

SECTION 303(d) PROGRAM VISION PRIORITIZATION FRAMEWORK
STATE OF DELAWARE
Department of Natural Resources and Environmental Control

I. BACKGROUND

The Clean Water Act (CWA) Section 303(d) Program provides a mechanism to integrate and implement water quality efforts for the restoration and protection of the nation's aquatic resources. In collaboration with States and the Association of Clean Water Administrators, the U.S. Environmental Protection Agency (USEPA) announced on December 5, 2013, a new framework to manage program responsibilities and to identify and prioritize water bodies for restoration and protection, entitled *A Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program*. This new long-term Vision includes prioritization, assessment, protection, alternatives, engagement, and integration components to be addressed in stages. The prioritization component of the Vision recommends that each State identify by 2016 its long-term CWA Section 303(d) Program priorities in the context of its overall water quality goals by focusing on identifying watersheds or individual waterbodies for priority restoration and protection activities.

The Department of Natural Resources and Environmental Control (DNREC) has long considered, planned, developed, and implemented a long-term strategy to restore and protect the natural resources of the State of Delaware, including its aquatic resources. This strategy is consistent with the objectives of the Section 303(d) Vision, and the State has demonstrated that its comprehensive, watershed-based ("basin") approach can maintain existing water quality, effect improvements, and mitigate degradation in the context of Delaware water quality goals. Between 1997 and 2005, DNREC published preliminary assessment reports for each of Delaware's four major drainage basins: the Piedmont, Chesapeake, Delaware Estuary, and Inland Bays. Each of these assessment reports contained recommendations for steps that should be taken to improve Delaware's environment and recreational resources and to gather critical data and information. This "Whole Basin" approach used drainage basins as the chief management unit and sought to bring together the expertise of all DNREC Divisions to create a comprehensive and coordinated management effort. Progress toward achieving the watershed-based goals of that DNREC-wide effort was recently evaluated to determine the status of those recommendations, demonstrate progress on achieving the stated goals, and highlight potential areas for additional attention. The new 303(d) Vision can be an opportunity to build upon Delaware watershed successes as DNREC and USEPA look to the future restoration and protection of Delaware's aquatic resources.

Delaware used the above whole-basin framework to establish Total Maximum Daily Loads (TMDLs) for dissolved oxygen, nutrients and bacteria for all impaired waters of the State during an eight year period (1998-2006). In addition, Pollution Control Strategies (PCSs), which are TMDL implementation plans, are developed and are being implemented for several watersheds within the State.

Furthermore, DNREC watershed and waste management programs recently developed a 5-year plan to integrate and coordinate efforts with the goal of restoring Delaware watersheds impacted by toxics. This plan is the key component of the Watershed Approach to Toxics Assessment and Restoration (WATAR) Program. Among the key objectives of the plan are to compile existing

ambient and site-related data for toxics; collect new, updated toxics data for impacted waters to assess the need for TMDLs; develop guidance for the assessment and management of contaminated sediments; identify high priority remediation projects that have the potential to significantly address toxics problems in State waters; and facilitate technology transfer within DNREC. This represents one of a number of Delaware initiatives which continue to make meaningful progress toward achieving its overall water quality goals.

II. PURPOSE AND OBJECTIVES

This 303(d) Program Vision Prioritization Framework document articulates the rationale to restore and protect waters of the State of Delaware consistent with the DNREC mission “to ensure the wise management, conservation, and enhancement of the State’s natural resources, protect public health and the environment, provide quality outdoor recreation, improve the quality of life and educate the public on historic, cultural, and natural resource use, requirements and issues.” DNREC recognizes that to fulfill both its own mission and the new USEPA CWA Vision necessitates prioritization in consideration of the resources involved and the objectives to be achieved.

Objectives of this Prioritization Framework for Delaware include to:

- prepare by June 30, 2015 a draft Prioritization Framework to restore and protect Delaware waters;
- prepare by June 30, 2015 a final Public Engagement Strategy;
- finalize by September 30, 2015 the Prioritization Framework; and
- enable identification of Delaware priority waters for inclusion in the USEPA WQ-27 measure (Appendix A) and the Delaware 2016 Integrated Report (IR).

III. ELEMENTS OF A PRIORITIZATION FRAMEWORK

USEPA has issued preliminary guidance recognizing that each State may differ in its implementation of goals of the new Clean Water Act Vision, depending on particular circumstances and water quality goals of the State. The Vision is neither a rule nor a regulation, and imposes no binding legal requirements on EPA, the States, or other stakeholders, and it does not alter CWA 303(d) regulatory obligations, but rather encourages States to develop tailored strategies in the context of overall water quality goals and priorities for each State. That USEPA guidance memorandum includes elements each State may consider when implementing the Prioritization, Engagement, and Alternatives goals. These elements for consideration in the Prioritization Framework for Delaware include various factors ranging from public interest to environmental considerations to resource implications.

IV. PRIORITIZATION CONSIDERATIONS

Delaware will consider various factors for prioritization, particularly considerations within a given Delaware water segment, watershed, or basin which are deemed by the State to most meaningfully influence water quality. Multiple prioritization considerations to restore or protect Delaware waters may be weighted or used in combination, depending upon their relative importance in given situations. Clean Water Act Section 303(d) recognizes that for each State not all TMDLs for impaired waters can be developed and implemented at once, that TMDLs may not be the best mechanism to achieve water quality in all instances, and that States can prioritize impaired waters for

future TMDLs or alternative measures. The Delaware Prioritization Framework enables DNREC to determine and apply those prioritization considerations. Prioritization is not intended to devalue certain Delaware waters, but rather reflects the reality that the restoration and protection of Delaware aquatic resources is subject to the limitations of scientific, programmatic, and financial resources.

A. Water Quality Characteristics and Trends

For restoration and protection prioritization, DNREC will consider the condition of Delaware waterbodies and the nature of impairments that may exist.

- 1. Pollutant Causing Impairment:** Specific pollutants causing or contributing to water quality impairment will be considered in the prioritization. Pollutants representing human health and aquatic life concerns may be given higher priority than those of lesser concern to human health and aquatic life. In addition, the number of pollutants that may be contributing to the impairment will be considered such that a restoration measure that is being implemented may help to improve multiple pollutants and water quality impairments. The degree and severity of impairment will be considered. A stressor analysis may be conducted to identify potential stressors and possible causes of impairment.
- 2. Pollution Causing Impairment:** Instances may occur where no specific pollutant can be identified as the most probable stressor and cause of impairment. Such impairments may be the result of a number of environmental factors which may not be adequately or practicably addressed by development of new TMDLs, or which may be partially or fully addressed by existing TMDLs. Where no specific pollutant can be attributed to the impairment, the State can consider whether other water quality initiatives may be the most reasonable and viable approach to achieving water quality objectives.
- 3. Pollutant Sources:** Suspected sources of pollutants will be considered in prioritization. Legacy sources may be given lower priority, for example, if these sources are reasonably expected to diminish over time. DNREC may conduct investigative activities to verify the pollutant sources. The restoration potential of a watershed will also be considered in prioritization. Watersheds possessing imperviousness beyond the capacity to reasonably support restoration or protection of certain aquatic resources, for example, may receive lower prioritization than watersheds capable of reasonably sustaining such aquatic resources.
- 4. Achievability:** Whether TMDLs, alternatives, or protection measures would result in rapid attainment or significant, quantifiable water quality improvement will be considered, as will the geographic extent. Delaware waters where specific pollutant concentrations are severely impaired compared to the respective water quality attainment goal may be in more need of intervention through restoration measures than those with less severity. Conversely, waters less severely impaired may be closer to attaining the water quality goal and may require minimal implementation efforts to help them achieve restoration. Currently-healthy Delaware waters, including waters of special State significance which indicate water quality may be declining, could be considered as candidates for protection.

5. **Redesignation of TMDL Category:** The Department may move segments from prior 303(d) Lists (equivalent to Category 5) to another category based on any of the following factors, and will document the reasons for doing so on a case-by-case basis.
- Assessment and interpretation of more recent or accurate data demonstrate that applicable Water Quality Standards are being met. (Move to Category 1 or 2, as appropriate.)
 - Results of more sophisticated water quality modeling demonstrate that applicable Water Quality Standards are being met. (Move to Category 1 or 2, as appropriate.)
 - Demonstration that flaws in the original analysis of data and information led to an incorrect listing. (Move to Category 1 or 2, as appropriate.)
 - Development of new listing methodology, consistent with State Water Quality Standards and federal listing requirements, and a reassessment of data leading to a prior listing, concluding that Water Quality Standards are now being attained. (Move to appropriate category.)
 - Demonstration pursuant to 40 CFR 130.7(b)(1)(ii) that effluent limitations required by State or local authorities are more stringent than technology-based effluent limitations required by the CWA, and that these more stringent effluent limitations will result in the attainment of WQSs for the pollutant causing the impairment. (Move to Category 4B until data and analysis support moving to Category 1 or 2, as appropriate.)
 - Demonstration pursuant to 40 CFR 130.7(b)(1)(iii) that other pollution control requirements required by State, local, or federal authority will result in attainment of Water Quality Standards for a specific pollutant(s) within reasonable time. (Move to Category 4B until data and analysis support moving to Category 1 or 2, as appropriate.)
 - Documentation that the State included on previous Section 303(d) List an impaired water not required to be listed by EPA regulations; e.g., waters where there is no pollutant associated with the impairment. (Move to Category 1, 2, or 4C, as appropriate)
 - Approval or establishment by EPA of a TMDL since the last Section 303(d) List. (Move to Category 4A until data and analysis support moving to Category 1 or 2, as appropriate.)
 - Other factors may also be used to change categories on a case-by-case basis, subject to EPA approval and appropriate stakeholder involvement.

B. State, Regional, and National Water Quality Initiatives

Delaware will consider appropriate State, regional, and national water quality initiatives, including current and anticipated State, regional, and national water quality initiatives. For example:

1. The **Watershed Approach to Toxics Assessment and Restoration** (WATAR) was conceived by DNREC in 2012 with the intention of building a bridge between the surface water toxics program and the site investigation and restoration program in Delaware. The focus of the WATAR program is surface waters, sediments, fish and other aquatic life impacted by toxics, the health of fish and shellfish consumers, and the associated sources/sites responsible for those impacts. WATAR is a holistic (watershed-scale), integrated, and systematic approach to the evaluation of contaminant sources, transport pathways, and receptors, and a mechanism to implement restoration actions based upon site prioritization. The concept was officially endorsed by DNREC following a series of briefings and the completion of a work plan that initially emphasized the development of toxics TMDLs and subsequently shifted focus to implementing toxics TMDLs.

2. The **Delaware Nonpoint Source Program** is committed to addressing the issue of nonpoint source pollution as it affects Delaware's numerous waterbodies. Efforts include grant funding, education, outreach, and partnerships with other organizations working together to reduce nonpoint source pollution in Delaware. Reduction of nonpoint source pollution is achieved through the incorporation or installation of specific best management practices (BMPs) addressing agriculture, silviculture, construction, septic systems, and hydromodification activities. To encourage and support the BMP installation, the NPS Program administers a competitive grant program currently made possible through Section 319 of the Clean Water Act. While this federal financial support has proven successful in complementing Delaware's nonpoint source control efforts, the NPS Program is currently seeking additional finances to expand Delaware's activities to more systematically address Delaware's nonpoint source concerns. Additional roles and responsibilities of the NPS Program include geospatial BMP tracking and reporting, management of the agricultural State Revolving Fund Program, support for developing Pollution Control Strategies, and watershed plan development and/or coordination.

3. The goal of the DNREC **Ecological Restoration and Protection Team** is to restore and protect streams, drainage ditches, wetlands, and riparian corridors in a coordinated effort to ensure that the maximum level of environmental results are being derived to enhance water quality, provide stream-bank protection and reduce erosion, and improve wildlife habitat. **Wetland restoration** is taking place in a variety of settings from marginal agricultural fields to school yards to create additional wildlife habitat, improve water quality and increase the efficiency of farming operations.

Stream restoration is targeting existing tax ditches and degraded natural stream systems to provide long-term stability and improve ecological value by reestablishing natural flood plains and sinuous low-flow channels using geomorphological approaches. Implementing the appropriate stream restoration techniques helps stabilize eroding stream banks resulting in reduced sediment and nutrient loading to the State's waterways. Combined with certain land uses and imperviousness, increased stream bank erosion as the volume of water entering the stream systems during storm events is greater along with the rate of flow (i.e., increased energy). Stream restoration efforts are utilized to minimize bank erosion resulting in significant improvements to habitat and water quality. Restoration efforts also allow for stream channels to be properly resized based on the flow volumes that pass through the systems during average storm events. Bank protection and vegetative plantings, along with other stream restoration construction techniques, stabilize the degrading stream banks, and improve habitat and water quality.

4. The goal of the DNREC **Wetland Monitoring and Assessment Program** (WMAP) is to assess the condition, or health, of wetlands and the functions and ecosystem benefits that wetlands provide. This information is used to inform the citizens of Delaware and to improve existing education, restoration, protection, and land use planning efforts. The Delaware Wetland Monitoring Strategy guides future efforts of WMAP in the areas of protocol development, wetland monitoring and assessment activities, research, and application of information. WMAP works closely with other States through the USEPA Mid-Atlantic Wetlands Program to establish and conduct research methods and share information.

Objectives of WMAP are to develop scientifically-valid wetland assessment methods; assess the current condition of wetlands by watershed and identify major stressors impacting wetlands; perform research on wetland functions, the impact of stressors, and the ecosystem services provided by wetlands to humans and the environment; evaluate the performance of wetland restoration and other compensatory wetland mitigation in replacing wetland acreage and function; educate other state agencies, conservation partners, and the general public to improve efforts to protect and restore wetlands; integrate monitoring and assessment data into watershed restoration plans and other conservation strategies; and meet CWA requirements.

5. Other Strategic Frameworks

Delaware may consider additional strategic frameworks which currently exist, which may be in development, or may exist in the foreseeable future. Consideration of such strategic frameworks affords the State the flexibility of adaptively managing its aquatic resources in view of additional or improved information or capabilities.

C. State and Federal Agency Partnerships

State and federal agency partnerships are instrumental to water quality restoration and protection in Delaware. Partners involved in past and current water-quality-related initiatives that could play an integral role in achieving the goals supporting the Vision include: Partnership for the Delaware Estuary, Nanticoke Watershed Alliance, Delaware Nature Society, Center for the Inland Bays, land conservation organizations, Delaware Department of Transportation, county Conservation Districts, University of Delaware, Delaware State University, Delaware Department of Agriculture, USDA/NRCS, Delaware Sea Grant, and the Delaware Nutrient Management Commission. The following Chesapeake Bay Watershed Implementation Plan is one such example.

1. Watershed Implementation Plan (WIP)

Delaware is among six Chesapeake Bay Watershed states and the District of Columbia committed to a federal-state initiative to develop TMDLs to help restore the water quality of the Bay and its tidal waters by 2025. Delaware has already established State TMDLs for impaired waters in the Chesapeake, and an additional USEPA-led TMDL calls for additional reductions and development of a WIP that details how load goals will be achieved and maintained.

Draft Phase I WIPs were due September 2010, and final plans were completed in November 2010; Phase II WIPs in draft and final forms were due December 2011 and March 2012, respectively; and Phase III WIPs are due in 2017. With each successive WIP, pollutant load goals and actions to achieve those goals become increasingly specific. The Delaware WIP Interagency Workgroup is comprised of DNREC; Delaware Department of Agriculture; Department of Transportation; Office of State Planning Coordination; County Conservation Districts; U.S. Department of Agriculture agencies; U.S. Geological Survey; and other stakeholders, such as the farming and development communities. Nine subcommittees were formed to address: agriculture; stormwater; wastewater; land use and comprehensive plans; restoration; public lands; funding; information technology; and communications.

D. Engagement

The Public Engagement Strategy is organized around the premise that there is a continuum of citizen stewardship and one can enter at any level. On-going progress toward a greater number and diversity of trained and mobilized citizens restoring and protecting their local watersheds requires successful actions at each level along this continuum. These levels include the following: Individual citizen action, volunteerism / collective community action, and citizen leadership. Citizens are continuously involved and engaged in activities that support the goals of the Vision.

- 1. Participation of Watershed Groups:** Watershed groups that are active in projects to restore and protect water quality and are increasingly knowledgeable about water quality issues impacting their local water bodies will be key to realizing water quality improvements under the new vision of the 303(d) Program.

Delaware has taken a new course by involving citizens up front in the pollution control process with the development, for example, of Tributary Action Teams (TATs). By getting citizens, farmers, educators, landowners, scientists and elected officials involved in sorting out the difficult issues, wrestling with the trade-offs, and developing ways to reduce pollution, DNREC seeks collaboration and supports communities affected by pollution abatement measures. TATs engage citizens in the process by measures including holding public forums on water pollution, publishing articles in newspapers, and holding community group meetings. Each TAT has the opportunity to write recommendations for a formal pollution control strategy of numerous voluntary and regulatory ways to reduce pollution levels, including a combination of more than one pollution-reducing method, which is tailored specifically for each watershed.

Each Tributary Action Team decides which approaches would be most effective in its watershed based on extensive study, comments at citizen forums, advice from experts, and discussions at public team meetings.

- 2. Public Notification:** The public is notified and encouraged to share feedback on water quality issues through public notices, DNREC email blasts, advertising online, workshops and media releases. Additional Public Engagement Efforts include public opinion surveys; initiatives by the Delaware Nonpoint Source Program and the Wetland Monitoring and Assessment Program; and Outreach and Education Programs, such as Citizen Monitoring Programs, the Delaware Watersheds Website, and the Delaware Wetlands Website; DNREC Social Media; and additional web presence. The biennial Integrated Report remains an important instrument to communicate and receive feedback from stakeholders and interested parties.

E. Regionalization and Classification

Delaware may prioritize waters for restoration or protection based on geographic, programmatic, functional, or other characteristics where such considerations enable resources to be addressed more efficiently as a group than as individual waterbodies. Examples may include prioritization of a particular watershed, such as the White Clay Creek

Watershed; of a particular waterbody type, such as wetlands of special State concern; or of particular recognition, such as waters of Exceptional Recreational or Ecological Significance (ERES).

F. Watershed Characteristics

Watershed characteristics—including land use, land cover, imperviousness, urbanization, and may be considered during prioritization—because such characteristics influence the achievability of water quality objectives.

G. Funding Availability

The availability of existing or planned funding through local, State, or federal funding for restoration or protection of Delaware waterbodies or watersheds may influence prioritization.

V. ADAPTIVE MANAGEMENT

Delaware employs adaptive management techniques to continually adjust its priorities. The Delaware Prioritization Framework will be flexible enough to address new issues that threaten the biological, chemical or physical properties of the waters of Delaware. As water quality criteria are changed to incorporate new parameters and developments in the status of the science involving water quality, Delaware's monitoring and assessment programs will be adjusted. Priority waters can be adjusted as improved data become available. DNREC will consider prioritization of Delaware waters related to new local, State, regional, and national concerns. New federal guidance will also be incorporated as it becomes available where appropriate for Delaware waters. Changes in stakeholder interest and other factors, including availability of resources can also factor into prioritization.

VI. REFERENCES AND RESOURCES

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<http://www.dnrec.delaware.gov/WholeBasin/Pages/index.aspx>

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U.S. Environmental Protection Agency (USEPA). 2015. *Draft 2016 IR Memo—State Review Version: Information Concerning 2016 Clean Water Act Sections 303(d), 305(b), and Integrated Reporting and Listing Decisions*. June 29, 2015.

U.S. Environmental Protection Agency (USEPA) Internet Resources:

<http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/programvision.cfm>

APPENDIX A. State of Delaware WQ-27 Priority Waters

Assessment ID	Assessment Unit Name	Cause Name
DE 010-001-01	LOWER APPOQUINIMINK RIVER	DIELDRIN
DE 010-001-01	LOWER APPOQUINIMINK RIVER	DIOXIN
DE 010-001-01	LOWER APPOQUINIMINK RIVER	FURAN COMPOUNDS
DE 010-001-03	LOWER APPOQUINIMINK RIVER - DRAWYER CREEK	DIELDRIN
DE 010-001-03	LOWER APPOQUINIMINK RIVER - DRAWYER CREEK	DIOXIN
DE 010-001-03	LOWER APPOQUINIMINK RIVER - DRAWYER CREEK	FURAN COMPOUNDS
DE 010-L02	SILVER LAKE	DIELDRIN
DE 020-001	LOWER ARMY CREEK	DIOXIN
DE 020-001	LOWER ARMY CREEK	FURAN COMPOUNDS
DE 040-002	UPPER BRANDYWINE CREEK, FROM STATE LINE TO WILMINGTON	DIOXIN
DE 040-002	UPPER BRANDYWINE CREEK, FROM STATE LINE TO WILMINGTON	FURAN COMPOUNDS
DE 060-008	PRIMEHOOK CREEK INCLUDING ITS TRIBUTARIES	MERCURY
DE 060-L03	WAPLES POND & REYNOLDS POND	MERCURY
DE 080-003	SLAUGHTER CREEK	DIOXIN
DE 080-003	SLAUGHTER CREEK	FURAN COMPOUNDS
DE 090-001	CHESAPEAKE AND DELAWARE CANAL FROM MARYLAND LINE TO DELAWARE	DIELDRIN
DE 090-001	CHESAPEAKE AND DELAWARE CANAL FROM MARYLAND LINE TO DELAWARE	DIOXIN
DE 090-001	CHESAPEAKE AND DELAWARE CANAL FROM MARYLAND LINE TO DELAWARE	FURAN COMPOUNDS
DE 120-001	LOWER CHRISTINA RIVER	DIELDRIN
DE 120-002	MID CHRISTINA RIVER, BETWEEN WHITE CLAY CREEK AND BRANDYWINE	DIELDRIN
DE 120-003	UPPER CHRISTINA RIVER	DIELDRIN
DE 120-006	UPPER CHRISTINA CREEK	CHLORDANE
DE 120-006	UPPER CHRISTINA CREEK	DIELDRIN
DE 260-001	RED CLAY CREEK FROM PENNSYLVANIA STATE LINE	DDT
DE 260-001	RED CLAY CREEK FROM PENNSYLVANIA STATE LINE	DIOXIN
DE 260-001	RED CLAY CREEK FROM PENNSYLVANIA STATE LINE	FURAN COMPOUNDS
DE 270-001-01	LOWER RED LION CREEK	DIOXIN
DE 270-001-01	LOWER RED LION CREEK	FURAN COMPOUNDS
DE 270-001-02	UPPER RED LION CREEK, HEADWATERS TO ROUTE 13	DIELDRIN
DE 290-001-01	LOWER ST. JONES RIVER	DIELDRIN
DE 290-001-01	LOWER ST. JONES RIVER	DIOXIN
DE 290-001-01	LOWER ST. JONES RIVER	FURAN COMPOUNDS
DE 290-001-02	UPPER ST. JONES RIVER	DIELDRIN
DE 290-001-02	UPPER ST. JONES RIVER	DIOXIN
DE 290-001-02	UPPER ST. JONES RIVER	FURAN COMPOUNDS
DE 290-002	ISAAC BRANCH	DDT
DE 290-003	FORK BRANCH	MERCURY
DE 290-L02	SILVER LAKE	DIELDRIN
DE 290-L02	SILVER LAKE	DIOXIN
DE 290-L02	SILVER LAKE	FURAN COMPOUNDS