



MAKING CHANGES TO AN APPROVED TMDL

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- Overview
- Writing New TMDLs to Better Adapt to Changes
- TMDL Revision Scenarios
- Coordinating TMDL Changes with EPA

This presentation and the information contained in these slides do not represent binding requirements on the states. Such requirements are found in the Clean Water Act and EPA's implementing regulations.

Overview

- As a result of state and EPA efforts over the past 20 years, over 73,000 TMDLs are currently in place to guide restoration of impaired waterbodies nationwide
- Given changing circumstances in the natural and built environments, there may be value in revisiting TMDLs to ensure they are still expected to attain standards
- However, EPA recognizes that developing new TMDLs for waterbodies without them or implementing existing TMDLs may lead to greater water quality benefits than revising old TMDLs

Overview

- The Clean Water Act does not specify requirements for states to revise or update established TMDLs
- 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 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.”
- 40 CFR 130.7(d)(1): “Schedules for submission of TMDLs shall be determined by the Regional Administrator and the State.”
- 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

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 ways that minimizes the need for future revisions, or clarifies and streamlines the process for later revisions



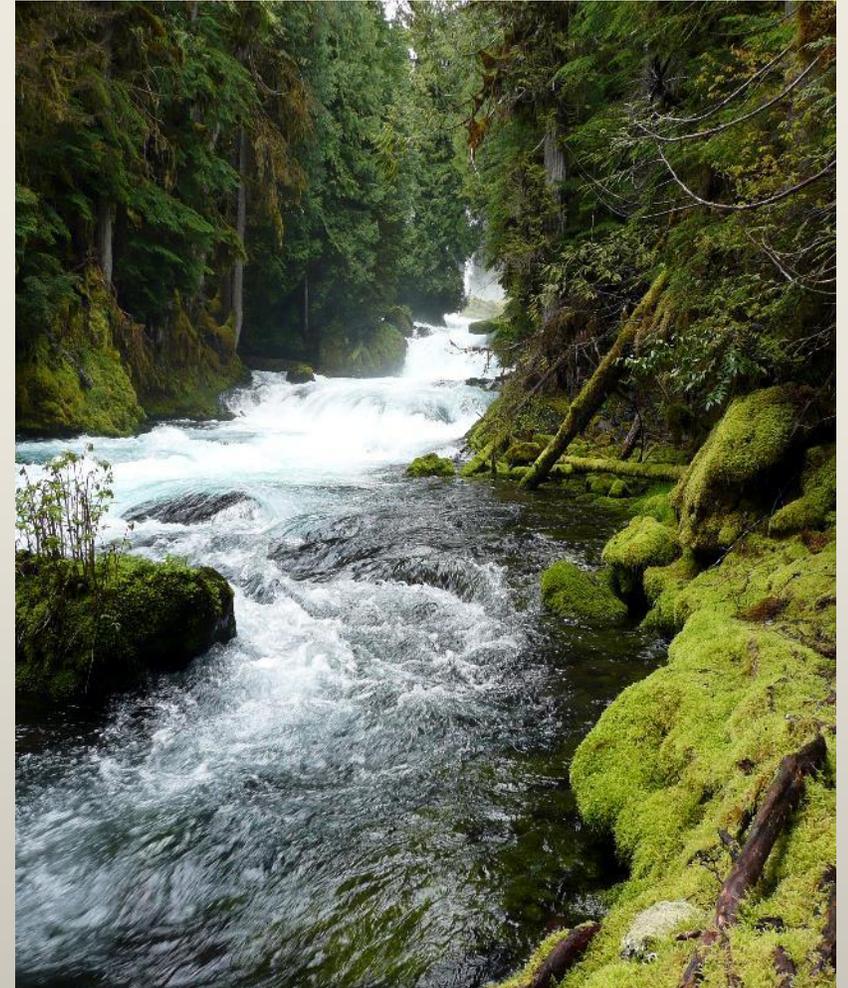
Writing New TMDLs to Better Adapt to Changes

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 reduction expectations are, e.g., “0” or some other number, for all point sources that discharge the pollutant of concern.



Writing New TMDLs to Better Adapt to Changes

- Include a process for notifying EPA and the public of changes that would allow for specific changes to implementation, but not involve formal TMDL submission to EPA under 303(d)
 - *Be as specific as possible about identifying the circumstances, steps, & criteria used to evaluate changes*
 - *Include a process for notifying stakeholders of changes*



Scenario #1 – Changes to WQS

- It may be appropriate to revise a TMDL when there have been a change to the EPA-approved WQS, e.g.,
 - *Changes to numeric criterion (e.g., 5 mg/L to 4 mg/L)*
 - *Adoption of site-specific criteria*
 - *Adoption of new numeric standard which supplements a narrative*
 - *Changes in interpretation of a narrative standard where existing TMDL is not sufficient to meet the new interpretation*

Scenario #1 – Changes to WQS

- In the case of changes to approved WQS, it is important to evaluate if the existing TMDL is sufficient to meet the new criteria and designated use



Scenario #1 – Changes to WQS

- If the TMDL is still sufficient to meet the standard, it may not be necessary to revise the TMDL, unless the state also wishes to revise allocations based on the new WQS
- However, if the evaluation of the existing TMDL finds that the TMDL is not sufficient to meet the new WQS, the water should be returned to the 303(d) list of impaired waters and a new TMDL prepared (or the existing TMDL revised)

Scenario #2 - Changes to Capacity

- It may be appropriate to revise a TMDL when changes to TMDL loading capacity are needed, e.g.,
 - *Where modeling assumptions or data have significantly changed since development of the TMDL*
 - *If there were flawed assumptions or data in TMDL development*



Scenario #3 – Changes to Allocations

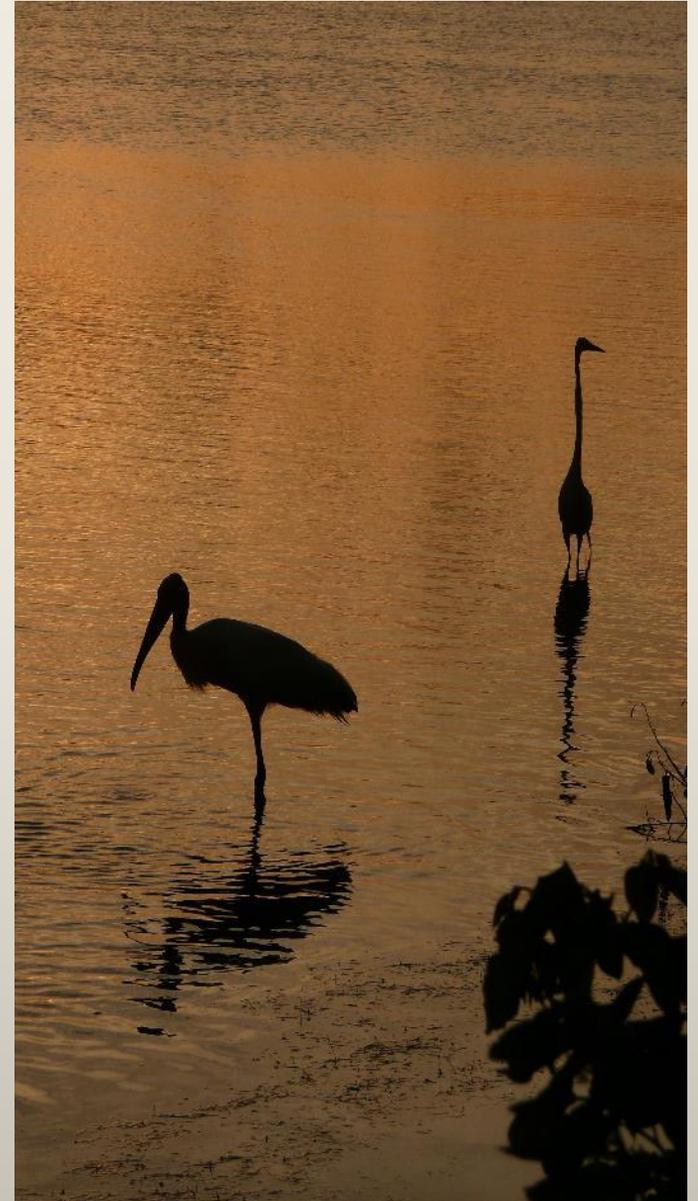
- It may be appropriate to revise a TMDL when there is a need to shift allocations (within the existing overall loading capacity)
 - *Where modeling assumptions or data have significantly changed since development of the TMDL*
 - *New or expanded point and/or nonpoint sources not accounted for in original TMDL*
 - *Existing point and/or nonpoint sources that were not assigned WLAs in the original TMDL*
 - *Shifting individual point source allocations within overall WLA*
 - *Shifting allocations between WLA, LA, and/or MOS*

Scenario #4 - Attainment

- What about when a segment is now attaining WQS for the pollutant identified in the TMDL?
 - *EPA does not consider it appropriate to revise or withdraw an otherwise valid 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*

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



Coordinating TMDL Changes with EPA

- There are certain cases where EPA would strongly encourage a state to submit a revised TMDL to EPA, pursuant to 303(d)
- For example:
 - *Changes to a TMDL's loading capacity*
 - *Reallocations between WLA and LA*
 - *Changes to the TMDL's Margin of Safety*
 - *Revisions to a TMDL due to changes in the underlying WQS such that the original TMDL was no longer sufficient to meet the new standard*

Coordinating TMDL Changes with EPA

- For other types of TMDL changes, it may not be essential to formally submit a TMDL revision to EPA for review and approval
- However, even in these cases EPA recommends discussion and notification to EPA in advance of making the changes to determine appropriate processes, prevent confusion and establish a strong administrative record



Coordinating TMDL Changes with EPA

- Some examples include:
 - *Use of a TMDL's reserve capacity to allow for new or expanded discharges*
 - *Implementation of a water quality trading program where individual load or waste load allocations remain unadjusted*

Questions?

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