

EPA Category 4b Questions and Answers

Q: What is Category 4b?

A: EPA regulations recognize that alternative pollution control requirements may obviate the need for a TMDL. Specifically, waterbody segments are not required to be included on the Section 303(d) list if States demonstrate that “[o]ther pollution control requirements (e.g., best management practices) required by local, State, or Federal authority” (see 40 CFR 130.7(b)(1)) are stringent enough to achieve applicable State WQS within a reasonable period of time. These alternatives to TMDLs are commonly reported to EPA as Category 4b waters as described in EPA’s Integrated Reporting Guidance (IRG) for Sections 303(d), 305(b), and 314 of the CWA.

Q: What are EPA’s expectations for an impaired water to be assigned to Category 4b?

A: According to EPA’s integrated reporting guidance, States should submit their Category 4b demonstrations with their Section 303(d) list or Integrated Report submission and the demonstration should address the following six elements:

1. Identification of segment and statement of problem causing the impairment.
2. Description of pollution controls and how they will achieve WQS.
3. An estimate or projection of the time when WQS will be met.
4. Schedule for implementing pollution controls.
5. Monitoring plan to track effectiveness of pollution controls.
6. Commitment to revise pollution controls, as necessary.

Additional Category 4b guidance is provided in EPA’s memorandum for the 2008 integrated reporting cycle (www.epa.gov/owow/tmdl/2008_ir_memoirandum.pdf).

EPA’s expectations for Category 4b were first introduced with EPA’s initial integrated reporting guidance for the 2002 reporting cycle. EPA has provided additional clarity and flexibility with respect to the use of Category 4b in subsequent reporting cycles. EPA’s key expectations (i.e., the six elements) have been consistent for both the 2006 and 2008 reporting cycles.

Q: What are examples of additional flexibility and clarity EPA has provided in its Category 4b guidance?

A: There are several examples of additional clarity and flexibility in EPA’s Category 4b guidance. For example, EPA’s initial integrated reporting guidance recommended that States adopt EPA’s five reporting categories and assign each waterbody to only one of the five reporting categories (i.e., the single category approach). Beginning with the 2006 reporting cycle however, EPA has advocated (at the request of many States) the option of using a multi-category approach for reporting the water quality status of waters in each State. Hence, with a multi-category approach, State’s can readily acknowledge the status of Category 4b waterbody/pollutant combinations that may not have been acknowledgeable under a single category approach.

Beginning with the 2006 reporting cycle, EPA’s Category 4b guidance has provided that controls relied on for Category 4b demonstrations do not always need to occur pursuant

to binding legal authority. Rather, States may choose to rely on controls that have already been implemented where there is sufficient certainty that implementation will continue until WQS are achieved and will not be reversed. Because the controls are already in place and achieving progress, EPA may consider such controls to be requirements even if their implementation did not occur pursuant to a specific binding legal authority.

Beginning with the 2008 reporting cycle, EPA also provided a recommended structure and content for a State's Category 4b demonstration. The recommended structure is consistent with the six Category 4b elements listed above and the content reiterates EPA's Category 4b expectations (i.e., the six elements) outlined in the 2006 integrated reporting guidance. Use of this recommended format is intended to promote a common organizational structure for Category 4b demonstrations nationally, and achieve the following objectives:

- Assist States with documenting Category 4b demonstrations that are consistent with EPA's regulations and integrated reporting guidance.
- Facilitate timely reviews of Category 4b demonstrations by EPA.
- Serve as a tool for States to obtain data and information from other Federal, State, and local stakeholders that may support Category 4b demonstrations.
- Promote achievement of water quality standards by facilitating sharing of good examples of Category 4b demonstrations among States.
- Support development of sufficiently detailed administrative records for State and EPA 303(d) list decisions.

Q: What are the benefits of Category 4b?

A: Waters successfully assigned to Category 4b may provide multiple benefits to States, including recognition and tracking of efforts designed to achieve water quality standards, as well as obviating the need to dedicate resources (time and dollars) to developing a TMDL. In some instances, developing the Category 4b demonstration and maintaining the waterbody/pollutant combination(s) in Category 4b may establish beneficial "feedback loops" between State 303(d) program staff and other program staff (e.g., Superfund) and stakeholders responsible for implementing the controls needed to achieve the applicable WQS. Also, in some instances, assignment of an impaired water to Category 4b may incentivize more timely implementation of nonpoint source controls.

Q: How many waters are assigned to Category 4b nationally?

A: Two sources of information are available to provide an answer to this question. First, In July 2006, Section 303(d) program staff from each EPA region were surveyed to identify the extent to which States in their region assigned waters to Category 4b. Program staff completed the survey based on the most recently submitted Integrated Report (and approved Section 303(d) list) for each State. Results from the survey showed that 267 impaired waters have been assigned to Category 4b in 15 States. The second source of information is the number of Category 4b proposals EPA has been discussing with States as part of the 2008 reporting cycle – more than 50 new Category 4b proposals, representing more than 500 waterbody/pollutant combinations. In the future, EPA expects to increase its ability to track and provide up-to-date information on the number of waters and waterbody/pollutant combinations assigned to Category 4b as the number of States reporting their water quality attainment status through ADBv2 increases.

Q: What types of controls and programs are being used to support assigning impaired waters to Category 4b?

A: EPA's July 2006 Category 4b survey did not collect detailed information on the types of controls and programs being used to support Category 4b determinations. However, in some instances, such information was provided by the survey respondents showing that over 100 of the 267 segments are point-source only impaired waters where the effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits were determined to be stringent enough to implement the applicable WQS. Other types of controls and programs included remediation under Superfund, county programs and local ordinances to address failing septic systems and livestock waste, and required and enforceable forestry practices. As part of the 2008 reporting cycle, other types of controls and programs being considered by States and EPA include chemical bans in coordination with natural attenuation, as well as voluntary and cost-share programs where funding is adequate and significant on-the-ground progress is being made. EPA will continue to coordinate closely with States on their Category 4b proposals throughout the 2008 reporting cycle and will identify and promote "good examples" as they become available.

Q: What is the level of effort to assign an impaired water to Category 4b versus developing a TMDL?

A: Conceptually, the level of effort to develop a Category 4b demonstration should be comparatively lower than that of a TMDL for the same waterbody because (1) the 4b demonstration simply summarizes evaluations and implementation strategies already provided in existing documents, and (2) public review of the 4b demonstration is included as part of public review for the 303(d) list or integrated report. In practice however, the level of effort to develop Category 4b demonstrations currently ranges from low to high. Low effort is often associated with 4b demonstrations based on one existing program document such as an NPDES permit. Medium to high level of effort is often associated with 4b demonstrations based on multiple program documents that need to be synthesized or additional information needs to be collected and incorporated into the planning process. Also, these 4b demonstrations may necessitate that State and EPA staff become more familiar with the terms and requirements of programs outside of their professional and/or water program experience (e.g., Superfund). However, the level of effort to develop a Category 4b demonstration should become more predictable and stabilize as States' and EPA's experience with Category 4b increases and "good examples" are identified and promoted.

Q: How can State's & EPA facilitate development and review of Category 4b demonstrations?

A: The following practices will facilitate development and review of Category 4b demonstrations:

- States should identify potential Category 4b waters based on EPA's most recent integrated report guidance.
- States should discuss potential Category 4b waters with EPA early in the reporting cycle (i.e., before public review of the 303(d) list or integrated report).
- If the State and EPA agree that Category 4b may be appropriate, develop the Category 4b demonstration based on EPA's recommended format/structure (see www.epa.gov/owow/tmdl/2008_ir_memo.pdf) & clarify EPA's expectations for the level of detail to include in the demonstration.

- Clarify any comments/questions on the draft Category 4b demonstration prior to its submittal with the formal 303(d) list or integrated report (April 1).

Q: Are there any emerging themes for States' use of Category 4b?

A: Although Category 4b guidance is a relatively new aspect of the 303(d) program, several themes have emerged over the past three reporting cycles. Several of these themes are described below.

- Although interest in Category 4b is growing, fewer than half of the States and Territories are using Category 4b and overall use of Category 4b is limited relative to TMDL development. Hence, TMDL development will continue to be the primary 303(d) means to address impaired waters in the foreseeable future.
- States' development and EPA's review of Category 4b demonstrations is significantly facilitated when States and EPA coordinate early and the demonstration is developed according to EPA's recommended format and structure.
- Many of the Category 4b demonstrations submitted to EPA include a plan to implement controls that will lead to water quality improvements. However, as described in EPA's 2008 Category 4b expectations for Element #2 (i.e., description of pollution controls and how they will achieve WQS), EPA expects that Category 4b demonstrations will include not just a plan to make water quality improvements, but a clear cause and effect relationship between the controls and source of impairment and the basis upon which the State believes the controls will lead to attainment of the applicable water quality standard. States are encouraged to include this information upfront with the original submittal of the demonstration.

Q: What are EPA's recent efforts to advance the use of Category 4b?

A: As part of the 2008 reporting cycle, EPA is working closely with States to develop Category 4b demonstrations that are consistent with EPA's expectations. Over the past year, EPA has also made presentations at multiple venues to discuss and clarify EPA's Category 4b expectations with States and other stakeholders (e.g., State/EPA regional meetings and ASWIPCA's national meeting and monthly calls). In addition, EPA is investigating Category 4b opportunities with existing CWA tools (e.g., 319 "nine elements" watershed-based management plans) and opportunities with other Federal Partners including the US Forest Service (see www.epa.gov/owow/tmdl/usfsepamoa/). EPA will continue to coordinate closely with States on their Category 4b proposals throughout the 2008 reporting cycle and will identify and promote "good examples" as they become available.