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COALITION FOR PRACTICAL REGULATION



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18 February 2004

Via Fax and U.S. Mail

Mr. Craig J. Wilson
TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

**Re.: Water Quality Control Policy for Developing California's
Clean Water Act Section 303(d) List and Draft Functional
Equivalent Document**

Dear Mr. Wilson:

On behalf of the Coalition for Practical Regulation (CPR), an ad hoc group of 43 cities within Los Angeles County that have come together to address water quality issues, I would like to submit the following comments regarding the Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List and Draft Functional Equivalent Document (FED). Our comments are organized to address the background, general comments, FED issue analysis, and policy recommendations.

Background/Context

As discussed in the FED, California has been preparing lists of water quality limited segments or 303(d) lists since 1976. For many years neither the regulators nor the regulated community paid much attention to the lists. Regional Boards used inconsistent procedures to develop lists and the State Board forwarded them to EPA. It was only after litigation by the environmental community against USEPA forced the development of Total Maximum Daily Loads (TMDLs) for water segment-pollutant combinations on 303(d) lists that the regulated community began to realize the importance of the lists and the potentially serious consequences of a water segment being erroneously listed. TMDLs cost hundreds of thousands of dollars to prepare and local governments may be forced to impose harsh regulations that result in little improvement to water quality while creating a business environment that companies regard as hostile.

- ARCADIA
- ARTESIA
- BALDWIN PARK
- BELL
- BELFLOWER
- BELL GARDENS
- BRADBURY
- CERRITOS
- COMMERCE
- COMPTON
- COVINA
- DIAMOND BAR
- DOWNEY
- GARDENA
- HAWAIIAN GARDENS
- INDUSTRY
- IRWINDALE
- LA CAÑADA FLINTRIDGE
- LA MIRADA
- LAKEWOOD
- LAWDALE
- MONROVIA
- MONTEBELLO
- MONTEREY PARK
- NORWALK
- PALOS VERDES ESTATES
- PARAMOUNT
- PICO RIVERA
- POMONA
- RANCHO PALOS VERDES
- ROSEMEAD
- SANTA FE SPRINGS
- SAN GABRIEL
- SIERRA MADRE
- SIGNAL HILL
- SOUTH EL MONTE
- SOUTH GATE
- SOUTH PASADENA
- TEMPLE CITY
- VERNON
- WALNUT
- WEST COVINA
- WHITTIER

The State Board prepared informal guidance in 1997 for the 1998 303(d) list and this list formed the basis of the 2002 list. Even though a formal listing policy was not adopted prior to development of the 2002 303(d) list, the process used by the State Board in developing and reviewing that list was much improved. CPR and CPR cities participated in that process and were impressed with the work of the State Board staff.

In 2002, the State compiled four separate lists:

- 303(d) list,
- TMDLs Completed List,
- Enforceable Programs List, and
- Monitoring List.

Concurrent with development of the 2002 list, the State Board began development of a new 303(d) listing/delisting policy to guide development of future lists as mandated by California Water Code (CWC) Section 13191.3(a). A draft policy was presented to the Public Advisory Group (PAG) and made available to the public in July 2003. This draft policy appeared to be based on the process used for developing the 2002 list. The approach taken in the July draft was similar to USEPA's Integrated Report Guidance and envisioned the State combining the lists that it prepares to comply with CWA sections 303(d) and 305(b) into a California Integrated Report. We were impressed with that draft of the Water Control Policy. It moved strongly in the direction of bringing the California 303(d) list into conformity with the federal regulations for implementing section 303(d) within the context of an integrated report that would track all impaired waters even if they were not appropriate to place on the 303(d) list. Now, we have the December Draft Water Control Policy that is a retreat from both the improvements made in the 2002 listing process and the July proposal for an Integrated Report. Furthermore, the December draft of the listing/delisting policy is inconsistent with *EPA's Guidance for 2004 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act*.

General Comments

First, CPR commends the State Board for the progress it has made on the 303(d) listing process. The enhancements your Board made in the 2002 list improved the process. Further, we support the Board's goal of standardizing listing procedures. That goal is a good starting point. The 303(d) Listing Policy is one of the most significant policy decisions your Board will make this year since impairments included on the 303(d) list will require TMDLs to be developed.

While the environmental community regularly refers to the general requirements of Clean Water Act Section 303(d), CPR recommends that you look carefully at 40 CFR 130.7, which provides the regulations for implementing CWA Section 303(d). When the 1998 303(d) list was developed it constituted more of a general impaired waters list rather than a 303(d) list of water quality-limited segments still requiring TMDLs consistent with 40 CFR 130.7.

The policy requires that narrative water quality objectives be evaluated using numerical evaluation guidelines and specifies considerations to be used in selection the evaluation guidelines.

Policy Questions

Consistent with the testimony given by Richard Watson on 5 February 2004, CPR sees the State Board having to answer many questions with respect to the 303(d) Listing Policy, including:

- What are the roles of the State and Regional Boards in making and implementing policy?
- Is California going to have a standardized, scientifically based 303(d) listing policy or are the Regional Boards and Regional Board staffs going to have the same level of flexibility and lack of State Board oversight in developing 303(d) lists that they had prior to development of the 2002 list?
- Should the 303(d) List be a catch-all Impaired Waters List or a list of impaired waters for which pollutants have been identified and which still require TMDLs to be developed?
- If there is to be an Impaired Waters List, what should it be and how should it be organized?
- Should California follow USEPA's recommendations to develop an Integrated Water Quality Report or just continue with separate 303(d) and 305(b) reports?
- Are the existing listings to be reviewed, and if so, when and how are they going to be reviewed?
- Should the policy incorporate guidance on beneficial use designations and water quality standards revisions?
- Should priority rankings and scheduling of TMDLs be linked?
- What is the statistical method on which to base 303(d) listings?

The State Board is faced with a series of policy decisions that will shape future 303(d) lists as well as the tracking and management of water quality impairments in California. These policy choices will help determine whether California is a business friendly state or an over-regulated location to avoid. Several of these questions have been raised in the FED issue analysis. We will comment briefly on the issues presented in the FED before commenting specifically on the Draft Water Control Policy.

FED Issue Analysis

Issue 1: Scope of Listing/Delisting Policy

Issue: What factors should be addressed by the Listing/Delisting Policy?

The issue of the scope of any listing/delisting policy is a major decision that underlies the rest of the policy decisions.

Development of the 303(d) list is also based on the existing water quality standards. CPR has many concerns about these standards, especially how they relate to limited-term, episodic, and highly variable stormwater discharges.

The regulated community is concerned about some of the beneficial uses and related water quality standards identified in basin plans. Many standards were adopted years ago without review. CPR is particularly concerned about how the requirement to consider probable future uses became "potential uses." Many uses are potential uses but are not at all probable.

CPR advocates combining Alternatives 1 and 2 to create a new Alternative 3. This alternative should focus on 303(d) listing/delisting factors while providing direction to Regional Boards to review beneficial uses and water quality objectives upon which the listing was based before adopting a TMDL Implementation Plan.

Issue 2: Structure of the Section 303(d) List

Issue: Should the State integrate the federal CWQ requirements for assessing water quality? What structure should be used?

CPR agrees with the statement that a key portion of the listing process is deciding how to address water bodies and sites identified as not meeting water quality standards. However, we disagree that waters on the 2002 303(d) list of water quality segments did not meet water quality standards due to pollutants – at least to known pollutants. Some 2002 listings fail to meet 40 CFR 130.7 criteria that pollutants be identified and TMDLs still be required

CPR advocates creating a new Alternative 6 that would essentially be a California Impaired Waters List with several components similar to the lists for impaired waters shown in Alternative 4 with the addition of a Pollutant Identification List that was discussed at the California Stormwater Quality Association's Watershed Management and Impaired Waters Subcommittee meeting in January. Such a list would contain components equivalent to USEPA's recommended Integrated Report categories 4A, 4B, 4C, and 5, plus the Pollutant Identification list that is

not part of Alternative 4. This Alternative would differ from Alternative 1 in that it would not place all impaired waters on the 303(d) list. Rather, the 303(d) list would be one category within the Impaired Waters List.

Issue 3: Weight of Evidence for Listing and Delisting

Issue: What factors should comprise California's weight of evidence approach? What should the relationship among the factors be?

CPR agrees with the Staff-recommended Alternative 1. As the State and Regional Boards gain more experience implementing the weight of evidence approach, the State Board may want to provide more specific directions to Regional Boards in order to further improve consistency and to provide greater assurance that the data and information used in the listing/delisting process are accurate and verifiable.

Issue 4: Listing or Delisting with Single Line of Evidence

Criteria

Issue 4A: Interpreting Numeric Water Quality Objectives and

Issue: How are exceedances of a water quality objective or criteria evaluated?

CPR advocates altering the Staff-recommended Alternative 2 to require sampling greater than the single sample requirement currently recommended where Regional Boards do not have enough data to match specific averaging periods.

Issue 4B: Interpreting Numeric Marine Bacterial Water Quality Standards

Issue: How should numeric marine bacterial water quality standards be interpreted?

We urge the Board to consider supporting BWQW recommendation of monitoring stations 25 yards from storm drain discharges.

CPR agrees with the Staff-recommended Alternative 2.

Issue 4C: Interpreting Numeric Freshwater Bacterial Water Quality Standards

Issue: How should numeric freshwater bacterial water quality standards be interpreted?

CPR agrees with the Staff-recommended Alternative 2. A more consistent approach for addressing bacterial standards in both freshwater and sea water is required.

Issue 4D: Interpreting Narrative Water Quality Objectives
Issue: How should SWRCB and RWQCBs interpret narrative water quality standards?

CPR supports the need for numeric translations. Federal regulations require that pollutants be suitable for calculation before a TMDL is required. Although EPA maintains that all pollutants are suitable for calculation under proper technical conditions, it is often hard to establish the needed proper technical conditions.

Best Professional Judgment can be one of several lines of evidence but not the sole reason for listing if the Board wants a transparent system.

We agree that narrative water quality objectives do not quantify parameters necessary to clearly determine if beneficial uses are being protected. The presence of a pollutant does not automatically translate into impairment of a beneficial use. The use of narrative water quality objectives without numeric translators is often not scientifically defensible because interpretation of impairment becomes subjective.

CPR advocates altering Alternative 4 to reflect the requirement that impairments be "suitable for calculation." We would then advocate recommendation of Alternative 4.

Issue 4E: Interpreting Aquatic Life Tissue Data
Issue: How should chemical residue concentrations in tissue be interpreted?

CPR agrees with the Staff-recommended Alternative 4 as long as specific pollutants are identified.

Issue 4F: Interpreting Data on Trash Impacts to Water Bodies
Issue: How should data on trash be interpreted?

CPR generally agrees with the intent of the Staff-recommended Alternative 3. We will comment further at the conclusion of current litigation.

Issue 4G: Interpreting Nutrient Data
Issue: How should nutrient data be interpreted?

CPR advocates creating a new Alternative 4 to require placement of water segments on a Pollutant Identification List and not the 303(d) List before RTAG/STRTAG criteria have been established.

Issue 4H: Impacts of Invasive Species on Water Quality
Issue: How should invasive species impacts be addressed?

The 2002 list did not list any new water bodies for invasive species because under the CWA invasive species are not a pollutant and it would be very difficult to develop TMDLs for invasive species. If the presence of invasive species were used as a listing factor, a TMDL would need to be developed for the impacted water body, and this may not be possible. If listed on the 303(d) list, a TMDL is required and the TMDL process would not be the most effective or appropriate way to address invasive species and other impairments for which a pollutant is not or cannot be identified.

EPA believes that invasive species should not be included in the definition of pollutants and, therefore, waters impacted by them should not be included in the 303(d) list.

CPR agrees with the Staff-recommended Alternative 3. CPR suggests that water bodies previously listed for invasive species should go to a pollution list.

Issue 5: Listing or Delisting with Multiple Lines of Evidence

Issue 5A: Interpreting Health Advisories
Issue: How should health advisory information be interpreted?

In the past, water bodies issued health advisories or shellfish bans were automatically considered water quality limited segments and were listed. The 2002 list improved the process by requiring multiple lines of evidence, most of which needed the pollutant(s) identified.

CPR advocates clarifying recommended Alternatives 2 and 3 to state that water segments will not be placed on the 303(d) List unless a specific pollutant is identified.

Issue 5B: Interpreting Data Related to Nuisance

Issue: How should data related to nuisance conditions (e.g., odor, foam, oil, sheen, excessive algae, taste, and color) be interpreted?

CPR congratulates the Board that in the 2002 listing process, water segments were not recommended for placement of the Section 303(d) list for nuisance conditions related to assessments of color, odor, excessive algae, and scum.

However, many legacy listings related to nuisance remain on the list because they were carried forward from previous listings. These should be delisted and placed on either a pollution list or a pollutant identification list. Waters should not be placed on the 303(d) unless pollutants identified are suitable for calculation. Suitability for calculation is a benefit of listing based on numeric water quality criteria.

CPR agrees with the Staff-recommended Alternative 3.

Issue 5C: Interpreting Toxicity Data

Issue: How should toxicity data be interpreted?

This is an area in which there is an opportunity to build on improvements made in the 2002 list. We agree with staff that it is very difficult to establish a TMDL on toxicity alone. Pollutants need to be identified. We further agree that toxicity is not a pollutant, but is a manifestation of effects caused by pollutant concentrations.

We recommend Alternative 3, but not Alternative 2 since Alternative 2 would allow toxicity alone to be the basis of listing without pollutants being identified. As noted in the FED, TMDLs would be difficult to develop when the cause of toxicity is not identified. Toxicity is not a valid basis for a TMDL.

Issue 5D: Interpreting Sedimentation Data

Issue: How should impacts due to sedimentation be addressed?

We agree with the FED statements concerning difficulty of determining if a water is impacted by sediment. The variability in sediment supply and transport capacity makes it difficult to determine representation of data.

Staff-recommended Alternative 1 seems reasonable. Given the complexity and variability of sedimentation, general guidelines are appropriate.

Issue 5E: Interpreting Temperature Water Quality Objectives
Issue: How should water temperature data be interpreted?

In most circumstances, natural receiving water temperature is not defined. The water temperature of streams varies greatly. Also, flood control channels should not be subject to a temperature requirement.

We are concerned about what sort of waterbody this would apply to; it should not apply to intermittent streams, effluent-dominated waters, or flood control channels.

CPR advocates altering recommended Alternative 2 to state that a water segment may only be placed on the 303(d) list if a specific thermal discharge is identified. If no specific thermal discharge is identified, a water segment may be placed on a Pollution List.

Issue 5F: Interpreting Data Related to Adverse Biological Response
Issue: How should data related to adverse biological response be interpreted?

In 2002, listings for adverse biological responses were not recommended. These should be on another list. Water bodies should not be listed for a condition without identification of a pollutant. Adverse biological response may be an indication that there is a problem, but the pollutant is not identified.

CPR disagrees with the Staff-recommended Alternative 1. A Pollutant Identification List is the appropriate list for water segments for which no pollutant has been identified.

Issue 5G: Degradation of Biological Regulations or Communities

Issue: How should bioassessment information be used in determining whether a waterbody is attaining water quality standards?

CPR agrees that bioassessments are important for evaluating ecosystems and providing critical water quality information. However, they are not sufficient for listing. Pollutants must be identified. These assessments should be used in developing 305(b) reports and to focus monitoring research.

We encourage the Board to continue with the 2002 practice of requiring multiple lines of evidence identifying the pollutants that cause or contribute to the adverse condition. Bioassessments should not be used to list on the 303(d) list, but could be useful for the 305(b) as supporting evidence of the impacts of pollutants.

CPR disagrees with the Staff-recommended Alternative 4, as well as Alternatives 1 - 3. Bioassessments are not sufficient for listing on the 303(d) List.

Issue 5H: Trends in Water Quality

Issue: How should trends in water quality (antidegradation policy) be used?

In 2002 all Section 303(d) listings proposed were based on information that showed water quality objectives were exceeded. Water bodies can be put on a watch list, or on the 305(b) if no pollutant is shown to be in exceedance of water quality standards.

CPR disagrees with the Staff-recommended Alternative 2 and with Alternative 1. Trends do not constitute calculable data.

Issue 6: Statistical Evaluation of Numeric Water Quality Data

Issue: Should statistical procedures be used to evaluate numeric water quality information for Section 303(d) listing and delisting decision-making?

We agree that the use of statistical procedures would increase confidence in Section 303(d) decision making. We support staff's assessment that statistical analysis provides the means to produce a quantifiable level of confidence that a water body achieves or does not achieve a water quality standard.

CPR agrees with the Staff-recommended Alternative 2.

Issue 6A: Selection of Hypothesis to Test

Issue: Which preliminary hypothesis should be tested in order to determine whether a water body should be placed on the Section 303(d) list? What hypothesis should be tested to remove the water body from the list?

Hypothesis testing would be a further improvement in the transparency and reliability of the listing process. No hypothesis testing or choice of null hypothesis was performed by the RWQCBs in previous Section 303(d) related data.

We support the statement about protection against unnecessary expenditures of funds.

CPR agrees with the Staff-recommended Alternative 1.

Issue 6B: Choice of Tests for Evaluation of Water Quality

Issue: Based on the need to use statistical analyses to help develop the Section 303(d) list and selection of an initial null hypothesis to anchor those analyses, what statistical test(s) should be used to evaluate water quality sample data?

CPR agrees with the Staff-recommended Alternative 7.

We note that it is readily available in EXCEL software and has been used by several states.

Issue 6C: Selection of Statistical Confidence Level

Issue: When a statistical test is used to evaluate sample data, what level of statistical confidence should be selected for 303(d) list decision making?

CPR agrees with the statement that greater confidence is necessary for placement on the 303(d) list in order to reduce the chance of inappropriately requiring the development and implementation of a TMDL.

CPR agrees with the Staff-recommended Alternative 3.

Issue 6D: Critical Rate of Exceedance of Water Quality Standards

Issue: What is the "critical rate of exceedance" of a water quality standard in each sample that would trigger the listing of a water body on the Section 303(d) list?

CPR agrees with the Staff-recommended Alternative 4.

Although we would prefer the 15 percent exceedance data in Alternative 3, we note that other states using the exact binomial test are using a 10 percent critical rate of exceedance.

Issue 6E: Minimum Sample Size

Issue: What minimum sample size is required for Section 303(d) listing and delisting?

USEPA guidance identifies acceptable Type II error at 20 percent or less. We request explanation of the need for a larger number of samples in order to delist.

CPR agrees with the Staff-recommended Alternative 4.

Issue 6F: Quantitation of Chemical Measurements

Issue: How should data measurements below the quantitation limit for chemical measurement be interpreted?

CPR agrees with the Staff-recommended Alternative 2.

Guidance is needed to promote consistency.

Issue 7: Policy Implementation

Issue 7A: Review of the Existing Section 303(d) List

Issue: What steps should the SWRCB and the RWQCBs take to implement the policy?

We wish to note the statement in the FED that since the inception of the California Section 303(d) list, the SWRCB has used the previous list as the basis for development of the new lists. The 2002 list was no exception. It accepted the 1998 List as given, unless there were requested changes. If there was no new evidence provided, the previous listings were carried forward.

CPR disagrees with the Staff-recommended Alternative 2 and advocates creation of a new Alternative 3 that would include delisting all previous listings for which pollutants are not identified, including Total Coliform.

Issue 7B: Defining Existing Readily Available Data and Information

Issue: How should the SWRCB define existing readily available data and information?

Only data with the appropriate QAPPs should be used for listing.

CPR agrees with the Staff-recommended Alternative 2. The advantages of Alternative 2 outweigh its disadvantages.

Issue 7C: Process for Soliciting Data and Information and Approval of the List

Issue: How should the SWRCB and the RWQCBs solicit readily available data and information and approve the CWA Section 303(d) list?

We recommend that fact sheets be developed for 1998 listings that were carried forward to the 2002 list, indicating when they were originally listed. CPR agrees with the Staff-recommended Alternative 3.

Issue 7D: Documentation of Data and Information

Issue: How should data and information be documented?

Pollutant and type of pollution should be separated.

CPR agrees with the Staff-recommended Alternative 2, but we advocate revising it to separate pollutants and pollution.

Issue 7E: Data Quality Requirements

Issue: What data quality should be required?

CPR agrees that we need to know the quality of the data. CPR agrees with the Staff-recommended Alternative 2.

Issue 7F: Spatial and Temporal Representation

Issue: How should spatial and temporal characteristics of the water bodies be addressed by the Policy?

We agree that spatial and temporal representation of water body segments is essential for samples to be used for listing or delisting.

We further support the concept that samples can be less than 200 meters apart and still be considered spatially independent if justified in the fact sheet. This provides flexibility to address specific site conditions while maintaining transparency.

We agree with the statement in the FED that one of the most important factors that must be addressed is that listing decisions are supported by actual data from the segment. This is not reflected in aggregation of data by reach or area policy.

CPR agrees with the Staff-recommended Alternative 3.

Issue 7G: Data Age Requirement

Issue: Should older data be used to support decisions to place or remove waters from the Section 303(d) list?

The FED confirms that all data of any age were used in the development of the 2002 303(d) list, but that an underlying assumption of the listing process is that the data and information assessments represent current conditions.

California should join the states that require that the data and information used to justify a listing decision are reasonably current.

CPR agrees with Staff-recommended Alternative 1, with the change that general listing decisions should be made using only the most recent five year (or maybe 7.5 year) period of data for water chemistry and sediment chemistry information.

Issue 7H: Determining Water Body Segmentation

Issue: How should water body segments be identified?

CPR agrees with Staff-recommended Alternative 1 with modifications to policy 6.2.5.6 to prevent incremental addition of segments to listed water bodies with only one sample exceeding water quality standards.

Issue 7I: Natural Sources of Pollutants

Issue: How should SWRCB address natural sources of pollutants under CWA Section 303(d)?

We agree that waters should not be listed if the pollutant causing them to not meet water quality standards originated from natural sources.

CPR agrees with Staff-recommended Alternative 2.

Issue 8: Priority Ranking and TMDL Completion Schedule

Issue: How should priority ranking and TMDL scheduling be established for water quality limited segments?

For the TMDL process to result in improved water quality, listings should be prioritized based on the factors listed in FED Alternative 2 and the development of TMDLs should be linked to the priority of the water quality problem. Otherwise, RWQCBs might be tempted to develop TMDLs for lower priority water quality problems because more data might be available and/or they may develop TMDLs that they think will be easier and less costly to complete.

CPR agrees with Staff-recommended Alternative 2.

Draft Water Control Policy Comments

With respect to the Water Control Policy, your Notice of Public Hearing correctly states that the Section 303(d) list must include the water quality limited segments, associated pollutants, and a priority ranking of the waters for purpose of developing Total Maximum Daily Loads (TMDLs) in the next two years.

CPR is particularly concerned that the current draft policy reverts back to considering the 303(d) List a list of all impaired waters, rather than a list of water quality-limited segments still requiring TMDLs, pursuant to 40 CFR 130.7, and that two of the separate lists proposed in the July draft are now inappropriately considered part of the 303(d) List. We request that the State Board adopt a listing policy that is generally consistent with EPA's *Guidance for 2004 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act*. No water segment should be listed on the 303(d) list unless specific pollutants are identified.

Our specific comments on the draft policy are presented below by section:

Section 1 – Introduction

Section 1 should be expanded by no more than a page to provide a more complete explanation of the legal and regulatory framework for 303(d) listing. Paragraph 2 of the introduction should be expanded to provide more thorough descriptions of both CWA Section 303(d) and 40 CFR 130.7.

Section 2 – Structure of the 303(d) List

CPR recommends that the Listing Policy specify that the 303(d) list should consist of impaired water body segments for which the pollutant has been identified and a TMDL is still required. This is consistent with the requirements of 40 CFR 130.7. We recommend also that previous listings for which specific pollutants have not been identified be placed on a Pollutant Identification list.

We have reviewed the 2002 303(d) list in relation to the requirements of 40 CFR 130.7 and have prepared a table on which we have noted the water segments listed on the 2002 303(d) list with no specific pollutant identified. Attached Table 1 lists the 350 listings for conditions, 141 listings for groups of pollutants, and 274 listings for indicators on the 2002 list, for a total of 765 listings with no specific pollutant identified. We appreciate that specific indicators such as fecal coliform may need to remain on the list because of the health implications of bacterial contamination, but the remainder of the listings for which no specific pollutant has been identified should be removed from the 303(d) List and placed on a Pollutant Identification List.

We further recommend that the 2004 listing process be focused on preparing an Impaired Waters List to be part of the California Integrated Water Quality Report discussed in the July 2003 draft of the listing policy and referenced in Section 6.2.1 of the December draft.

Board staff recommends a single impaired waters list with categories. CPR concurs with that general recommendation, but our suggested list differs from the one recommended by staff. We recommend the California Impaired Waters List contain the following categories:

- A 303(d) List, consisting of water quality-limited segments for which pollutants have been identified and for which TMDLs are still required;
- A TMDLs Completed List, consisting of water quality-limited segments for which TMDLs have been completed;
- An Alternative Enforceable Program, consisting of water quality-limited segments for which requirements other than TMDLs are expected to result in attainment of water quality standards;
- A Pollutant Identification List, consisting of water quality-limited segments previously listed for which pollutants have not been identified; and
- A Watch List (or Planning and Monitoring List), consisting of water segments suspected of being water quality-limited but with insufficient data and information to place segment on the Section 303(d) list.

We recommend adding citations to descriptions of lists explaining the relationship to 40 CFR 130.7

Section 3 - California Listing Factors

CPR recommends that this section be redrafted to eliminate current sections 3.2 and 3.3. The TMDLs Completed List and the Enforceable Program List should not be part of the State's 303(d) List. Section 3.1.10 should also be deleted. As currently drafted it would allow water segments to be placed on the 303(d) list even though water quality objectives were not exceeded and no specific pollutant was identified for water body conditions. This factor is inconsistent with 40 CFR 130.7.

In addition, section 3.1.11 should be corrected to eliminate the possibility that a water segment could be listed for toxicity without the pollutant causing the toxicity being identified. Furthermore, sections 3.1.4, 3.1.6, 3.1.7, 3.1.8, and 3.1.9 should specify that water segment-pollutant combinations identified using these factors are to be placed on the 303(d) List only if the specific pollutants causing the impairment are identified.

Section 4: California Delisting Factors

The delisting factors section does not provide for removing water segments from the 303(d) list if specific pollutants have not been identified. A delisting factor should be added to specify that

existing water segment-pollutant combinations that have been listed without specific pollutants identified shall be removed from the 303(d) List and placed on a Pollutant Identification List.

Section 5: Priority Setting and Schedule

We are concerned with the fact that Regional Board staffs do not want priority rankings and schedules linked. This may be appropriate for most impaired waters, but not for those waters where a pollutant has been identified and a TMDL is still required. 40 CFR 130.7 (b) (4) requires identification of waters targeted for TMDL development in the next two years.

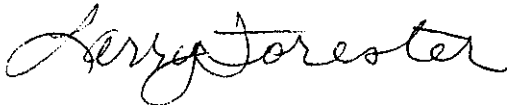
Section 6: Policy Implementation

CPR is pleased that the draft policy includes a structured process for preparing future 303(d) Lists. We are disappointed, however, with section 6.1. This section provides for interested parties to request that an existing listing be reassessed but contains no commitment that legacy listings will be reviewed. The process for evaluating existing listings transfers the provision of data and information necessary to enable the RWQCB and SWRCB to conduct a listing review to interested parties. The July draft committed the State to evaluate the existing listings. This policy should include that commitment.

CPR has reviewed the process for evaluating readily available data and information, including the proposals for statistical evaluation based on the use of the binomial model. The procedures outlined seem reasonable and technically valid as long as the data requirements are modified to reflect that listings require pollutant identification.

Thank you for the opportunity to provide these comments on the 303(d) Listing Policy.

Sincerely,



Larry Forester
CPR Steering Committee
City Council Member, City of Signal Hill

Attachments

**Table 1: 2002 303(d) LISTINGS WITH NO SPECIFIC POLLUTANTS IDENTIFIED
(Candidates for a New Pollutant Identification List)**

LISTING	POLLUTANT CODE	TOTAL 303(d) LISTINGS	POLLUTANT CATEGORY (FYI)
CONDITIONS			
Flow alterations	1500	5	Hydromodification
Hydromodification	1501	1	Hydromodification
Water Diversion	1503	2	Hydromodification
Pumping	1504	2	Hydromodification
Reduced Tidal Flushing	1505	1	Hydromodification
Fish barriers	3300	4	Hydromodification
Abnormal Fish Histology	0104	3	Miscellaneous
pH	1000	18	Miscellaneous
pH (high)	1020	1	Miscellaneous
Temperature*	1400	37	Miscellaneous
Habitat alterations	1600	10	Miscellaneous
Noxious aquatic plants	2200	1	Miscellaneous
Exotic Species	2600	12	Miscellaneous
Exotic Vegetation	2601	1	Miscellaneous
Fish Consumption Advisory	3700	2	Miscellaneous
Shellfish Harvesting Advisory	3750	2	Miscellaneous
Benthic Community Effects	3755	12	Miscellaneous
Fish Kills	3756	1	Miscellaneous
Odors	2001	14	Nuisance
Color	2002	2	Nuisance
Scum/Foam-unnatural	3540	11	Nuisance
Organic Enrichment/Low Dissolved Oxygen	1200	29	Nutrients
Eutrophic	1201	22	Nutrients
Biological Oxygen Demand	1202	1	Nutrients
Low Dissolved Oxygen	1203	17	Nutrients
Algae	2210	30	Nutrients
Beach Closures (Coliform)	3753	1	Pathogens
Beach Closures	3754	42	Pathogens
Swimming Restrictions	3757	1	Pathogens
Unknown Toxicity	0100	26	Toxicity
Toxicity	0102	16	Toxicity
Sediment Toxicity	3752	23	Toxicity
CONDITIONS SUBTOTAL:		350	
* Is considered a pollutant only if there is a discharge of heat.			

1400

**Table 1: 2002 303(d) LISTINGS WITH NO SPECIFIC POLLUTANTS IDENTIFIED
(Candidates for a New Pollutant Identification List)**

LISTING	POLLUTANT CODE	TOTAL 303(d) LISTINGS	POLLUTANT CATEGORY (FYI)
GROUPS OF POLLUTANTS			
Metals	0500	26	Metals/Metalloids
Trace Elements	0590	2	Metals/Metalloids
Nutrients	0900	54	Nutrients
Nutrients (Algae)	0901	7	Nutrients
Pesticides	0200	24	Pesticides
Pesticides (sediment)	0201	1	Pesticides
Group A Pesticides	4220	12	Pesticides
ChemA	4221	1	Pesticides
ChemA (tissue)	4222	14	Pesticides
GROUPS OF POLLUTANTS SUBTOTAL:		141	
INDICATORS			
Pathogens	1700	66	Pathogens
Bacteria	1705	1	Pathogens
Bacteria Indicators	1706	45	Pathogens
High Coliform Count	7010	77	Pathogens
Fecal Coliform	7020	60	Pathogens
Total Coliform	7030	12	Pathogens
Specific conductivity	1301	1	Salinity
Salinity	1302	1	Salinity
Electrical Conductivity	1303	11	Salinity
INDICATORS SUBTOTAL:		274	
Total Listings with No Specific Pollutant:		765	

1401