

Environmental Protection Agency

§ 130.28

limitations in NPDES permits). A TMDL is not required for waterbodies on Part 4. If a waterbody listed on Part 4 does not attain water quality standards by the time the next list is required to be submitted to EPA, such waterbody must be included on Part 1 unless you can demonstrate that the failure to attain water quality standards is due to failure of point source dischargers to comply with applicable NPDES permit effluent limitations, which are in effect. TMDLs for waterbodies moved from Part 4 to Part 1 of the list must be scheduled for establishment in accordance with the requirements of § 130.28(b).

(b) You must identify:

(1) The pollutant or pollutants causing the impairment for each waterbody on Part 1 of the list, or for waterbodies for which the impairment is a result of biological information, the pollutant or pollutants if known.

(2) The type of pollution causing the impairment for each waterbody on Part 2.

(3) The geographic location of each waterbody on the list, using the National Hydrography Database or subsequent revisions, or a compatible georeferenced database.

(c) Any one of the three reporting formats described in this paragraph are acceptable.

(1) *Separate section 303(d) list.* You may submit your list as a separate four-part section 303(d) list.

(2) *Consolidated section 303(d) list and section 305(b) report.* You may submit your list as a component of your water quality report (section 305(b) report). You must clearly identify the parts of your water quality report you are submitting as your four-part section 303(d) list.

(3) *Part 1 waterbodies in section 303(d) report and Parts 2, 3, and 4 waterbodies in section 305(b) report.* You may submit Part 1 of your list as a separate section 303(d) list, provided you include Parts 2, 3, and 4 of your list as a component of your section 305(b) water quality report and clearly identify the parts of your water quality report that you are submitting as Parts 2, 3, and 4 of your section 303(d) list.

(d) EPA will approve or disapprove your four-part section 303(d) list re-

gardless of the reporting format that you use.

§ 130.28 What must your prioritized schedule for submitting TMDLs to EPA contain?

(a) Your list must include a prioritized schedule for establishing TMDLs for all waterbodies and pollutant combinations on Part 1 of your list.

(b) You must schedule establishment of TMDLs:

(1) as expeditiously as practicable, evenly paced over the duration of the schedule;

(2) no later than 10 years from July 10, 2000, if the waterbody and pollutant was listed on any part of the list before that date or 10 years from the due date of the first subsequent list after July 10, 2000, on which the waterbody and pollutant is initially included. You may extend the schedule for one or more TMDLs by no more than five years if you explain to EPA as part of your list submission that, despite expeditious actions, establishment of all TMDLs on Part 1 of your list within 10 years is not practicable.

(c) You must identify each specific TMDL you intend to establish and the one year period during which it is scheduled to be established. Your schedule should provide for the coordinated establishment of TMDLs within a watershed to the fullest extent practicable.

(d) You must:

(1) explain how you considered the severity of the impairment and the designated use of the waterbody in prioritizing waterbodies for TMDL establishment on your schedule.

(2) Identify waterbodies:

(i) That are designated in water quality standards as a public drinking water supply, or are used as a source of drinking water, and are impaired by a pollutant that is contributing to a violation of a national primary drinking water regulation (NPDWR) by a public water system or causes a public water system to be vulnerable to a violation of a NPDWR; or

(ii) Where species listed as threatened or endangered under section 4 of the Endangered Species Act are present in the waterbody.

(3) Waterbodies identified in this subsection must be given a higher priority unless you explain why a different priority is appropriate.

(e) When identifying and scheduling your waterbodies for TMDL establishment, you may also consider the presence of sensitive aquatic species and other factors such as the historical, cultural, economic and aesthetic uses of the waterbody. You may consider other factors in prioritizing your schedule, including the value and vulnerability of particular waterbodies; the recreational, economic, and aesthetic importance of particular waterbodies; TMDL complexity; the degree of public interest and support; State, Territorial and authorized Tribal policies and priorities; national policies and priorities; or the efficiencies that might result from coordinating the establishment of TMDLs for multiple waterbodies located in the same watershed. If you are using a rotating basin approach, you may take that approach into account when prioritizing waterbodies on your schedule because of the inherent efficiencies of such an approach.

(f) If you consider other factors, you should identify each factor and explain how you used each factor in prioritizing your schedule.

§ 130.29 Can you modify your list?

(a) You may modify your list at times other than those required by § 130.30, in accordance with this section. If you modify your list and prioritized schedule, you must submit your list to EPA as a modification to your list under this section and follow the public participation requirements of § 130.36, except that such requirements shall apply only to waterbodies and issues addressed by the modification. The requirements of subsections (b), (c), (d), and (e) of this section apply to lists submitted under § 130.30(a) or at any other time.

(b) You must keep each impaired waterbody on your list for a particular pollutant until it is attaining and maintaining applicable water quality standards for that pollutant.

(c) You may remove a listed waterbody for a particular pollutant if new data or information indicate that

the waterbody is attaining and maintaining the applicable water quality standards for that pollutant.

(d) You may add a waterbody to your list if you have data or information indicating that it is impaired.

(e) You may modify your prioritized schedule for establishing TMDLs in accordance with § 130.28 based on new information provided that the modification does not reduce the number of TMDLs scheduled for completion during the first four years of the current approved schedule.

(f) EPA must issue an order approving or disapproving the modification of your list or prioritized schedule in accordance with § 130.30(b).

(g) EPA may also issue an order modifying a list consistent with the provisions of paragraphs (c), (d) and (e) of this section, after providing notice and an opportunity for public comment.

§ 130.30 When must you submit your list of impaired waterbodies to EPA and what will EPA do with it?

(a) You must submit your list of impaired waterbodies to EPA by April 1 of every fourth year, beginning in the year 2002.

(b) EPA must:

(1) Issue an order approving or disapproving your list or modification of your list, within 30 days of receipt, in whole or in part if it is not consistent with the requirements of §§ 130.25 through 130.29.

(2) By order, within 30 days of disapproval, issue a new list consistent with §§ 130.25 through 130.29 if EPA disapproves or partially disapproves your list or modification of your list.

(3) Publish the order required by paragraph (b)(2) of this section in the FEDERAL REGISTER and a general circulation newspaper in your State, Territory, or where your Tribe is located and request public comment for at least 30 days.

(4) Issue a subsequent order revising the new list after the close of the public comment period, as appropriate, if EPA revises its initial order required by paragraph (b)(2) of this section based on public comment.

(5) Send you a copy of its order(s).