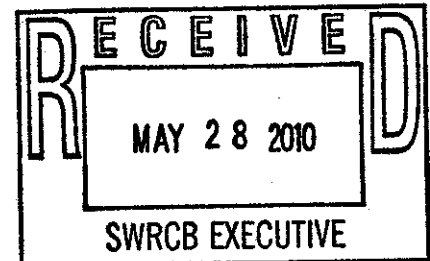


Fred Krieger
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May 28, 2010

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
Submitted via email: commentletters@waterboards.ca.gov



Subject: Comment Letter – 2010 Integrated Report / Section 303(d) List

Thank you for the opportunity to comment on the proposed 2010 Integrated Report, including the CWA Section 303(d) list of impaired waters. The 303(d) list has a significant impact on all regulated dischargers of wastewater and will become increasingly important in the coming years. This proposed 303(d) list has a net increase of 57% listings compared with the 2006 list and is indicative of the likely rapid increase in listings as additional monitoring data becomes available.

The State Water Board is proceeding to adopt the 303(d) list in the absence of the analysis required by the California Environmental Quality Act (CEQA). A full analysis is needed because of the immediate and continuing statewide impact of the adoption of the 303(d) list. This statewide and cumulative impact is not assessed during the development of the resulting TMDLs.

Depending on the program or activity, the Water Boards comply directly with CEQA or indirectly as a certified regulatory program (CRP). The Water Board activities that must conform strictly to CEQA include enforcement, 401 certification, etc. CRP activities are those that have been certified as exempt by the Secretary for Natural Resources and include State Board development of water quality plans (e.g., State Implementation Policy, Ocean Plan) and Regional Board basin planning (including TMDLs). Each CRP is subject to certain provisions in CEQA, including the general requirement of "avoiding significant adverse effects on the environment where feasible."

If CEQA does not apply directly, then the impact assessment must be completed via a substitute environmental document (SED) that is prepared under the State Water Boards' own regulations. This substitute document is sometimes referred to as a Functionally Equivalent Document, and is typically integrated into the Staff Report. The State Board recently proposed an update to its regulations that requires specific significant impacts findings as part of the process for the approval of a Final SED.¹

It is worthwhile to analyze the intent of CEQA and compare it with this regulatory action and the benefits of a CEQA assessment:

¹ Proposed Amendments to Regulations for Implementation of the California Environmental Quality Act of 1970 are posted: http://www.waterboards.ca.gov/laws_regulations/

- Disclose potential environmental impacts of agency decisions to decision-makers and public

This decision on the 303(d) list has immediate impacts on dischargers because the discharge of a listed pollutant into a waterway is immediately affected upon listing. In addition, cumulative impacts from all listings on individual waterways and statewide may be significant. Some impacts could be lessened by a greater emphasis on source control via the Green Chemistry Initiative and by other means. These alternatives should be examined.

- Analyze and minimize environmental effects of projects before final approval

Opportunities are present to decrease environment effects, such as de-emphasizing less important pollutants such as the legacy pollutants which are naturally decreasing and over which dischargers have minimal control. Similarly, new and more significant pollutants could be focused on as high priority.

- *Foster public involvement in governmental decision making*

The scoping process for an EIR or FED could bring public involvement with the potential to improve the environmental outcome by identifying better alternatives.

- *Facilitate interagency coordination*

Again, the lack of a scoping process decreases involvement of other agencies.

- *Identify and mitigate significant effects*

Significant effects from the current approach of focusing almost exclusively on down-stream dischargers (POTWs, MS4s) means that alternatives with lesser impacts are not assessed.

- Improve decision-making

Better environmental outcomes are the intent of CEQA but are not possible if CEQA is avoided.

Although never stated, the basis for the decision to not follow CEQA or the Board's CRP procedures is that environmental impacts are addressed later during the development of the resulting TMDLs. The TMDLs are, however, very narrowly focused. They address individual pollutants on specific waterways. They seldom address cumulative impacts even for the same waterway. They do not address the issue of serial TMDLs where later TMDLs impact controls developed for earlier TMDLs.

CEQA is intended to look at "big picture" issues and identify and assess alternatives. The current approach of relying completely on the TMDLs is clearly not adequate and contrary to CEQA and the Board's own procedures.

Please consider the need to provide CEQA documentation. Thank you for the opportunity to comment. If you have any questions please contact me at (510) 843-7889.

Sincerely

/signed/

Fred Krieger