Briefing Paper: Meeting with Clean Water Network on 98 Listing Status

I. Background

This paper has been developed to inform you of issues that may be raised at the ***Tuesday, June 30*** meeting with the Clean Water Network. It is based on their draft agenda - attached.

II. Issues

A. Approval/disapproval of lists-

Regions have been instructed to take one of three actions on the 98 lists:
1) Approve
2) Disapprove
3) Partially Approve and Partially Disapprove- to be used where the existing listed waters are accurate but additional waters will be added by the Region to complete the list.

B. Failure to submit a list-

Lists are coming in at a much better pace and quality than during the previous listing cycles. A number of lists have been delayed due to increased public involvement and States' willingness to accommodate extended comment periods and/or additional public hearings (VT, NJ, MO, MT, AZ, and CA). Currently, we are working closely with States to get their lists submitted as quickly as possible, however, where States fail to submit lists, EPA will develop the lists.

C. Omissions of Waters

Regions have been closely reviewing lists to make sure they were developed in accordance with the CWA and implementing regulations. In some cases, Regions have requested that additional waters be added to the lists, e.g., Georgia, where the Region disapproved the State's failure to list more than 100 waters covered by area wide stormwater permits, based on the Region's determination that such waters would not meet standards by the next listing cycle.

D. Delisting

Lists are dynamic. Based on the 98 listing guidance, waters may be removed from a State's 303(d) list prior to TMDL development: (1) if such waterbody is meeting all applicable water quality standards (including numeric and narrative criteria and designated uses) or is expected to meet these standards in a reasonable timeframe (e.g., two years) as a result of implementation of required pollutant controls; or (2) if, upon re-examination, the original basis for listing is determined to be inaccurate.

E. Pollutant Sources-

For the 1998 listing cycle, waterbodies impaired by an unknown source should be included on 1998 section 303(d) lists, as long as there is a pollutant associated with the impairment. Listing may be based on pollutant loadings from unknown point and nonpoint sources, and includes situations where a pollutant is found in fish tissue such that there is an exceedance of applicable water quality standards, but the pollutant is not traceable to a particular source.

Also, regulations require lists to identified pollutants causing violations of water quality standards, however, sources of those pollutants <u>may</u> be identified. Most States choose not to identify pollutant sources.

F. Narrative Standards-

States must list those waters which are not attaining or are not expected to maintain standards. Standards include narrative and numeric criteria as well as designated uses. However, because of the subjective nature of narrative standards, it is difficult to attain national consistency on how States interpret them.

E. Public Participation-

Public participation is an important part of the 303(d) process and we encourage States to engage the public in both listing and TMDL development. In any case, we expect States to meet the minimum requirements of 40 CFR 25 which include notices to be no less than 30 days, public consultation, and development of a responsiveness summary.

III. Draft Agenda

Agenda

1. Brief Introductions 1:00 -1:05 PM

2. Meeting Overview 1:05 -1:10 PM

3. Questions Regarding EPA Review Issues 1:10 -1:40 PM
    A. Approval/Disapproval
    B. Failure to Submit
    C. Omissions of Waters
    D. Delistings
    E. Pollutant Sources
    F. Narrative Standards
    G. Public Participation

4. Questions Regarding Next Steps 1:40 -2:00 PM
    A. Review Process Timeline
    B. Public Participation Opportunities
    C. Planning for the Implementation Process