
Tri-TAC
Jointly Sponsored by:
League of California Cities
California Association of Sanitation Agencies
California Water Environment Association

Reply to: Phil Bobel
Water Quality Control Plant
2501 Embarcadero Way
Palo Alto, CA 94303
(650) 329-2285

March 2, 2001

Timothy Dwyer
U.S. Environmental Protection Agency
ICC Building (MC 4203M)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Draft Guidance Implementing the Water Quality-Based Provisions in the Combined Sewer Overflow (CSO) Control Policy

Dear Mr. Dwyer:

Tri-TAC of California appreciates the opportunity to submit these comments on the proposed Guidance Implementing the Water Quality-Based Provisions in the CSO Control Policy. Tri-TAC is a technical advisory committee representing California municipal wastewater management agencies that collectively treat and reclaim more than 2 billion gallons of wastewater each day. Tri-TAC's name reflects its membership and role: "Tri" from its three sponsoring organizations (the League of California Cities, the California Association of Sanitation Agencies, and the California Water Environment Association); and "TAC" from its role as a technical advisory committee. Tri-TAC operates as an independent entity in the state of California.

Tri-TAC appreciates the efforts of the Environmental Protection Agency (EPA) staff in developing this comprehensive guidance. We hope our comments will be helpful in developing final guidance that will be protective of the waters of the United States and that will be supported by all interested parties.

Please find our major recommendations on the following pages.

1. **Reference should be made in the document to the use of this guidance for wet weather pollution control activities other than combined sewer overflows.** The nature of the guidance, while focused primarily on proper implementation the CSO policy, certainly has applicability in other watershed management and wet weather water pollution control challenges. Reference should be made in the document of the applicability of the Use Attainability Analyses (UAA) and other parts of the guidance to other wet weather challenges.
2. **EPA should take a leadership position and repeatedly encourage state water quality standards officials to consider wet weather water quality standards revisions seriously and to engage in productive and meaningful dialogue with dischargers.** We need leadership and creativity from EPA on this most pressing issue, especially as the easy problems get fixed and we are now faced with the more difficult, and often wet weather, problems.
3. **Anti-degradation policies are separate from water quality standards and should not be characterized as a component of water quality standards.** In several places in the draft document, anti-degradation is referred to as a component of water quality standards. However, there is nothing in the Clean Water Act (CWA) that indicates an anti-degradation policy is to be part of water quality standards; in fact, it was intended to be a separate policy. CWA Section 303(c)(2)(A) states:

Whenever the State revises or adopts a new standard, such *revised or new standard . . . shall consist of the designated uses of the navigable waters involved and the water quality criteria* for such waters based upon such uses. (emphasis added)

Hence, such an interpretation is contrary to the explicit provisions of the CWA and should be removed.

4. **Revisions to uses should be characterized as changes, not as downgrading.** In most cases, EPA characterizes a change in use as downgrading a use. This interpretation will result in failure to change any uses, and again makes it look like EPA is not really that interested in seeing any changes to uses occur.
5. **Further detail needs to be provided for how UAAs can be simplified.** On page 6, there is a statement that reads, “This document identifies ways in which the UAA can be simplified” but this simplification is not apparent later in the document. UAAs have in many cases been onerous exercises for little to no benefit. There is really very little information in the document itself regarding UAAs. Reference to state guidelines (with no information on obtaining related information) or future guidance, does not in our view, represent communicating simplification.

6. **EPA needs to indicate more strongly that there are some situations where primary contact recreation should not (or simply does not) occur.** On page 17 (last paragraph), EPA says that “For waterbodies where a State demonstrates through a UAA that primary contact recreation should not occur, a recreation use and water quality criteria to protect secondary contact activities may be appropriate.” However, it is not enough to then just give examples of secondary contact recreation. EPA should further provide examples of situations where primary contact recreational use is inappropriate, such as shipping channels or flood control channels.
7. **We applaud EPA in pointing out that some States provide mixing zones for bacteria, derive permit limits that account for instream dilution, and apply the criteria at the point where recreation actually occurs.** On page 20, this discussion is important in describing the attainability, and reasonableness, of particular uses.
8. **EPA should be clear that the percentages for affordability refer to the sum of water and sewer bills which include costs for new facilities.** On page 30, these aspects of the costs are unclear and should be further defined. Total costs including planning, design, construction, operation, maintenance, depreciation, renewal & replacement, debt service, etc. must be included to provide a complete picture of actual costs to the public.
9. **EPA should take into account *di minimus* sources and put them in the proper context, namely that there may be no discernable impact.** On page 40, EPA describes three ways that water quality standards could be revised. However, EPA should also discuss the situation where an impact is only occurring a small percentage of the time, such as less than 1-2%, and especially if pollutants are not persistent, a discernable impact may not be occurring.

Again, Tri-TAC appreciates the opportunity to comment on the proposed guidance. Please contact me if you have any questions or if you need additional information

Sincerely,

(Original Signed By....)

Phil Bobel, Chair
Tri-TAC

cc: Jim Colston, Co-chair, Tri-TAC Water Committee
Monica Oakley, Co-chair, Tri-TAC Water Committee