

**From:** Lisa McCann  
**To:** Wilson, Craig J.  
**Date:** 8/16/02 2:40PM  
**Subject:** Re: Region 3 Data Evaluation

Craig,

I prepared the attached internal memo for Brad Hagemann (AEO) to send to Tom after internally discussing the issues and reaching agreement with Brad. I suggest you read the entire memo to fully understand our response. In a nut shell, if you guys can explain to us how to justify using a different interpretation than we did for weight of evidence (and specifically your desired 10%) technically and legally, than we think it would make sense to consider using that interpretation where it is more appropriate for our data sets. We also offer to help state board staff respond to comments received about our weight of evidence interpretation in lieu of reevaluating data on an arbitrary basis. We just can't see clear to redirect staff from TMDL development and participation in Listing Policy to reevaluate data without clarity about how and why the changes are technical and legally justified.

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>>> Craig J. Wilson 08/16/02 08:27AM >>>  
Hi Lisa,

At the Roundtable Meeting you said you were going to get feedback from your EO on whether Region 3 would perform additional data evaluation for the 2002 303(d) list as requested by Tom Howard.

Has the decision been made? I'm preparing my report on the list status and would like to include a status on this topic.

CJWilson  
916.341.5560

Internal Memo

To: Brad Hagemann

From: Lisa McCann

Date: Aug. 16, 2002

Re: Responding Tom Howard's request for us to reevaluate 303d data

Per our internal discussions the other day, I recommend you send Tom Howard the following text in an email. I also recommend that you copy Craig J Wilson, Tom Mumley and Michael Levy as well.

**We have considered the request for staff to reevaluate data submitted for listing with a different percent exceedance level to provide "consistency" amongst Regions for the 2002 listing recommendations. Additionally, we discussed the request at the TMDL Roundtable (including All Regions' Program Managers, Tom Mumley, Craig J. Wilson and Michael Levy).**

**We cannot find valid technical justification to reevaluate the data and we are reluctant to assign such a task to our staff without being clear that it is necessary and valid to do so. We have concluded that it may make sense to reevaluate *some* of the data *if* State Board staff can provide technical justification for a different percent exceedance than that asserted by our staff as a reasonable interpretation of weight of evidence. The existing recommendations for Region 3 listings and the basis for them have been presented to the public via both Regional and Statewide forums and have not incurred comments (except from USEPA staff). There does not appear to be any clear technical or legal basis for one particular percent exceedance over another. In fact, we have all been advised by Michael Levy that asserting a set percent exceedance (such as 10%) without justification is inappropriate.**

**If State Board staff can present technical justification for evaluating data with revised criteria that has approval from State Board management and legal counsel, we will apply it to the appropriate data sets. Alternatively, Region 3 staff can assist State Board staff in developing responses to written comments supporting the current basis for listing, if comments are shared with Region 3 staff. Lastly, Region 3 staff can assist State Board staff in developing written responses to USEPA's Region 3-specific comments.**

**We maintain that the process we used represents a reasonable interpretation of weight-of-evidence for most of our data sets. Given small sample sizes for individual waterbody segments, our percent exceedance level was reasonable. We also used additional lines of evidence (best professional judgement) in concert with percent exceedance to apply to the remaining sets of data (e.g. larger data sets from a single location without spatial representation). At this late point in the process, it does not seem in our best interest to require staff to alter rationale without valid technical justification.**