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Environmental Coordinator

August 24, 2004

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DIVISION OF  
WATER QUALITY

Mr. Arthur G. Baggett, Chair  
State Water Resources Control Board  
1001 "I" Street  
Sacramento, CA 95814

Subject: WSPA comments on the July 22, 2004 Draft "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List"

Dear Chairman Baggett:

The Western States Petroleum Association (WSPA) is a non-profit trade association of companies that produce, transport, refine and market petroleum and petroleum-based products throughout the six western states.

Water quality issues, particularly 303(d) listing, development and implementation of TMDLs, NPDES and monitoring are all very important to our members and therefore we appreciate the opportunity to provide comments on the draft July 22, 2004 Draft "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List."

As you are aware, WSPA has been a member of the Regulated Caucus of the AB982 Public Advisory Group (PAG) since its inception and has worked closely with the Board and staff on several water quality issues. WSPA believes the development of the draft 303(d) List Policy is by far one of the most important documents developed by the SWRCB in the past few years and it will be the first time the SWRCB has specific Policy guidance for local Regional Boards to follow and hopefully will ensure water body listings are done on a more consistent and technically sound basis.

As mentioned above, WSPA is a member of the Regulatory Caucus of the AB982 PAG, and they have submitted an extensive list of comments on the July 2004 303(d) Listing Policy: WSPA supports and endorses their comments in full.

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In addition to supporting the comments submitted by the AB982 Regulatory Caucus, WSPA would like to reiterate the following 3 issues of concern:

**1. Listings based on data collected during a spill or other violation:**

The July 2004 303(d) listing policy allows data that is collected during a known spill or violation to be used, in addition to other data, to show that an exceedance of a water quality standard has occurred and therefore can be used as a basis for being placed on the 303(d) list. WSPA opposes allowing the use of data collected from a spill to be used as data for purposes of placing the water body/segment on the 303(d) list. Spills or other types of violations which are clearly not a normal permitted discharge, should not be treated as a condition that is constant and ever present. It would be inappropriate to allow regional boards to consider it in their listing evaluations.

WSPA requests the SWRCB revise the July 2004 303(d) Policy and remove any reference allowing data from spills or violations of an effluent limit to be used as data in the listing process.

**2. Binomial Distribution:**

WSPA strongly supports the binomial distribution using the null hypothesis approach as the main methodology for determining listing and delisting decisions as proposed in the July 2004 303(d) policy. We believe this statistical approach is the best available method for providing the much-needed objectivity to the listing (and delisting) process. Additionally, WSPA supports inclusion of the new type of approach called the "Acceptance Sampling by Attributes Approach." This approach balances Type I (listing a water body that is not impaired) and Type II (not listing a water body that is impaired) errors, which should result in better listing decisions.

WSPA supports the "Binomial Distribution", including the "Acceptance Sampling by Attributes Approach" and urges the SWRCB to formally adopt this approach.

**3. Urge the SWRCB Adopt the Final 303(d) Policy**

As mentioned in the AB982 Regulated Caucus letter, the 2004 Section 303(d) list update is already underway and we believe, at a minimum, any future TMDL listing decisions should be made using the guidelines, criteria and objectives developed in the July 2004 303(d) list Policy provides.

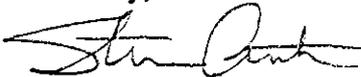
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In that regard, we would urge the SWRCB to consider and incorporate our suggestions and we urge the Board to formally adopt the final 303 (d) list Policy as soon as reasonably possible, so that regional boards and the regulated community can immediately take advantage of the 303(d) Policy's criteria, guidance and objectives on water quality bodies and segments of concern.

In closing, we would like to express our appreciation and thanks to Mr. Craig Wilson and his staff for their hard work and dedication and most importantly efforts in seeking the input and concerns of WSPA and the AB982 Regulated Caucus.

Thank you for considering our comments and look forward to the SWRCB finalizing and adopting the 303(d) Listing Policy in the near future.

Sincerely,



Steven Arita

cc: SWRCB Board Members  
Mr. Tom Howard - SWRCB  
Mr. Stan Martinson - SWRCB  
Mr. Craig J. Wilson - SWRCB

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