

Environmental Protection Agency

§ 130.37

§ 130.35 How will EPA assure that TMDLs are established?

(a) EPA must assure that TMDLs for waterbodies and pollutants identified on Part 1 of your list are established. EPA must do this by:

(1) Working with you to assure that TMDLs are established in accordance with your schedule; and

(2) Establishing a TMDL if you have not made substantial progress in establishing the TMDL in accordance with your approved schedule. Substantial progress means that you have established a TMDL not later than the end of the one-year period during which it was scheduled to be established. EPA must establish the TMDL within two years of the date on which you fail to make substantial progress. The Administrator may extend this period for no more than two years on a case-by-case basis if there is a compelling need for additional time. Notice of such extension shall be published in the FEDERAL REGISTER.

(b) EPA may establish TMDLs under other circumstances including:

(1) You request that EPA do so; or

(2) EPA determines it is necessary to establish a TMDL for an interstate or boundary waterbody or to implement Federal water quality standards.

(c) In establishing any TMDL pursuant to this section, EPA shall provide notice and an opportunity for public comment on such order.

PUBLIC PARTICIPATION

§ 130.36 What public participation requirements apply to your lists and TMDLs?

(a) You must provide public notice and allow the public no less than 30 days to review and comment on your list of impaired waterbodies and TMDLs prior to submission to EPA. You should notify directly those who submit a written request for notification.

(b) At the time you make your submission to EPA, you must provide EPA with a summary of all public comments received on your list and TMDLs and your response to all significant comments, indicating how the comments were considered in your final decision.

(c) Prior to your submission to EPA, and at the time that you provide the public the opportunity to review and comment on your list and TMDLs:

(1) You must provide a copy of each of these documents to EPA, the U.S. Fish and Wildlife Service, and to the National Marine Fisheries Service where appropriate (*e.g.*, coastal areas), unless you request EPA to provide these documents to the Services, in which case EPA will do so.

(2) You are encouraged to establish processes with both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that will provide for the early identification and resolution of threatened and endangered species concerns as they relate to your list and TMDLs. To facilitate consideration of endangered and threatened species in the listing and TMDL process, EPA will ask the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, where appropriate, to provide you and EPA with any comments that they may have on your lists and TMDLs.

(3) You must consider any comments from EPA, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service in establishing your list and TMDLs and document your consideration of these comments in accordance with paragraph (b) of this section.

(d) EPA will review any comments submitted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service and consider how you addressed these and EPA's comments prior to EPA's approval or disapproval of your submission.

TMDLS ESTABLISHED DURING THE TRANSITION

§ 130.37 What is the effect of this rule on TMDLs established during the transition?

(a) EPA will approve any TMDL submitted to it for review before January 11, 2002 or nine months from the effective date of this rule, whichever occurs later, if the TMDL meets either the requirements in § 130.7 in effect prior to July 13, 2000 or the requirements in §§ 130.31, 130.32 and 130.33 of this subpart C.

(b) EPA will establish TMDLs before January 11, 2002 or nine months from