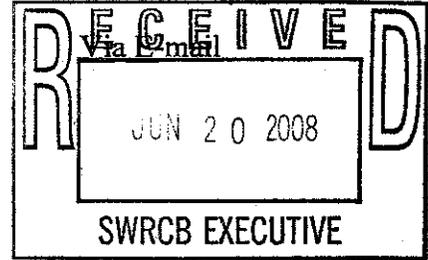


COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"

Public Comment
Strategic Plan Update
Deadline: 6/20/08 by 12

June 20, 2008



Ms. Tam Doduc, Chair
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Proposed Strategic Plan Update: 2008-2012, Version Three

Dear Ms. Doduc and Members of the Board:

I am writing on behalf of the Coalition for Practical Regulation (CPR), an *ad hoc* group of more than 40 cities in Los Angeles County that have come together to address water quality issues. We thank the State Water Resources Control Board for the opportunity to provide these comments regarding the proposed Strategic Plan Update: 2008-2012.

First, CPR would like to congratulate the State Water Board for its efforts to use the Strategic Plan Update to improve inter-agency coordination. The statements on pages 2 and 3 that the "Update institutionalizes processes to continuously evaluate consistency and the effectiveness of program implementation across the Water Boards," and that "success depends on the integration of State, federal, and local programs" indicate that your Board recognizes that the current gaps in coordination between the Regional Water Boards and the State Water Board have hindered progress in making water quality improvements. Consistency among the Water Boards and the cooperation of other State agencies are both vital in making the State's water policies achievable. CPR supports the Water Boards in making this a top priority going forward.

Sound Science in Decision-Making

CPR agrees that the use of sound science in decision-making is a key component of the Water Board's principal of integrity. The need for a sound scientific foundation underlying State water policy is critical to the evolution of stormwater quality management in California. In addition to being the best way to determine achievable water quality strategies, the stringent application of sound science will make it easier for permittees and the Water Boards to enlist the critical support of the public. As noted in the Draft Update, "public awareness of water management

- ARCADIA
- ARTESIA
- BALDWIN PARK
- BELL
- BELL GARDENS
- BELLFLOWER
- CARSON
- CERRITOS
- COMMERCE
- COVINA
- DIAMOND BAR
- DOWNNEY
- GARDENA
- HAWAIIAN GARDENS
- INDUSTRY
- IRVINDALE
- LA CAÑADA FLINTRIDGE
- LA MIRADA
- LAKEWOOD
- LAWNDALE
- 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

issues and their complexities can encourage changes in people's behaviors to improve and protect water quality." Demonstrable scientific justifications will help assure the public that requests for behavior changes are not arbitrary, but are based on specific, anticipated resultant improvements to water quality.

Review of Standards

In the Issue Statement regarding the implementation of total maximum daily loads (TMDLs) State Water Board staff states, in part:

"A TMDL specifies the pollutant loading that a waterbody can receive and still meet water quality standards...and identifies strategies to return the impaired water body to compliance with standards. Compliance may be achieved by implementing the TMDL through existing Water Board regulatory programs, or by alternative strategies such as modifying inappropriate or outdated standards, or certifying local remediation programs." (Draft Update, p. 10)

The Strategic Plan Update should address the development of alternative methods for TMDL compliance, such as Memoranda of Understanding between Water Boards and stakeholders, Porter-Cologne Act provisions, or amendments to the Porter-Cologne Act, if necessary.

CPR would like to compliment Water Board staff for its inclusion of language that lists "modifying inappropriate or outdated standards" as a compliance option. Ongoing review of stormwater management standards should be a high priority for the State Board. This is consistent with the conclusion of the National Research Council (NRC) in its September 2001 report to Congress, entitled "Assessing the TMDL Approach to Water Quality Management." NRC concluded:

"States should develop appropriate use designations for waterbodies in advance of assessment and refine these use designations prior to TMDL development. Clean Water Act goals of fishable and swimmable waters are too broad to be operational as statements of designated uses. Thus, there should be greater stratification of designated uses at the state level (such as primary and secondary contact recreation). The appropriate designated use may not be the use that would be realized in the water's predisturbance condition. Sufficient science and examples exist for all states to inject this level of detail into their water quality standards. To ensure that designated uses are appropriate, use attainability analysis should be considered for all waterbodies before a TMDL is developed."

CPR has continue to express the position that the Regional and State Boards support an alternative implementation mechanism for the TMDLs, in lieu of the NPDES Permits. Suggestions include legally binding Memorandum of Understandings between the Boards and the municipalities or the use of Porter-Cologne. The Strategic Plan should give a high priority to finding a suitable mechanism to implementing and enforcing the TMDLs, which would reduce the amount of third-party litigation.

Leveraging Resources to Address Cross-Media Pollution

The Draft Update states on page 6 that the "State Water Board ensures the protection of water quality by setting statewide policy." CPR agrees with State Board staff that the Water Boards need to reduce fragmentation and leverage resources. CPR encourages the State Water Board to leverage resources by adopting policy regarding cross-media pollution and encouraging the Regional Boards to do the same. Establishing policy on cross-media pollution, including atmospheric deposition, would allow the Water Boards to utilize the authority of California Water Code Sections 13146 and 13247 to compel the assistance of the Air Boards and other State offices, departments, and boards in addressing the problem.

There is widespread agreement that atmospheric deposition is a significant contributor of pollutants to urban watersheds, but there has not yet been successful follow-through by the Water Boards and the Air Boards to bridge the gap between agreement and action. If it remains unaddressed in State policy, atmospheric deposition will continue to plague permittees as a pollutant source that is beyond their ability to control. CWC Sections 13146 and 13247 could prove instrumental in attaining the multi-agency cooperation necessary for the Water Boards and those they regulate to begin to effectively address the threat to water quality posed by atmospheric deposition.

In recently adopted State Water Resources Control Board Resolution No. 2208-0046, the State Water Board recognized the importance of working collaboratively to address atmospheric deposition, and of using CWC Sections 13146 and 13247. In the discussion about the meeting between the Los Angeles Regional Water Board, the South Coast Air Quality Management District (SCAQMD), and the California Air Resources Board (CARB), the resolution states,

"The two agencies have identified the need to (1) expand monitoring of larger particles in atmospheric deposition to better gauge the impact to water quality, and (2) investigate the sources of these metals in order to design a control strategy. The Los Angeles Water Board and the State Water Board will continue to meet with the SCAQMD and CARB to pursue further studies and assist in developing appropriate controls." (State Water Resources Control Board Resolution No. 2208-0046, WHEREAS 10)

The Resolution goes on to state:

“The State Water Board encourages local municipalities within the urban watersheds in the Los Angeles Region and Los Angeles County also to work with SCAQMD and CARB to further identify and control sources of trace metals in atmospheric deposition. If necessary the State Water Board and Los Angeles Water Board shall enforce compliance with the adopted plans by the SCAQMD and CARB as appropriate under Water Code sections 13146 and 13247, and all other relevant statutes and regulations.” (State Water Resources Control Board Resolution No. 2208-0046, WHEREAS 11)

The Resolution then goes on to require:

“The Los Angeles Water Board shall consider the data generated from the TMDL special studies or any other appropriate data, and determine whether and to what extent measures by the CARB and SCAQMD are necessary or appropriate to attain Water Quality Standards and the TMDL. If such measures are appropriate, the Los Angeles Water Board shall adopt a Basin Plan amendment consistent with the atmospheric deposition findings in WHEREAS 10, 11, and 12 above, and take appropriate action to pursue compliance with such requirements.” (State Water Resources Control Board Resolution No. 2208-0046, Resolve 2)

CPR strongly supports the State Board’s establishing statewide policy with respect to atmospheric deposition and other cross-media issues in order to use these two California Water Code sections to leverage the necessary collaboration and assistance to begin to address the problem.

Source Control

The water quality program should undergo a paradigm shift to focus on source control. Instead of a “master implementation plan” in the next five years, the State Board should establish a policy that TMDLs be adopted using a combined water quality attainment strategy (WQAS)/TMDL structure, which will allow Water Boards anticipating future TMDLs to build upon and adapt water quality attainment strategies as additional TMDLs are developed and adopted. The WQAS/TMDL approach is built on identifying sources and assigning responsibility for source control. CPR recommends that the State Board revise Action Item 1.1.3 to specify the development of combined water quality attainment strategies with TMDLs where feasible. The shift to combination WQAS/TMDLs, together with the use of CWC Sections 13146 and 13147, will be significant steps toward addressing source control. These sections should be specifically referenced in Action 1.1.5 in order to more effectively address true source control.

Statewide Stormwater Policy

In the past, CPR was encouraged to see that a Statewide Stormwater Policy was under development. The State and stakeholders statewide spent considerable time working toward that end. Unfortunately, the Stormwater Policy was removed from the list of State Water Board priorities. CPR strongly supports the inclusion of development of a Statewide Stormwater Policy as a core component to Draft Update Planning Priority 4, Water Quality Planning. The development of a Statewide Policy is the single most important Action item the State Board could take toward achieving statewide consistency and alleviating the current situation, in which policy is assembled piecemeal by the various Water Boards. The only truly valid way to address State water quality as a whole will be to address Statewide Stormwater Policy as a whole.

Regional Water Quality Control Plans

CPR agrees that regional and statewide water quality control plans are the cornerstone of California's regulatory program to protect water quality. We also agree that the Basin Plans, originally written in the 1970s, are badly out-of-date. As noted in the discussion on Water Quality Planning in the Draft Strategic Plan Update, the last coordinated update occurred in the mid-1990s. We appreciate that the Water Boards envision a comprehensive statewide update of the Basin Plans and that the Boards will collaborate with stakeholder groups on Basin Plan formats and work cooperatively with stakeholders as part of the triennial review process to ensure that updated Basin Plans address water quality issues of mutual concern. To date, the triennial review process has not really been implemented as specified in the Clean Water Act.

CPR is disappointed that updating the Basin Plans is not given more urgency in the Strategic Plan Update. Basin Plans across the state, particularly in the most populated areas, should be updated much earlier than 2015. The concept described in Action item 4.3 should be broadened to achieve more rapid implementation of consistent organization and updating of Basin Plans by collaborating with third-party initiated processes that incorporate Water Board requirements and stakeholder interests. CPR would appreciate the opportunity to be represented on the statewide stakeholder group to be convened by October 2008 to assess statewide and regional needs for updating water quality control plans and provide advice on defining the scope and approach for future Basin Plan updates.

Coastal Municipal Stormwater Permits

CPR supports Action item 1.2 to "manage urban runoff volume to reduce pollutant loadings, reduce wet weather beach postings by 75 percent by 2020, and, where applicable, explore opportunities for using management techniques to promote sustainable water supplies." Reducing runoff volumes will reduce the transport of pollutants. However, we do not understand the intent of Action item 1.2.4 to, "by 2010, update and standardize coastal municipal storm water permits to reduce wet weather beach postings." Several permits are going through the approval process now, and others

will be adopted in 2009. Does this Action item mean that newly adopted permits could be reopened again soon to add updated and standardized content, or does it mean that the Water Boards are planning to use the new Ventura MS4 permit as the model for other coastal municipal permits across the state?

Consistency in Municipal Stormwater Permits

CPR supports the State Board's efforts to achieve consistency in the municipal stormwater permitting program. However, we recommend that State Board staff rewrite Action item 6.2.1 to adopt a statewide template for Phase I MS4 permits in which at least 80% of the permit is consistent statewide. The remainder of the permits could address regional and watershed differences. In addition, we recommend that State Board staff remove references that indicate that the Phase I program should be modified based on the Phase II program. Due to the substantial differences between Phase I and Phase II communities, including size, program experience, and funding, this Action item should be removed. CPR requests that the State Water Board keep the Phase I and Phase II programs distinct for at least another permit cycle, particularly since the Phase II program is so new in its implementation. It would be inappropriate to use Phase II program elements, which are comparatively untested, to modify the longer-standing Phase I program.

Design Storms

The Strategic Plan Update provides an opportunity for the Water Boards to commit to a policy of developing design storms. One key element missing from the Draft Strategic Plan Update is a design storm. To date, MS4 permits and the State's General Permits have exposed municipalities and other permittees to potential third party lawsuits and mandatory minimum penalties by not specifying design storms. The Blue Ribbon Panel, a group of experts assembled by the State Water Board to evaluate the State's stormwater program and make recommendations for its improvement, recognized this problem and stated that the concept of BMP sizing is important and that agencies (or others) should not be accountable for water quality in volumes above a set design level (see Eric Strecker's Power Point presentation to the June 4, 2008 State Water Board hearing on the Construction General Permit.) The Blue Ribbon Panel recommended that neither Numeric Limits nor Action Levels apply to storms of unusual event size and/or pattern.

CPR appreciates State Board staff's recognition that heavy rainfall "may overwhelm pollution control facilities that have been designed to handle...stormwater runoff under assumptions anchored in historical rainfall patterns." This highlights the need for defined design storms as sizing standards for best management practices (BMPs). Statistical data based on historical rainfall patterns, although an imperfect predictor of future rain events, is the best tool available for designing appropriate BMPs. Municipalities and other permittees need the Water Boards to define watershed-appropriate design storms to serve as control standards for BMP design and installation. We suggest that the State Board staff review and build upon the SCCWRP study entitled, *Concept Development: Design Storm for Water Quality in the Los Angeles Region* to propose a defined design storm

process for inclusion in the Strategic Plan Update. This will allow municipalities and other permittees to make confident BMP design choices.

Relationship Between Strategic Plan Update and Proposed Water Quality Improvement Initiative

The State Administration is proposing several amendments to the water code that are designed to implement the findings of the Strategic Planning sessions held by the State and Regional Water Boards in 2007, as well as to deal with issues raised by the Legislature, most notably Senator Perata in the 2007-2008 sessions. It is unclear to CPR how the Strategic Plan Update relates to these proposed amendments. For instance, the water code is proposed to be amended to add Section 13128.1 to require that a new Water Quality Council require that the Council "establish or amend its regulations or state policy for water quality control to address alleged inconsistencies by the regional boards in considering the costs of the reasonably foreseeable methods of compliance with the total daily maximum daily loads (TMDLs)."

The TMDL process is seriously flawed in California, primarily due to the lack of financial resources at the State level to complete scientific studies necessary to establish appropriate water quality standards for impaired water bodies. The best case in point is the problems that cities are encountering in implementing the California Toxics Rule (CTR), a federal standard covering 126 priority pollutants. In completing the CTR, EPA recognized that it may be overly protective of water bodies; therefore a scientific protocol was adopted to allow for each water body in the State to be reviewed.

The lack of State resources has resulted in the Cities, Counties and Caltrans having to fund the costs of scientific studies necessary to adjust CTR. These water body studies, known as Water Effects Ratios and Site Specific Objectives are very expensive and time consuming. The Cities of Los Angeles and Burbank recently invested over \$1 million in studying copper limits on the Los Angeles River over a three-year period of time. The Los Angeles River watershed cities are proposing to fund over \$5 million in scientific

The Strategic Plan Update should include a program to fund more water effects ratios and other scientific studies needed to improve the application of the California Toxics Rule to actual water bodies in California.

Conclusion

Thinking and acting strategically is essential if we are going to continue to improve water quality in California. Although the environmental community, the regulated community, and the Water Boards will continue to disagree on aspects of the water quality program, these differences can be reduced by implementing a sound Strategic Plan. CPR believes that the changes we have recommended will strengthen the Strategic Plan Update and facilitate implementation of a more effective water quality improvement program in California.

Thank you again for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ken Farfsing', with a long horizontal flourish extending to the right.

Kenneth Farfsing
City Manager, City of Signal Hill