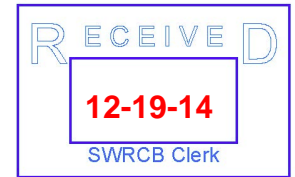




County of San Diego



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December 19, 2014

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Electronic Submission: commentletters@waterboards.ca.gov

COMMENT LETTER – PROPOSED AMENDMENTS TO THE WATER QUALITY CONTROL POLICY FOR DEVELOPING THE CLEAN WATER ACT SECTION 303(D) LIST

Dear Ms. Townsend:

The County of San Diego (County) appreciates the opportunity to provide comments on the proposed amendments to the Water Quality Control Policy for Developing the Clean Water Act Section 303(d) List (Listing Policy). The County commends the State on undertaking this needed effort; however, in order to ensure that the Listing Policy is as clear and effective as possible at providing direction for when and how to list a waterbody, some changes to the draft are recommended.

The County recommends modifying several sections of the Listing Policy to better incorporate and make clear the need to follow the methodologies of the sediment quality objectives (SQOs) as outlined in the Water Quality Control Plan For Enclosed Bays And Estuaries Part 1: Sediment Quality (SQO Part 1). The SQOs are structured around assessing the risk to aquatic life and human health via multiple lines of evidence (MLOE) characterizing the quality of the sediments in question. The three lines of evidence for SQOs include sediment toxicity, condition of benthic biota, and sediment chemistry.

The MLOE approach required by the SQO Part 1 should be incorporated where appropriate in the Listing Policy. In addition, the current language in the Listing Policy

related to causality should reference the stressor identification process described within the SQO Part 1. This change will help to ensure that proper causal assessments are performed prior to linking stressors to impairments of sediment quality in the context of listing decisions. A few specific comments and recommendations are outlined below.

3.6 WATER/SEDIMENT TOXICITY

Comment #1: Toxicity data collected as part of the triad approach under the SQO Part 1 should be interpreted in accordance with procedures in the SQO Part 1.

Recommendation: Add language at the end of paragraph one.

“Where SQOs are relevant and apply, toxicity data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1.”

Comment #2: Sections A – C are not applicable where a triad of data (chemistry, bioassessment, and toxicity) is available. Causal assessments should be focused on the stressor identification requirements contained in the SQO Part 1 (Section VII.F). For clarity, Sections A – C should not apply where the sediment quality objectives apply.

Recommendation: Where sediment quality objectives apply, the following language should be included in lieu of Sections A – C.

“Where impairments of sediment quality are identified through the multiple lines of evidence approach as described in the SQO Part 1, listings should be only for the impairment of sediment quality. Upon performance of the stressor identification process per the SQO Part 1 and identification of the specific stressor, the listing may be modified to reflect the pollutant contributing to or causing the observed impact.”

3.9 DEGRADATION OF BIOLOGICAL POPULATIONS AND COMMUNITIES

Comment #3: Biological data collected as part of the triad approach under the SQO Part 1 should be interpreted in accordance with procedures in the SQO Part 1. In addition, causal assessments should be focused on the stressor identification requirements contained in the SQO Part 1 (Section VII.F).

Recommendation: Add language at the end of the section.

“Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1. Where impairments of sediment quality objectives are identified, listings should be for the impairment of sediment quality. Upon performance of the stressor identification process per the SQO Part 1 and identification of the specific stressor, the listing may be modified to reflect the pollutant contributing to or causing the observed impact.”

4 CALIFORNIA DELISTING FACTORS

Comment #4: The policy should directly address the methods to be used to delist water bodies that are listed for impairment of sediment quality but have more recent data demonstrating that there is no impairment. Because the SQO Part 1 encompasses chemistry, biological, and toxicity data, it is not clear which binomial distribution would be applicable. Further, due to the rigor of the SQO Part 1, it is unreasonable and impractical to require collection of the amount of data necessary to delist based on the binomial distribution. Lastly, where a stressor identification has been performed and the stressor has been identified, the sediment quality listing should be removed and replaced with a listing for the identified stressor.

Recommendation: Add a new section under Section 4 to address delisting factors related to sediment quality objectives.

“Waterbodies listed for an impairment of sediment quality that no longer show impairment as defined in the SQO Part 1 shall be removed from the Section 303(d) list. Where a stressor identification study has been performed as required under the SQO Part 1 and the stressor has been identified, the sediment quality listing shall be removed from the Section 303(d) list and replaced with a listing for the identified stressor.”

6.1.1 DEFINITION OF READILY AVAILABLE DATA

Comment #5: The County recommends utilizing all available data in the California Environmental Data Exchange Network (CEDEN) during the upcoming integrated reporting efforts. Utilizing only the data submitted as part of the 2010 solicitation, as suggested in the November 12, 2013, letter from Nick Martorano¹ to interested parties, would result in at least four years of additional data being left out of the analysis. The County expends significant resources collecting data to meet MS4 Permit and total maximum daily load (TMDL) requirements and all available data should be considered to ensure the 303(d) list reflects the most current information available.

6.1.2 ADMINISTRATION OF THE LISTING PROCESS

Comment #6: The County is broadly affected by TMDLs and thus has a strong interest in potential changes to listing procedures and decisions. Compliance can be resource intensive as the County’s programs work to protect water quality in accordance with state and federal rules. As described in Section 6.1.2 of the proposed amendment to the Listing Policy, “off cycle” revisions may be considered. However, the Regional Boards are often under staffed to conduct listing reviews and revisions, particularly in off cycle periods. As such, the County recommends that the State Board provide a mechanism for interested parties to submit requested revisions directly to the State Board rather than relying on a Regional Water Board’s decision of when to administer off cycle processes.

6.1.3. EVALUATION GUIDELINE SELECTION PROCESS

¹ Chief, Surface Water Quality Assessment Unit, State Water Resources Control Board, Division of Water Quality.

Comment #7: Additional language should be added to clarify that procedures developed within SQO Part 1 should be followed and should supersede previous listing analysis where the required data is available under the SQO Part 1.

Recommendations:

- a. Language should be added to Section 6.1.3.1.A to clarify that the SQO Part 1 is used as appropriate.

"If sediment quality objectives apply, the Regional Water Boards shall use the methods and procedures that were adopted to interpret the objective in accordance with the SQO Part 1. Analysis to support listing decisions conducted utilizing the SQO Part 1 methods and procedures supersede previous analyses conducted utilizing one or more of three lines of evidence independently."

- b. Add language to Section 6.1.3.1.B to clarify the use of sediment quality guidelines:

"If no applicable sediment quality objectives apply, or insufficient data exists to interpret sediment quality objectives, the Regional Water Boards may select sediment quality guidelines that have been published in the peer-reviewed literature or by state or federal agencies. However, once sufficient data exists to interpret sediment quality objectives, previous analyses utilizing sediment quality guidelines will be superseded and independent lines of evidence shall no longer be considered."

Acceptable guidelines include selected values (e.g., effects range-median, probable effects level, probable effects concentration), and other sediment quality guidelines. Only those sediment guidelines that are predictive of sediment toxicity shall be used (i.e., those guidelines that have been shown in published studies to be predictive of sediment toxicity in 50 percent or more of the samples analyzed). Note that effects range-low values are predictive of sediment toxicity in 10 percent of samples analyzed and are not appropriate sediment quality guidelines."

6.1.5.8 EVALUATION OF BIOASSESSMENT DATA

Comment #8: As noted previously, biological data collected as part of the triad approach under the SQO Part 1 should be interpreted in accordance with procedures in the SQO Part 1.

Recommendation: Add a fifth bullet.

"Where SQOs are relevant and apply, bioassessment data shall be interpreted in accordance with the multiple lines of evidence approach as outlined in the SQO Part 1."

6.3 APPROVAL OF STATEWIDE LIST

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Comment #9: Section 6.3 includes changes the review process of the final Statewide 303(d) List. Changes would allow the State Board Executive Director to finalize the proposed list and submit it directly to the EPA. At present, there are multiple opportunities for interested parties to address the proposed list, and the State Board holds a public hearing on the proposed final list and then approves it via vote. The changes would make it possible for the Executive Director to move the proposed list to public hearing and comment without the involvement of the State Board or their voted approval. These changes eliminate the ability of the public to express disagreement with the proposed list to the State Board for via their hearing process and vote. Furthermore, given the potential cost implications associated with new 303(d) listings, it would not be prudent for the State Board to reduce transparency in this process. The County feels that the proposed changes reduce the opportunity for public and municipal participation in the process and should not be enacted as included in the draft Listing Policy.

Recommendation: New language providing the Executive Director with approval authority should be removed from the proposed language.

~~"The State Water Board Executive Director or the State Water Board shall approve the section 303(d) list. Before the Executive Director or the State Water Board approves the section 303(d) list, the State Water Board shall provide advance notice and opportunity for public comment. Public comment shall be limited to listing recommendations that are timely requested for review pursuant to section 6.2 unless the Executive Director or the State Water Board elects to consider recommendations on other waters. Upon approval by the Executive Director or State Water Board, the statewide section 303(d) list and supporting fact sheets shall be submitted to USEPA for approval as required by the Clean Water Act."~~

Thank you for your time and consideration of these comments offered in an effort to improve consistency in 303(d) listing and delisting decisions in the future. If you have questions, please contact Jo Ann Weber at (858) 495-5317 or at JoAnn.Weber@sdcounty.ca.gov.

Sincerely,



Todd Snyder, LUEG Program Manager
Department of Public Works, Watershed Protection Program