los Angeles Regional Water Quality Control Board (Regional Board) in discharge monitoring reports, and therefore these data were in the possession of the Regional Board. In some cases, the data were collected between June 2004 and the present (since the Data Solicitation), and a large enough dataset is now available to meet the minimum number of samples required for listing/delisting. In all of these instances, we believe re-examination of the proposed decision with respect to listing is warranted to ensure that sound listing decisions are made that are in accordance with the State Board's Listing Policy. We therefore request that the State Board reconsider these listings based on the analysis contained in the attached materials.

The Districts commend the State Board for improving the rigor of the 303(d) List, as well as for providing "fact sheets" that contain explanations of the basis for State Board decision-making. The Districts support the State Board's use of a Water Quality Limited Segments Being Addressed category of the 303(d) list for the portion of listings where an impairment will be mitigated through an existing program and a TMDL for the impairment is not warranted or where a TMDL has already been established. A good example of listings that should be placed in this category of the 303(d) list is diazinon (which is proposed for listing on various water bodies). U.S. EPA has mandated a phase out of all non-agricultural uses of diazinon, requiring retail sales of diazinon for indoor and outdoor uses to cease as of December 2002 and December 2004, respectively. U.S. EPA's action will essentially eliminate all urban usage of diazinon, once existing stocks of this pesticide have been used up. The U.S. EPA's phase out of urban uses of diazinon is a good example of an existing regulatory program that can be reasonably expected to result in attainment of the diazinon evaluation guideline within a reasonable, specified time frame. Therefore, it is most appropriate to address this pollutant with the Water Quality Limited Segments Being Addressed category, where water quality impairments for diazinon in urban area

water bodies have been documented and otherwise meet the criteria for listing under the Listing Policy, but for which a TMDL is not necessary.

One area where a re-examination of several proposed listings is needed stems from the incorrect application of the potential municipal drinking water beneficial use designation to several waterbodies in the Los Angeles region, which has led to a number of new proposed listings. We believe that these proposed listings are not valid, because the proposed listings are based on the application of water quality objectives that are associated with the potential MUN beneficial use category, which in fact don't apply to these waterbodies. In summary, most potential municipal drinking water supply use designations in the Los Angeles Region Basin Plan have been found to be "conditional" use designations of no legal effect. This situation, and the listings which are affected by it, are explained further in the attached comments.

Another issue for which we request reconsideration is the State Board's decision not to utilize total metals data when considering delistings for metals. By way of background, in the California Toxics Rule, water quality criteria for metals are expressed as dissolved metals because this is considered the bioavailable fraction and therefore is the most environmentally appropriate way to regulate metals. However, federal regulations require that NPDES permit limits for metals be expressed as total metals. Studies can be done to develop what is known as a translator to characterize the fraction found as dissolved on a site-specific basis. The most important point here is that dissolved metals are always some fraction of total metals.

The Staff Report indicates that total metals data are not being considered because the CTR metals criteria are based on dissolved metals. Staff believes it is inappropriate to compare the total metals data to the dissolved criteria. In response to the data solicitation for development of the 303d list, the Districts submitted total metals data to the State Board. The Districts are required to analyze for total metals by our NPDES permits, and these are the data that we submitted. The Districts believe that utilizing total metals data in a delisting context is not only technically valid, but also can be considered conservative. Clearly, if a total metals concentration is below the water quality criterion, then obviously the dissolved fraction of the metal would also be below the criterion.

Additionally, the Districts believe that the inclusion of total metals data in a dataset for delisting purposes can provide better temporal representation, as well as improved spatial representation. For example, the Districts sample for total metals year-round in dry weather. In many water segments in the San Gabriel River watershed, most of the dissolved metals data available are stormwater data collected only in wet weather, and without the total metals data, water quality conditions would remain uncharacterized for much of the year. Therefore, the Districts believe it is appropriate for the State Board to consider total metals data within a weight of evidence context when evaluating potential delistings for metals, and we request that the Board staff include the total recoverable metals data that was submitted (in the Data Solicitation and is resubmitted in the attachments to this letter) for the San Gabriel River watershed in their analysis.

This is a particularly important and timely issue because TMDLs for several metals in the San Gabriel River watershed are currently under development by the Regional Board and are scheduled for completion pursuant to the Los Angeles Region TMDL Consent Decree by March 2007. The use of the total recoverable metals data will mean the difference between listing and delisting a water body in several instances. The Districts therefore urge the State Board to consider total metals data as an additional line of evidence when evaluating the listing status for several reaches in the San Gabriel River watershed.

The Districts commend the State Board for re-examining some of the 303(d) listings which were carried over from previous listing cycles for which the original basis of the listing was insufficient. A

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good example of this is the proposed delisting of "abnormal fish histology" for several segments in the San Gabriel River watershed, based on the fact that fish histology is an effect, and this effect has not been linked to a specific pollutant or toxicity.

Conclusion

In conclusion, the Districts commend the State Board for many of the proposed revisions to the 2006 303(d) List. We believe these changes will focus the attention of the TMDL process on those waters and impairments for which attainment with water quality standards will yield the greatest potential water quality benefits. Given the limited resources available for the development and implementation of TMDLs, we believe it is important for the State Board to concentrate on those waters where problems are documented and understood, and where a TMDL is the appropriate tool to solve the problem. However, further refinements are necessary to complete this process and develop a scientifically and legally defensible list with a sound and consistent basis. Therefore, we urge you to fully consider the information and analysis we are submitting and we hope that the State Board will decide to make the changes we are recommending.

If you have any questions regarding our comments or the information and data we are providing to you, please contact the undersigned, Beth Bax, or Heather Lamberson at (562) 699-7411.

Very truly yours,

James F. Stahl



for Victoria O. Conway
Assistant Department Head
Technical Services Department

VOC:HL:drs

Enclosures

cc: Members, State Board (letter only)
Celeste Cantu, Executive Officer (letter only)
Jon Bishop, Los Angeles-RWQCB (letter only)