



Overview of Current Total Maximum Daily Load – TMDL – Program and Regulations

Background

The Need – The Quality of Our Nation's Waters

Over 40% of our assessed waters still do not meet the water quality standards states, territories, and authorized tribes have set for them. This amounts to over 20,000 individual river segments, lakes, and estuaries. These impaired waters include approximately 300,000 miles of rivers and shorelines and approximately 5 million acres of lakes -- polluted mostly by sediments, excess nutrients, and harmful microorganisms. An overwhelming majority of the population – 218 million – live within 10 miles of the impaired waters.

Section 303(d) of the Clean Water Act

Under section 303(d) of the 1972 Clean Water Act, states, territories, and authorized tribes are required to develop lists of impaired waters. These impaired waters do not meet water quality standards that states, territories, and authorized tribes have set for them, even after point sources of pollution have installed the minimum required levels of pollution control technology. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters.

What is a TMDL?

A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and allocates pollutant loadings among point and nonpoint pollutant sources. By law, EPA must approve or disapprove lists and TMDLs established by states, territories, and authorized tribes. If a state, territory, or authorized tribe submission is inadequate, EPA must establish the list or the TMDL. EPA issued regulations in 1985 and 1992 that implement section 303(d) of the Clean Water Act – the TMDL provisions.

Litigation

While TMDLs have been required by the Clean Water Act since 1972, until recently states, territories, authorized tribes, and EPA have not developed many. Several years ago citizen organizations began bringing legal actions against EPA seeking the listing of waters and development of TMDLs. To date, there have been about 40 legal actions in 38 states. EPA is under court order or consent decrees in many states to ensure that TMDLs are established, either by the state or by EPA.

EPA Actions to Implement the TMDL Program

Federal Advisory Committee

In an effort to speed the Nation's progress toward achieving water quality standards and improving the TMDL program, EPA began, in 1996, a comprehensive evaluation of EPA's and the states' implementation of their Clean Water Act section 303(d) responsibilities. EPA convened a committee under the Federal Advisory Committee Act, composed of 20 individuals with diverse backgrounds, including agriculture, forestry, environmental advocacy, industry, and state, local, and tribal governments. The committee issued its recommendations in 1998.

The New TMDL Rule

These recommendations were used to guide the development of proposed changes to the TMDL regulations, which EPA issued in draft in August, 1999. After a long comment period, hundreds of meetings and conference calls, much debate, and the Agency's review and serious consideration of over 34,000 comments, the final rule was published on July 13, 2000. However, Congress added a "rider" to one of their appropriations bills that prohibits EPA from spending FY2000 and FY2001 money to implement this new rule.

Current TMDL Program

The current rule remains in effect until 30 days after Congress permits EPA to implement the new rule. TMDLs continue to be developed and completed under the current rule, as required by the 1972 law and many court orders. The regulations that currently apply are those that were issued in 1985 and amended in 1992 (40 CFR Part 130, section 130.7). These regulations mandate that states, territories, and authorized tribes list impaired and threatened waters and develop TMDLs.

Overview of the 1992 TMDL Regulations-- Under Which the Current Program Operates

■ □ Scope of Lists of Impaired Waters

- ▶ States, territories, and authorized tribes must list waters that are both impaired and threatened by pollutants.
- ▶ The list is composed of waters that need a TMDL.
- ▶ At the state's, territory's, or authorized tribe's discretion, the waterbody may remain on the list after EPA approves the TMDL, or until water quality standards are attained.

■ □ 2-Year Listing Cycle

- ▶ States, territories, and authorized tribes are to submit their list of waters on April 1 in every even-numbered year, except in 2000. In March 2000, EPA issued a rule removing the requirement for the 2000 list – though some states are choosing to submit such lists on their own initiative.

■ □ **Methodology Used to Develop Lists**

- ▶ States, territories, and authorized tribes must consider “all existing and readily available water quality-related information” when developing their lists.
- ▶ Monitored and evaluated data may be used.
- ▶ The methodology must be submitted to EPA at the same time as the list is submitted.
- ▶ At EPA’s request, the states, territories, or authorized tribes must provide “good cause” for not including and removing a water from the list.

■ □ **Components of a TMDL**

- ▶ A TMDL is the sum of allocated loads of pollutants set at a level necessary to implement the applicable water quality standards, including –
 - Wasteload allocations from point sources, and
 - Load allocations from nonpoint sources and natural background conditions.
- ▶ A TMDL must contain a margin of safety and a consideration of seasonal variations.

■ □ **Priorities/Schedules for TMDL Development**

- ▶ States, territories, and authorized tribes must establish a priority ranking of the listed waterbodies taking into account the severity of pollution and uses to be made of the water, for example, fishing, swimming, and drinking water.
- ▶ The list must identify for each waterbody the pollutant that is causing the impairment.
- ▶ States, territories, and authorized tribes must identify waters targeted for TMDL development within the next 2 years.

■ □ **Public Review/Participation**

- ▶ Calculations to establish TMDLs are subject to public review as defined in the state’s continuing planning process.

■ □ **EPA Actions on Lists and TMDLs**

- ▶ EPA has 30 days in which to approve or disapprove a state’s, territory’s, or authorized tribe’s list and the TMDLs.
- ▶ If EPA disapproves either the state’s, territory’s, or authorized tribe’s list or an individual TMDL, EPA has 30 days to establish the list or the TMDL. EPA must seek public comment on the list or TMDL it establishes.

■ **1997 Interpretative Guidance for the TMDL Program**

- ▶ EPA issued guidance in August, 1997, to respond to some of the issues raised as the program developed. The guidance includes a number of recommendations intended to achieve a more nationally consistent approach for developing and implementing TMDLs to attain water quality standards. These recommendations include:
- ▶ States, territories, and authorized tribes should develop schedules for establishing TMDLs expeditiously, generally within 8-13 years of being listed. EPA Regions should have a specific written agreement with each state, territory or authorized tribe in the Region about these schedules. Factors to be considered in developing the schedule could include:
 - Number of impaired segments;
 - Length of river miles, lakes, or other waterbodies for which TMDLs are needed;
 - Proximity of listed waters to each other within a watershed;
 - Number and relative complexity of the TMDLs;
 - Number and similarities or differences among the source categories;
 - Availability of monitoring data or models; and
 - Relative significance of the environmental harm or threat.
- ▶ States, territories, and authorized tribes should describe a plan for implementing load allocations for waters impaired solely or primarily by nonpoint sources, including –
 - Reasonable assurances that load allocations will be achieved, using incentive-based, non-regulatory or regulatory approaches. TMDL implementation may involve individual landowners and public or private enterprises engaged in agriculture, forestry, or urban development. The primary implementation mechanism may include the state, territory, or authorized tribe section 319 nonpoint source management program coupled with state, local, and federal land management programs and authorities,
 - Public participation process, and
 - Recognition of other watershed management processes and programs, such as local source water protection and urban storm water management programs, as well as the state’s section 303(e) continuing planning process.

For more information, see EPA’s TMDL web site at: <http://www.epa.gov/owow/tmdl>

- ▶ **Status report on litigation**
- ▶ **TMDL Federal Advisory Committee Report**
- ▶ **Maps and information on impaired waters**
- ▶ **Links to other TMDL web sites, including states**
- ▶ **Regulations and guidance**