Making changes to an approved TMDL

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- Overview
- Relevant Statutory and Regulatory Language
- Writing New TMDLs to Better Adapt to Changes
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Overview

- Given changing circumstances in the natural and built environments, there may be a need to revisit TMDLs to ensure they are still expected to attain standards.
- Some common reasons TMDLs are revised include:
  - New data about the waterbody
  - New or revised applicable WQS
  - Errors or missing information in the original TMDL
  - New or expanding point source dischargers

Overview

- When changes to established TMDLs are needed in order to make progress toward water quality standards, EPA encourages states to consult with their EPA Region in advance on a transparent and effective process for making these changes.
- Some states have chosen to align their priorities under the 303(d) Vision with anticipated TMDL revisions.

Relevant Statutory/Regulatory Language

- 33 USC 1313(d)(2): “Each State shall submit to the Administrator from time to time…”
- 40 CFR 130.7(c)(1): “Each State shall establish TMDLs for the water quality limited segments identified in paragraph (b)(1) of this section, and in accordance with the priority ranking.”

Relevant Statutory/Regulatory Language

- 40 CFR 130.7(d)(1): “All WLAs/LAs and TMDLs established under paragraph (c) for water quality limited segments shall continue to be submitted to EPA for review and approval.”
- 33 USC 1313(e) – Continuing Planning Process; see also 40 CFR 130.5 (Continuing Planning Process) and 130.6 (Water Quality Management Plans)

WLA and NPDES regulations

40 CFR 122.44(d)(1)(vii)

When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

…

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7

Working with your EPA Region

- Coordination is key.
- Remember to involve all affected programs (e.g., 303(d), NPDES).
- If multiple TMDLs are potentially being changed, consider setting up standardized procedures for changes.

One option – Water Quality Management Plans

- Water Quality Management Plans are identified in 33 USC 1313(e) and 40 CFR 130.6, which states
  - “State water quality planning should focus annually on priority issues and geographic areas and on the development of water quality controls leading to implementation measures.”
  - WQM plans are used to direct implementation. WQM plans draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions.
- Approved TMDLs are an element of a WQMP

One option – Water Quality Management Plans

- “State and/or areawide agency WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals.”
- Regular state/EPA coordination on WQMP updates and updates to the WQMP itself can be a mechanism for making and memorializing TMDL revisions.

Writing New TMDLs to Better Adapt to Changes

Because revising TMDLs can involve a significant investment of time and resources, states should consider writing TMDLs in a way that minimizes the need for future revisions or clarifies and streamlines the process for later revisions.

Writing New TMDLs to Better Adapt to Changes

Some tips for building this kind of adaptability into TMDL development include:

- Expressly including reserve capacity for future growth and/or new sources.
- Include a set of alternative future WLAs or LAs, along with an estimated timeframe or events that would prompt them to take effect in the submitted TMDL document.

Writing New TMDLs to Better Adapt to Changes

- Explicitly identify the WLA “assumptions and requirements” that a permit writer would consider in developing WQBELs.
- Avoid aggregating WLAs for multiple point sources.
- Avoid assigning “de minimus” as a WLA to point sources. Be clear what the expectations/assumptions/allocations are, e.g., a WLA of 0 or some other explicit load, for all point sources that discharge the pollutant of concern.

Writing New TMDLs to Better Adapt to Changes

- Include a process in the TMDL for notifying EPA and the public of changes.
  - Be as specific as possible about identifying the circumstances, steps, & criteria used to evaluate changes.
  - Include a process for notifying stakeholders of changes.

WQS Restoration

What about when a segment is now attaining WQS for the pollutant identified in the TMDL?

- Since the goal of a TMDL is to be established at levels necessary to attain and maintain the applicable WQS, EPA does not consider it appropriate to revise or withdraw a TMDL if the water is now attaining standards.
- The information and allocations contained within the TMDL may continue to provide environmental benefits and ensure continued water quality goals, as well as avoiding the added resources costs of re-establishing a TMDL if the water were to become impaired again.