



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

Via Electronic and U.S. Mail

May 17, 2004

Frank Roddy
Division of Water Quality
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-0100

SUBJECT: Comments on California Ocean Plan Triennial Review

Dear Frank:

The California Association of Sanitation Agencies (CASA) and Tri-TAC appreciate the opportunity to provide our comments regarding the California Ocean Plan Triennial Review. CASA and Tri-TAC are statewide organizations comprised of members from public agencies and other professionals responsible for wastewater collection and treatment. Tri-TAC is jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. The constituency base for CASA and Tri-TAC collects, treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California.

CASA and Tri-TAC were pleased to see the State Water Resources Control Board (SWRCB) move forward with proposed Ocean Plan amendments in conjunction with the Scoping Workshop and Hearing held in January and February of this year. In general, we believe the proposed amendments properly focused on several of the key issues in the Plan that warrant clarification or revision. Therefore, we are disappointed that this effort has stalled in favor of a new, broad triennial review process. For a number of reasons, discussed below, we encourage the SWRCB to move forward with the process that has been ongoing since the last triennial review. Tri-TAC, CASA, and numerous individual sanitation districts and cities participated in the last triennial review process. The issues identified by the triennial review process are complex and time consuming, and restarting the process will likely mean losing the significant

amount of effort and public participation that has already been devoted to the current effort. The SWRCB is never able to address the entire range of issues identified in the periodic reviews of a statewide plan, and we believe the subset of issues selected by staff for amendments represents a reasonable approach.

The SWRCB Should "Stay the Course" with the Current Triennial Review Process

CASA, Tri-TAC and numerous local government agencies participated in the 1998 Triennial Review Process and 1999-2000 amendment process for the California Ocean Plan (COP). The scoping meeting held in January 2004 was an important step in advancing the four proposed amendments to the COP. Numerous participants from the many interests that participated in the scoping meeting emphasized the need to move forward with these amendments.

Proposed Ocean Plan Amendment #3: Reclassifying Areas of Special Biological Significance (ASBSs) to State Water Quality Protection Areas (SWQPAs) and establishing implementing provisions for discharge into SWQPAs. This important amendment should move forward, as the revisions are necessary both to comply with state law and to address the important issue of stormwater discharges into ASBSs/SWQPAs. Unlike some other commenters, we believe that the proposed changes in nomenclature (i.e. changing ASBS to SWQPA) are ministerial in nature, and do not constitute a substantive change in beneficial use designation. *See Cal. Public Resources Code Section 36700 et seq.* Most importantly, for the future protection of these areas and the development of reasonable and achievable stormwater permits, the SWRCB must develop definitions for the terms "limited by special conditions" and "controllable to the extent practicable," and it is appropriate for the SWRCB to develop definitions of these terms and include them in the COP.

Proposed Ocean Plan Amendment #1: Choice of bacteria indicator organisms for water-contact bacterial standards. This amendment should also move forward in order to comply with federal law and to harmonize federal and state law. Federal law requires states to develop water-contact bacterial standards at least as stringent as EPA's 1986 Ambient Water Quality Criteria for Bacteria. Since the COP's current objectives do not include enterococci, as proposed in this amendment, the Plan does not comply with this requirement. However, the Department of Health Services Beach Sanitation Standards do comply with this requirement. EPA expressed concern regarding this discrepancy in an April 2004 letter to the Secretary of the California Environmental Protection Agency. Consistent with the detailed comments on the nature and specific content of these proposed amendments CASA and Tri-TAC previously provided via our February 6, 2004 letter, we do support moving forward with this amendment as discussed in those comments.

Proposed Ocean Plan Amendment #2: Adoption of fecal Coliform standard for shellfish harvesting areas. This amendment is important in as much as it would help to clarify those areas where the shellfish harvesting standard is applicable. The current COP lacks clear language on the determination of shellfish harvesting areas in the nearshore zone. Due to the restrictive nature of this objective, if it is not applied carefully and with appropriate implementation provisions, it could result in numerous impaired water body listings for areas that do not support shellfish harvesting. For instance, RWQCBs must be directed to identify geographic and seasonal boundaries for the areas where shellfish harvesting has been specifically identified as a beneficial use.

Proposed Ocean Plan Amendment #4: Define “reasonable potential” calculations to determine when water quality-based effluent limitations would be required. As many of the water quality objectives in Table B of the COP are at low levels including picogram and nanogram concentrations, the current method to determine reasonable potential needs to be updated. Tri-TAC and CASA provided comments in our February 6, 2004 comment letter on how the proposed amendment may be improved to provide a workable and protective reasonable potential process. We support further work on this amendment to the COP.

For all of the reasons discussed above, we urge the SWRCB to continue to work on developing amendments to the California Ocean Plan based on the current staff proposal discussed at the January 2004 workshop. This is important to meet federal and state law requirements and address several important technical and policy issues with the COP.

High Priority Issues for the Next Triennial Review Process

While CASA and Tri-TAC urge the SWRCB to move forward with the current COP amendment development process, if the SWRCB decides to move forward with a new triennial review process, we recommend that the SWRCB reopen the triennial review process, and direct staff to solicit public comments and provide an updated staff analysis of the issues. While we prefer this approach, we offer the following preliminary comments on the scope of issues that the SWRCB might wish to address in the future. The first three issues are from the current proposal, and we believe that they should continue to be the SWRCB's highest priority issues for the reasons discussed above.

1. Reclassifying Areas of Special Biological Significance (ASBSs) to State Water Quality Protection Areas (SWQPAs) and establishing implementing provisions for discharge into SWQPAs
2. Choice of bacteria indicator organisms for water-contact bacterial standards
3. Adoption of fecal Coliform standard for shellfish harvesting areas
4. Review of Table B based on the lack of certified standards for some constituents.

5. Refinement of Toxicity Testing Implementation Provisions and Development of Toxicity Reduction Evaluations (TREs)
6. Incorporation of Procedures for Establishing Site-Specific Water Quality Objectives in the Ocean Plan

In summary, CASA and Tri-TAC recommend that the SWRCB proceed with development of the four amendments discussed during the January 2004 workshop. As noted above, to the extent that other issues are going to be selected instead, we recommend that the SWRCB reopen the Triennial Review process to conduct a more complete assessment of the issues that need to be addressed. At that time, we would welcome the opportunity to provide additional comments on the issues of concern to us. Thank you for your consideration of these comments.

Sincerely,

Roberta L. Larson
SNG

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Sharon N. Green

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Chair
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