



# California Regional Water Quality Control Board

## Los Angeles Region



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**TO:** Celeste Cantú, Executive Director  
Tom Howard, Chief Deputy Director  
State Water Resources Control Board

**FROM:** Dennis A. Dickerson  
Executive Officer

**DATE:** February 18, 2004

**SIGNATURE:**

**SUBJECT:** WATER QUALITY CONTROL POLICY FOR DEVELOPING CALIFORNIA'S  
CLEAN WATER ACT SECTION 303(d) LIST; DECEMBER 2003 (LISTING  
POLICY)

Thank you for the opportunity to provide comments on the proposed Policy. We are well aware of the challenges and shortcomings of past listing cycles and welcome the benefits afforded by a policy, such as greater consistency amongst the Regions. Region 4 staff participated actively, through the TMDL Round Table, in developing detailed recommendations on a multitude of technical and procedural issues for consideration in developing the policy. These recommendations are detailed in the document, "Policy for the Identification of Surface Waters not Meeting Water Quality Standards: Recommendations from the Regional Board Representatives of the TMDL Round Table to the Management Coordinating Committee" dated December 18, 2002, which was submitted to the State Board. Unfortunately, only a few of these recommendations were incorporated in the proposed Policy and many of the most important ones were not included. Given that the staff of the Regional Boards has many years of experience conducting water quality assessments and developing 303(d) lists, we ask the State Board to carefully consider and give a great deal of weight to these joint recommendations from the nine Regional Boards and OCC. These recommendations are also discussed in detail in the recent comment letter from the TMDL Round Table to State Board.

Our comments are directed to three major issues also addressed by the TMDL Round Table: 1) the primary reliance on the binomial method for listing and delisting waters, 2) resource implications of policy provisions, and 3) the linkage of priority setting with specific schedules for TMDL completion.

**1. Focus on Binomial Method for listing and delisting waters** - The binomial method with a 10% acceptable exceedance rate is the primary method proposed in the draft policy for evaluating water quality data. Although such an approach would provide consistency, few standards are written with a 10% allowable exceedance rate. For example, U.S. EPA generally recommends that objectives for toxic pollutants not be exceeded more than once every three years. Therefore, it is unclear how an allowable frequency of exceedance that is in direct conflict with that intended for the standard in question can be used to evaluate compliance with that standard.

Furthermore, the binomial method alone cannot take into account critical information that is pertinent to the evaluation of compliance with standards. Analysis of trends and magnitude of exceedance would be precluded, as well as consideration of other relevant information. The proposed allowance for "Alternate Data Evaluation" is unclear or otherwise imposes prohibitive and unnecessary constraints, such as requiring use of a statistical method with a confidence limit and exceedance frequency equivalent to those of the binomial method.

We recommend that the binomial method be used as a screening tool in combination with a more comprehensive analysis that can take into account other relevant factors. We support the recommendation by the TMDL Round Table to use the binomial method in conjunction with a well-defined "weight of evidence" method. Such an approach will help ensure that the Regional Boards will make reasoned decisions in determining whether standards are attained.

**2. Resource implications of policy provisions –** Performing water quality assessments for California's surface waters is a resource intensive task due to the high degree of public interest, the level of documentation required, and the level of technical effort needed. The draft Listing Policy adds to this resource intensive task by requiring the Regions to go above and beyond an assessment of California's surface waters. Having an enforceable programs list requires the Regions to perform a detailed evaluation of the adequacy of a program, in addition to performing a water quality assessment. Determining whether non-attainment of standards is solely due to natural background levels requires an assessment of sources. The Regions are also required to make a distinction between impairments that are due to pollutants versus pollution, which may require an evaluation that cannot be readily performed with available information. The recently completed TMDL Guidance provides procedures and mechanisms for evaluating and recognizing enforceable programs, and deciding when and how to consider natural sources and pollutants versus pollution.

The draft Listing Policy also does not discuss how often the List will be updated. The 1998 and 2002 lists took a little over two years between the solicitation of information by the Regions to approval by U.S. EPA. The process outlined in the draft Listing Policy would likely require at least that amount of time. If the 303(d) List is updated every two years, we would be in a constant state of updating the 303(d) List. Such a process would require permanent staffing for the 303(d) List update, which would take away needed resources from working on identified problems. We suggest that the Listing Policy define a comprehensive update effort every 4 to 5 years. A more limited update process could occur more frequently, if necessary to meet federal requirements (e.g. the limited process would only focus on specific requests for changes to the List).

**3. Linkage of priority setting with specific schedules for TMDL completion -** The proposed policy goes beyond the regulations that require the state to list impairments as high, medium, or low and to identify those that are targeted for TMDL development in the next two years. The policy requires the Regional Board to determine whether a TMDL will be used to resolve an impairment; determine when that TMDL will be completed; and assign a completion date consistent with that priority. The linkage of

priorities with schedules for TMDL completion is particularly problematic for Regions such as ours that are under a consent decree with court ordered schedules for completing specific TMDLs. As a result, the linkage causes priority setting for newly listed waters to be driven solely by when the TMDL can be completed given existing consent decree schedules. Further, scheduling completion of TMDLs involves a program planning effort that goes well beyond the needs of an assessment. The Regions will need to know the estimated level of effort to address each listed water; how the listed water will be addressed per the TMDL (Impaired Waters) Guidance; and the amount of resources available to address different impairment issues. This expansion in scope would bog down the assessment effort and require important planning decisions to be made based on very limited information. Use of the normal program planning processes for identifying how impairments will be addressed is more appropriate than piggybacking on the Listing effort.

We appreciate your careful consideration of our comments and those of the TMDL Round Table. For your information, attached are the recommendations that were prepared by staff from the nine Regional Boards and OCC. If you have any questions, please don't hesitate to contact me, or your staff can contact Renee DeShazo at (213) 576-6783.