

Environmental Protection Agency

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(6) Establish a list of impaired waterbodies for your State, Territory, or authorized Tribe consistent with §§ 130.25 through 130.29 if you fail to do so by April 1 of every fourth year.

(c) EPA may establish lists of waterbodies that do not attain and maintain Federal water quality standards.

(d) You must incorporate into your water quality management plan those portions of your list that EPA approves or establishes.

ESTABLISHMENT AND EPA REVIEW OF TMDLS

§ 130.31 Which waterbodies need TMDLs?

(a) You must establish TMDLs for all waterbodies and pollutant combinations on Part 1 of your list in accordance with your approved schedule and submit the TMDLs to EPA.

(b) You do not need to establish TMDLs for waterbodies on Parts 2, 3, and 4 of your list.

§ 130.32 What are the minimum elements of a TMDL submitted to EPA?

(a) A TMDL is a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant. TMDLs may be established on a coordinated basis for a group of waterbodies in a watershed. A TMDL provides the opportunity to compare relative contributions of pollutants from all sources and consider technical and economic trade-offs between point and nonpoint sources.

(b) You must include the following minimum elements in any TMDL submitted to EPA:

(1) The name and geographic location, as required by § 130.27(b)(3), of the impaired waterbody for which the TMDL is being established and, to the extent known, the names and geographic locations of the waterbodies upstream of the impaired waterbody that contribute significant amounts of the pollutant for which the TMDL is being established;

(2) Identification of the pollutant and the applicable water quality standard

for which the TMDL is being established;

(3) Quantification of the pollutant load that may be present in the waterbody and still ensure attainment and maintenance of water quality standards;

(4) Quantification of the amount or degree by which the current pollutant load in the waterbody, including the pollutant load from upstream sources that is being accounted for as background loading, deviates from the pollutant load needed to attain and maintain water quality standards;

(5) Identification of source categories, source subcategories, or individual sources of the pollutant consistent with the definitions of load and wasteload allocation in §§ 130.2(f) and (g), respectively, for which the wasteload allocations and load allocations are being established;

(6) Wasteload allocations assigned to point sources permitted under section 402 of the Clean Water Act discharging the pollutant for which the TMDL is being established that will, when implemented in conjunction with assigned load allocations, if any, result in the attainment and maintenance of water quality standards in the waterbody. Wasteload allocations that reflect pollutant load reductions for point sources needed to ensure that the waterbody attains and maintains water quality standards must be expressed as individual wasteload allocations for each source. Wasteload allocations that do not reflect pollutant load reductions from point sources needed for the waterbody to attain and maintain water quality standards may be expressed as an individual wasteload allocation for a source or may be included within a wasteload allocation for a category or subcategory of sources. Wasteload allocations for sources subject to a specified general permit, regardless of whether they reflect pollutant reductions, may be allotted to categories of sources. You should submit supporting technical analyses demonstrating that wasteload allocations, when implemented in conjunction with necessary load allocations, will result in the attainment and maintenance of

the water quality standard(s) applicable to the pollutant for which the TMDL is being established;

(7) Load allocations, ranging from reasonably accurate estimates to gross allotments, for nonpoint sources of a pollutant, storm water sources for which an NPDES permit is not required, atmospheric deposition, ground water or background sources of a pollutant that, when implemented in conjunction with assigned wasteload allocations, if any, result in the attainment and maintenance of water quality standards in the waterbody. If feasible, a separate load allocation must be allocated to each source of a pollutant. Where this is not feasible, load allocations may be allocated to categories or subcategories of sources. Pollutant loads from sources that do not need to be reduced for the waterbody to attain and maintain water quality standards may be included within a category of sources or subcategory of sources. You should submit supporting technical analyses demonstrating that load allocations, when implemented in conjunction with necessary wasteload allocations, will result in the attainment and maintenance of water quality standards applicable to the pollutant for which the TMDL is being established;

(8) A margin of safety that appropriately accounts for uncertainty related to the TMDL, including uncertainties associated with pollutant loads, modeling water quality, and monitoring water quality. A margin of safety may be expressed as unallocated assimilative capacity or conservative analytical assumptions used in establishing the TMDL;

(9) Consideration of seasonal variations, stream water flow levels, and other environmental factors that affect the relationship between pollutant loadings and water quality impacts, such that the allocations will result in attainment and maintenance of water quality standards in all seasons of the year and during all flow conditions;

(10) Allowance for reasonably foreseeable increases in pollutant loads including future growth; and

(11) An implementation plan which meets the requirements of paragraph (c) of this section.

(c) The purpose of the implementation plan is to provide a description, in a level of detail appropriate to the circumstances, of actions necessary to implement the TMDL so that the waterbody attains and maintains water quality standards. EPA does not expect the implementation plan to be a complex, lengthy document.

(1) For waterbodies impaired only by point sources for which NPDES permits will implement the TMDL, an implementation plan must include:

(i) An identification of the wasteload allocation(s) that the effluent limitation(s) must be consistent with pursuant to §122.44(d)(1)(vii)(B) in the NPDES permit(s) that will be issued, reissued, or revised. In all instances, the NPDES permit effluent limitation(s) must be consistent with the applicable wasteload allocation(s). You must identify:

(A) The point sources that are or will be regulated by individual permits and the categories or subcategories of point sources that are or will be regulated by general permits that will be subject to such effluent limitations.

(B) The permit, if you intend to implement the wasteload allocation by requiring a point source to apply for coverage under an existing NPDES general permit.

(C) The elements of the general permit necessary to ensure implementation of the wasteload allocation, if you intend for a point source to be regulated by a new general permit.

(ii) A schedule for issuing, reissuing or revising the NPDES permit(s) as expeditiously as practicable to include effluent limits consistent with the wasteload allocation(s) in the TMDL. EPA must:

(A) Reissue or revise the permit(s) within two years after the establishment of the TMDL, where EPA is the NPDES permitting authority.

(B) Notify the NPDES Director of EPA's intent to object to the permit pursuant to the provisions of §123.44(k) within one year after expiration of the permit term, or where the permit term expired prior to the establishment of the TMDL, within one year from establishment of the TMDL where the State is the NPDES permitting authority, and the permit term has expired.

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(C) Issue an NPDES permit that incorporates effluent limitations based on wasteload allocation(s) in the TMDL within one year thereafter where the State has not done so. Nothing in this paragraph (c)(1)(ii) limits EPA's authority to reissue a permit after the expiration of the two-year time frame set forth in this paragraph (c)(1)(ii), or invoke the mechanism described in §123.44(k) after the expiration of either of the one-year time frames set forth in this paragraph (c)(1)(ii).

(iii) The date by which the implementation plan will result in the waterbody attaining and maintaining applicable water quality standards and the basis for that determination;

(iv) A monitoring and/or modeling plan designed to measure the effectiveness of the controls implementing the wasteload allocations and the progress the waterbody is making toward attaining water quality standards; and

(v) The criteria you will use to determine that substantial progress toward attaining water quality standards is being made and if not, the criteria for determining whether the TMDL needs to be revised.

(2) For waterbodies impaired only by nonpoint source(s), storm water sources for which an NPDES permit is not required, atmospheric deposition, ground water or background sources of a pollutant where no NPDES permit will implement the TMDL, the implementation plan must include:

(i) An identification of the source categories, source subcategories, or individual sources of the pollutant which must be controlled to implement the load allocations;

(ii) A description of specific regulatory or voluntary actions, including management measures or other controls, by Federal, State or local governments, authorized Tribes, or individuals that provide reasonable assurance, consistent with §130.2(p), that load allocations will be implemented and achieve the assigned load reductions. Your selection of management measures for achieving the load allocation may recognize both the natural variability and the difficulty in precisely predicting the performance of management measures over time;

(iii) A schedule, which is as expeditious as practicable, for implementing the management measures or other control actions to achieve load allocations in the TMDL within 5 years, when implementation within this period is practicable;

(iv) The date by which the implementation plan will result in the waterbody attaining and maintaining applicable water quality standards, and the basis for that determination;

(v) A description of interim, measurable milestones for determining whether management measures or other control actions are being implemented;

(vi) A monitoring and/or modeling plan designed to measure the effectiveness of the management measures or other controls implementing the load allocations and the progress the waterbody is making toward attaining water quality standards, and a process for implementing stronger and more effective management measures if necessary; and

(vii) The criteria you will use to determine that substantial progress toward attaining water quality standards is being made and if not, the criteria for determining whether the TMDL needs to be revised.

(3) For waterbodies impaired by both point sources and nonpoint sources where NPDES permits and management measures or other control actions for nonpoint or other sources will implement the TMDL, the implementation plan must include:

(i) The elements of paragraphs (c)(1) and (2) of this section; and

(ii) A description of the extent to which wasteload allocations reflect expected achievement of load allocations requiring reductions in loadings.

(4) For all impaired waterbodies, the implementation plan must be based on a goal of attaining and maintaining the applicable water quality standards within ten years whenever attainment and maintenance within this period is practicable.

(d) TMDTLs must meet all the requirements of paragraphs (b) and (c) of this section, except that, rather than estimating a TMDTL at a level necessary to attain and maintain water quality standards, you must estimate the TMDTL as required by statute at a

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level necessary to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, taking into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and dissipative capacity of the waterbody for which the TMDTL is being established. Estimates for those waterbodies must include a calculation of the maximum heat input and a margin of safety that takes into account any lack of knowledge concerning the development of thermal water quality criteria.

(e) A TMDL must not be likely to jeopardize the continued existence of an endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of its designated critical habitat.

§ 130.33 How are TMDLs expressed?

(a) A TMDL must contain a quantitative expression of the pollutant load or load reduction necessary to ensure that the waterbody will attain and maintain water quality standards, or, as appropriate, the pollutant load or load reduction required to attain and maintain aquatic or riparian habitat, biological, channel or geomorphological or other conditions that will result in attainment and maintenance of water quality standards.

(b) As appropriate to the characteristics of the waterbody and pollutant, the pollutant load or load reduction may be expressed in one or more of the following ways:

(1) The pollutant load that can be present in the waterbody and ensure that it attains and maintains water quality standards;

(2) The reduction from current pollutant loads required to attain and maintain water quality standards;

(3) The pollutant load or reduction of pollutant load required to attain and maintain aquatic, riparian, biological, channel or geomorphological measures so that water quality standards are attained and maintained;

(4) A quantitative expression of a modification of a characteristic of the waterbody, *e.g.*, aquatic and riparian habitat, biological, channel,

geomorphological, or chemical characteristics, that results in a pollutant load or reduction of pollutant load so that water quality standards are attained and maintained; or

(5) In terms of either mass per time, toxicity or other appropriate measure.

§ 130.34 What actions must EPA take on TMDLs that are submitted for review?

(a) EPA must:

(1) Review each TMDL you submit to determine if it meets the requirements of §§ 130.31, 130.32 and 130.33 and issue an order approving or disapproving each TMDL you submit within 30 days after you submit it.

(2) Disapprove the TMDL if it does not meet all those requirements.

(3) Issue an order establishing a new TMDL for a waterbody and pollutant within 30 days of EPA's disapproval or determination of the need for revision, if EPA disapproves a TMDL you submit or determines that an existing TMDL needs to be revised.

(4) Publish this order in the FEDERAL REGISTER and a general circulation newspaper and request public comment for at least 30 days.

(5) Issue a subsequent order revising the TMDL after the close of the public comment period, as appropriate, if EPA revises its initial order based on public comment.

(6) Send you the final TMDL EPA establishes. You must incorporate any EPA-established or EPA approved TMDL into your water quality management plan.

(b) When EPA establishes a TMDL it must provide reasonable assurance. It may satisfy the adequate funding requirement of reasonable assurance by conditioning Clean Water Act grants to the fullest extent practicable and in a manner consistent with effective operation of other Clean Water Act programs.

(c) EPA may also use any of its statutory or regulatory authorities and voluntary, incentive-based programs, as it determines appropriate, to supplement conditioning Clean Water Act grants in demonstrating reasonable assurance.