



COUNTY OF SACRAMENTO
PUBLIC WORKS AGENCY – CHERYL CRESON, ADMINISTRATOR

Department of Water Resources

Including service to the Cities of Citrus Heights, Elk Grove and Rancho Cordova

Keith DeVore, Director

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Feb. 18, 2004

Craig J. Wilson
TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

**SUBJECT: WATER QUALITY CONTROL POLICY FOR DEVELOPING
CALIFORNIA'S CLEAN WATER ACT SECTION 303(D) LIST,
DECEMBER 2003 DRAFT**

Dear Mr. Wilson:

The Sacramento County Stormwater Program supports the State Board's efforts to establish standard protocols for the 303(d) listing process. A standardized approach will help the state meet its obligations to protect and improve impaired waters in a reasonable and cost-effective way.

We also support the efforts by the State Board staff to establish a technically-sound set of criteria as the foundation of those standard protocols. This is essential in deriving a listing policy that will result in scientifically-supportable listings of impaired waters.

It is very important for the state's 303(d) listings to be scientifically supportable, because such listing leads to a requirement to develop TMDLs. The TMDL process involves a substantial commitment of resources from the state's regulatory agencies, regulated entities, and citizenry, and should only be undertaken where there is demonstrated due cause, and where the process will result in meaningful improvement in water quality.

We do have a few concerns with the revised draft Listing Policy, as follows.

Listing of Biologically-based Impairments Where the Pollutant is Not Known

We believe that there is clear need for some version of a "monitoring" or "planning" list or

category for those waters for which data are incomplete or inconclusive. In previous discussions this list has also been known as the "watch list". Per Sections 3.1.6, 3.1.8, and 3.1.9 of the revised draft Policy, it appears that a water body can be listed due to toxicity, adverse biological response, or degradation of biological populations **EVEN IN THE ABSENCE OF IDENTIFICATION OF A POLLUTANT CAUSING SUCH EFFECTS**. All three sections appear to acknowledge that association with a specific pollutant is necessary before proceeding with a TMDL, but the policy language does not require such association prior to listing. This situation highlights the need for some version of a monitoring or planning or watch list – one suggestion would be to call it the "pollutant identification" list – to account for those surface waters where biological testing indicates impairment, but the causative pollutant(s) is (are) not identified. Such list could be set up as a category within the 303(d) list that requires additional investigation to determine the cause(s) of impairment prior to initiation of the TMDL process.

Aggregation of Data by Reach/Area

A second significant concern lies in the "Aggregation of Data by Reach/Area" (Section 6.2.5.6). The third (last) paragraph of this section states, "*Data related to the same pollutant from two or more adjoining segments shall be combined provided that there is at least one measurement above the applicable water quality objective in each segment of the water body. The pooled data shall be analyzed together.*" This appears to mean that if Reach A has the minimum number of required samples and meets a criterion for listing, then reaches B, C, etc. could all be listed if just one sample meets the criterion, through pooling with the Reach A data. This is in conflict with the letter and spirit of the carefully-crafted technical basis for listing laid out in the policy.

Listing Based on Bacteria Indicators in Freshwaters/Contact Recreation Impacts

Per Section 3.1.3 of the revised draft Listing Policy, percentage exceedances are used to establish listing for recreational uses. The language in this section should be clarified to apply specifically to contact recreation. Using existing freshwater beach monitoring data may not be appropriate if the sampling protocol does not adequately represent spatial and temporal variability. Freshwater beach postings should be used as a screening tool only, unless the data are obtained from a monitoring program conducted using a representative sampling protocol.

Impacts on contact recreation uses in freshwater should be evaluated in the context of seasonal and site-specific variation in actual use patterns. For example, freshwater contact recreation is very rare in Sacramento area beaches during cold weather and rainfall events, and during those times contact recreation should not be considered a beneficial use that could be impacted.

Latitude should be allowed to consider actual pathogen data for the receiving water, if it exists, to support either listing or delisting, especially when the exceedance frequency is close to 10%.

Water Quality Trends and Alternate Data Evaluation

We are also concerned that Sections 3.1.10 and 3.1.11, dealing with Trends in Water Quality and Alternate Data Evaluation, will create loopholes for listing of waters without sufficient data or technical basis.

Miscellaneous; Clarifications Needed

We also request clarification of the following language in the revised draft policy:

- the language regarding use of data older than ten years (Section 6.1) – the concern here is that listings originally based on such data may have had inadequate scientific basis, and/or may not reflect current conditions and hence may no longer be valid for the water body in question;
- the reference to "photographic documentation" in the last paragraph of Section 6.2.4, as such is not mentioned previously (appears to be an inadvertent holdover from the previous draft policy);
- descriptions of Spatial Representation (Section 6.2.5.3) and Temporal Representation (Section 6.2.5.4), as the technical meaning of these sections is unclear;
- Section 6.2.5.5, which references the "planning list" (apparent holdover from previous draft).

Thank you for your consideration of these comments. You may reach me at (916) 874-4681 if you have any questions.

Sincerely,



for : Kerry Schmitz
Senior Civil Engineer

cc:

Craig Crouch
Dave Tamayo
Armand Ruby
Jeanne Wallberg



Terry Tamminen
Secretary for
Environmental
Protection

State Water Resources Control Board

Arthur G. Baggett Jr., Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5566
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5550 • <http://www.swrcb.ca.gov>



Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

DRAFT WATER QUALITY CONTROL POLICY FOR DEVELOPING CALIFORNIA'S CLEAN WATER ACT SECTION 303(d) LIST AND DRAFT FUNCTIONAL EQUIVALENT DOCUMENT

Wednesday, January 28, 2004 – 10:00 a.m.

Coastal Hearing Room – Second Floor
Joe Serna, Jr. Cal/EPA Headquarters Building
1001 "T" Street, Sacramento, CA

and

Thursday, February 5, 2004 – 10:00 a.m.

Torrance Community Meeting Hall
Torrance Cultural Arts Center
3330 Civic Center Drive, Torrance, CA

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (SWRCB) will hold a public hearing to seek comments on the proposed Water Quality Control Policy for Developing California's Clean Water Act (CWA) section 303(d) List (Policy). As required by Water Code section 13191.3(a), the Policy contains guidelines to be used by SWRCB and the Regional Water Quality Control Boards (RWQCBs) in listing and delisting waters pursuant to section 303(d) of the federal CWA (33 U.S.C. section 1313[d]). SWRCB is requesting comments on the draft Functional Equivalent Document (FED) and the draft Policy.

SWRCB will not take final action at the hearing. The draft Policy will be considered for adoption and the draft FED will be considered for approval at a future Board Meeting.

BACKGROUND

Section 303(d) of CWA requires states to identify waters that do not meet applicable water quality standards with certain technology-based controls alone. Applicable standards include the designated beneficial uses, the adopted water quality objectives, and the State's antidegradation policy. The section 303(d) list must include the water quality limited segments, associated pollutants, and a priority ranking of the waters for purposes of developing Total Maximum Daily Loads (TMDLs) in the next two years. A TMDL is the maximum load of a pollutant that can be present in a water body without exceeding water quality standards. States are required to submit

the section 303(d) list and TMDL priorities to the U.S. Environmental Protection Agency for approval in even numbered years.

In 2002, the California Water Code was amended to include section 13191.3(a) requiring the development of guidelines to be used by SWRCB and the RWQCBs in listing, delisting, as well as developing, and implementing TMDLs pursuant to section 303(d) of the federal CWA (33 U.S.C. section 1313[d]). The draft Policy contains the guidelines for listing and delisting waters.

SUMMARY OF THE DRAFT POLICY

SWRCB is developing a statewide Policy for the consistent identification of waters that do not meet water quality standards. The goal of the Policy is to establish a standardized approach for making these determinations. The proposed Policy outlines the decision rules for evaluating data; an approach for analyzing data statistically; and requirements for data quality, data quantity, and administration of the listing process. Decision rules are provided for: chemical-specific water quality standards; bacterial water quality standards; health advisories; bioaccumulation of chemicals in aquatic life tissues; nuisance such as trash, odor, and foam; water and sediment toxicity; adverse biological response; and degradation of aquatic life populations and communities. An approach for interpreting narrative water quality objectives using numeric data is also proposed.

AVAILABILITY OF THE DRAFT FED AND DRAFT POLICY

Copies of the draft Policy and the draft FED may be obtained via the Internet on the SWRCB web site at <http://www.swrcb.ca.gov/>. You may also receive a CD-R or paper copy by writing or calling: Gena Estep, Division of Water Quality, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100, (916) 341-5566, FAX: (916) 341-5550, esteg@dwq.swrcb.ca.gov.

SUBMISSION OF COMMENTS

SWRCB will accept both written and oral comments on the draft Policy and draft FED at the hearing. Comments must be limited to the draft Policy and to the draft FED. In order for SWRCB to adequately consider written comments, all interested parties are requested to submit their comments to SWRCB no later than 5:00 p.m., February 11, 2004. Comments will be accepted via mail or facsimile.

Written comments should be submitted to:

Craig J. Wilson
TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
FAX: (916) 341-5550

At the hearing, participants are encouraged to briefly summarize their written comments. Time limitations on oral presentations may be imposed. Persons with similar views are encouraged to make joint presentations. SWRCB will consider all comments before taking final action on the draft Policy.

COURT REPORTER

A court reporter will record all the oral comments made during the public hearing. Persons who desire a copy of the hearing transcript must make their own arrangements with the court reporter.

PARKING AND ACCESSIBILITY

The hearing and public parking locations are indicated on the enclosed maps.

Cal/EPA:

There is a parking garage across the street from the Joe Serna, Jr. Cal/EPA Building with entrances on 10th and 11th Streets between "I" and "J" Streets, and metered parking spaces are in the vicinity of the building. Enclosed is a map, or see our website at <http://www.calepa.ca.gov/EPABldg/location.htm>. The facilities are accessible to persons with disabilities. Individuals who require special accommodations are requested to contact Adrian Perez at (916) 341-5880 at least five working days prior to the public hearing date. Persons with hearing or speech impairments can contact us by using the California Relay Service Telecommunications Device for the Deaf (TDD). TDD is reachable only from telephones equipped with a TDD Device. HEARING IMPAIRED RELAY SERVICE: TDD to voice 1-800-735-2929, voice to TDD 1-800-735-2922.

All visitors are required to sign in and receive a badge prior to attending the hearing. The Visitor and Environmental Services Center is located just inside and to the left of the Cal/EPA Building's public entrance. Valid picture identification may be required, so please allow up to 15 minutes.

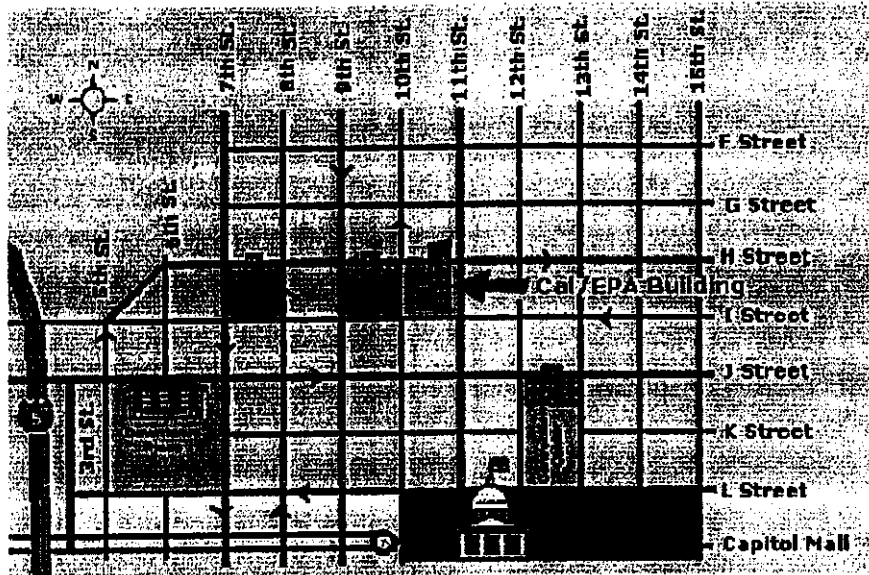
Torrance Cultural Arts Center:

There is public parking available at the Torrance Cultural Arts Center. The public hearing will be held at the Community Meeting Hall building within the Torrance Cultural Arts Center complex. Enclosed is a map, or see their website at <http://www.tcac.tornet.com/directions.htm>. The Community Meeting Hall is located to your left in the large multi-building complex once you have entered the parking lot.


Debbie Irwin
Clerk to the Board

Date: December 2, 2003

Enclosures (3)





From Downtown Los Angeles:

Take the 110 Fwy South to the 405 Fwy North and exit at Crenshaw Blvd. From the off ramp, turn left onto 182nd St., then make a left onto Crenshaw Blvd. Travel south on Crenshaw to Torrance Blvd. Turn right onto Torrance Blvd. and travel west to Madrona Ave. Turn right onto Madrona Ave. and turn into the first driveway on the right hand side. The Torrance Cultural Arts Center is the large multi-building complex to your left once you have entered the parking lot.

From Los Angeles Int' Airport (LAX):

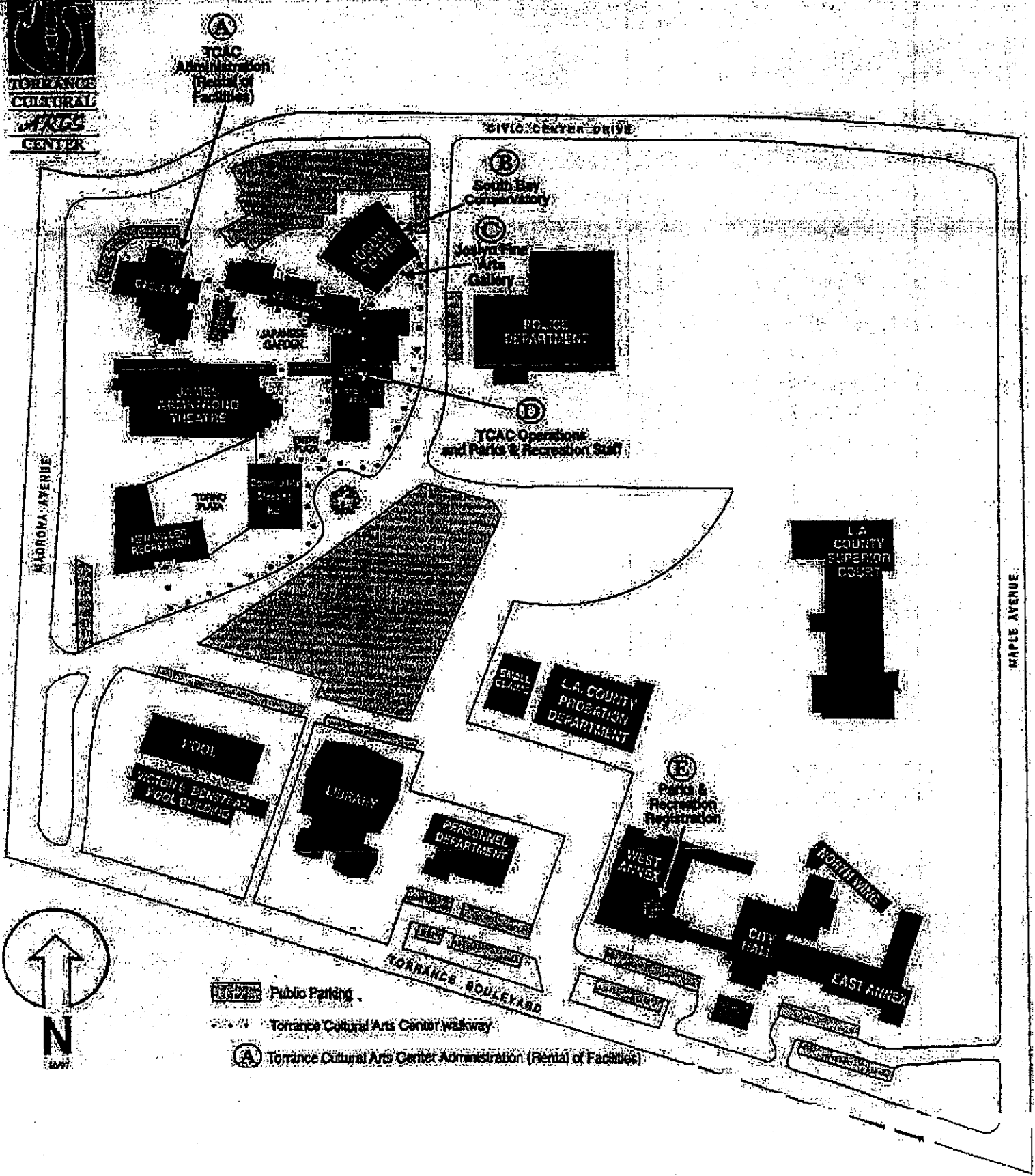
Take the 105 East to the 405 South and exit at Crenshaw Blvd. From the off ramp, turn right onto Crenshaw Blvd and travel south to Torrance Blvd. Turn right onto Torrance Blvd. and travel west to Madrona Ave. Turn right onto Madrona Ave. and turn into the first driveway on the right hand side. The Torrance Cultural Arts Center is the large multi-building complex to your left once you have entered the parking lot.

From San Diego:

Take the 5 North (turns into the 405 North) and exit at Crenshaw Blvd. From the off ramp, turn left onto 182nd St., then make a left onto Crenshaw Blvd. Travel south on Crenshaw to Torrance Blvd. Turn right onto Torrance Blvd. and travel west to Madrona Ave. Turn right onto Madrona Ave. and turn into the first driveway on the right hand side. The Torrance Cultural Arts Center is the large multi-building complex to your left once you have entered the parking lot.

Torrance Cultural Arts Center

TORRANCE CULTURAL ARTS CENTER



- Public Parking
- Torrance Cultural Arts Center Walkway
- Torrance Cultural Arts Center Administration (Rental of Facilities)