

US EPA ARCHIVE DOCUMENT

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Via email: stakeholders@epa.gov

SUBJECT: Review of Environmental Protection Agency Public Participation Policies

We appreciate the opportunity to provide comments on the Environmental Protection Agency's (EPA) Public Participation Policies [64 Fed. Reg. No. 229, Page 66906] on behalf of Tri-TAC. Tri-TAC is a California-based technical advisory group comprised of members from municipalities, public agencies, and other professionals responsible for wastewater treatment. Membership includes the League of California Cities, the California Association of Sanitation Agencies, and the California Water Environment Association. The constituency base for Tri-TAC collectively treats and reclaims more than one billion gallons of wastewater each day, and serves most of the sewered population of California.

Many Tri-TAC agencies operate under National Permit Discharge Elimination System (NPDES) permits for the discharge of stormwater or treated wastewater. Members are concerned about NPDES permit processes and other Clean Water Act programs including Water Quality Standards, Total Maximum Daily Loads, State Revolving Loan Fund, and the industrial pretreatment program. Due to Tri-TAC's interest in these and other EPA programs, we offer the following comments regarding public participation in decision making, rulemaking, and program implementation as outlined in the 1981 Public Participation Policy (Policy).

Recommended Changes to the Policy

To improve the Policy, the Outreach and Timing portions must be revised. Under "Outreach

Methods,” the Policy states, “Whenever possible, the social, economic, and

environmental consequences of proposed decisions and alternatives should be clearly stated in outreach material. Technical evidence and research methodology should be explained.”

We support this requirement, but it is currently not used on most regulations. This form of outreach should be mandatory for any “potentially significant” decision making, rulemaking or program implementation by EPA. A suggested definition for “potentially significant” is when the total annual cost to fully implement the proposed action may exceed \$100 million under possible or likely scenarios. The “total annual cost” should include consideration of the direct costs to implement the action by States, as well as the indirect State and local costs associated with compliance with permit requirements, TMDLs, local land use controls, product restrictions, etc. Recent EPA efforts to estimate the costs of regulations or policy proposals have severely underestimated or neglected to consider such costs (Refer to proposed TMDL regulations, NPDES permit regulations, and Great Lakes mixing zone restrictions.).

This review of consequences should also require an evaluation of other administrative or regulatory options to the proposed action, such as cross-media controls or pollutant trades. This would allow locally impacted communities to consider the most technically and economically feasible alternatives to achieve environmental objectives.

We also recommend that the “Timing” section of the policy be revised so that the minimum public comment period for the review of regulations or EPA adopted TMDLs is at least 60 days. EPA has allowed extended time periods for comments on some significant regulations, but others have been proposed with very limited timeframes for public comment. A minimum 60-day comment period would allow the public a greater opportunity to receive notice of the proposed action, receive and review pertinent documentation, and make comments on the proposal.

Tri-TAC Supports Public Participation

Tri-TAC supports more opportunities for public participation and has been a long-time supporter of the watershed management approach. We particularly encourage the use of state and local advisory groups as an alternative to the Federal Advisory Committee Act (FACA) process, wherever possible. Local groups can offer conditions that are more conducive for participants to meet including timing, location and familiarity with local conditions and other stakeholders. This option also offers affected parties an opportunity to

exchange ideas and concerns, participate in problem identification and goal-setting steps, and to work towards mutually acceptable solutions.

Tri-TAC also supports "Assimilation" as discussed in the Policy including the statement that [t]he agency must then demonstrate, in its decisions and actions, that it has understood and fully considered public concerns." Also, EPA must "[s]et forth the agency's specific responses, in terms of modifying the proposed action, or explaining why the agency rejected proposals made by the public." The Assimilation requirements help to assure that EPA reviews, understands and responds to the public's position on EPA's action.

Thank you for the opportunity to comment on this important Policy. If you have any questions, please call me at (714) 593-7458.

James E. Colston
Co-Chair, Tri-TAC Water Committee

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c: Phil Bobel, Chair
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