



## **Ocean Acidification & 303(d) Program ELI Ocean Acidification Seminar**

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## **Today's Discussion**

- ◆ Provide background on 303(d) Program
- ◆ Summarize recent program litigation
- ◆ Summarize Federal Register Notice

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## CWA 303(d) Program Overview

- ◆ Section 303(d) and regulations (40 CFR 130.2 and 130.7) establish Impaired Waters Listing and TMDL Program
- ◆ 303(d) is a State-driven program with EPA oversight
- ◆ States must submit Lists of impaired waters within the State's boundaries to EPA by April 1<sup>st</sup>, of every even numbered year (e.g. 2008, 2010)
  - ❖ Impaired waters are those that do not meet applicable water quality standards (WQS) even after a technology-based CWA permit is in place.
  - ❖ EPA is to take action on a List within 30 days of receipt.
  - ❖ States must establish a priority ranking for waters on the List and develop Total Maximum Daily Loads (TMDLs) for them.
  - ❖ To date, about 44,000 waters are listed nationwide as impaired
  - ❖ State's marine criteria apply to open-ocean waters within 3 miles of a State or Territory's shoreline
- ◆ Few coastal waters listed, none for marine pH

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## CWA 303(d) Program (cont'd)

- ◆ States establish priorities for developing TMDLs, within 8 to 13 years of listing (EPA guidance)
- ◆ A TMDL is a "pollutant budget"
  - ❖ Maximum amount of a pollutant that a waterbody can receive and still meet applicable WQS with a margin of safety, and an allocation of that amount to the pollutant's point and nonpoint sources.
  - ❖ EPA is to approve or disapprove a TMDL within 30 days of state submission.
  - ❖ If EPA disapproves the TMDL, EPA must establish the TMDL within 30 days.
  - ❖ Neither the CWA nor EPA regulations give EPA authority to establish TMDLs other than when EPA disapproves a state TMDL
  - ❖ TMDL must account for pollutant contribution from all sources
  - ❖ (air deposition affecting waters considered to be a nonpoint source, e.g. mercury)

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## **CWA 303(d) Program (cont'd)**

- ◆ TMDL point source allocations implemented through CWA permits
- ◆ TMDL nonpoint source allocations implemented through voluntary State programs
- ◆ To date, about 42,000 TMDLs have been developed
- ◆ More info at: [www.epa.gov/owow/tmdl](http://www.epa.gov/owow/tmdl)

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## **Ocean Acidification**

- ◆ Refers to decrease in ocean pH caused by uptake of CO<sub>2</sub> from atmosphere
- ◆ Oceans have absorbed about one-third of anthropogenic CO<sub>2</sub> since pre-industrial times
- ◆ Current research indicates the impact of OA on marine organisms will largely be negative and is likely to disrupt the normal functioning of many marine and coastal ecosystems.

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## 303(d) OA Litigation

- ◆ Center for Biological Diversity (CBD) filed complaint on May 14, 2009
- ◆ CBD challenged EPA approval of WA 2008 303(d) list
  - ❖ Failure to include coastal waters as impaired for marine pH
  - ❖ Does not comply with antidegradation portion of water quality standards
- ◆ In addition CBD sent letters to coastal states and territories regarding state lists on OA

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## March 10, 2010 CBD Settlement Agreement

- A. EPA sent letter to WA State Dec 1, 2009, encouraging submittal of April 2010 with OA data
- B. EPA will sign a Federal Register notice (FRN) requesting comments on OA under the 303(d) program by March 15, 2010
- C. EPA will complete a memorandum that describes how EPA intends to proceed with 303(d) program in light of comments from FRN by November 15, 2010.
- D. Parties agree that completion of memo will not constitute final agency action.

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## Settlement Agreement (cont'd)

- ◆ Does not commit to any specific action, including developing 303(d) guidance
- ◆ Takes into account other federal OA actions in the next 2 years
- ◆ Provides time to make 303(d) program decision
- ◆ Does not require EPA to initiate rulemaking

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## Specific Questions in FRN

1. What considerations should EPA take into account when deciding how to address the listing of waters as threatened or impaired for OA under the 303(d) program?
2. If EPA issues guidance, what are the specific elements EPA should consider (monitoring and assessment)
3. How can States or EPA otherwise aid in monitoring OA and its impacts on marine life and ecosystems
4. If waters were determined to be threatened or impaired for OA under 303(d), what issues should EPA and States take into account when considering how to address TMDL development for such waters?
5. What other Federal OA programs and initiatives should EPA take into account when deciding how to approach OA under the 303(d) program?

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## Contact Us

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