

Planned Proposed Rulemaking to Address the Process for Tribes to Obtain Treatment in a Similar Manner as States for the Clean Water Act Impaired Water Listing and Total Maximum Daily Load Program

USEPA Office of Wetlands, Oceans and Watersheds
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Overview of Today's Meeting

- Issue & Purpose
- Basics of the Impaired Water Listing and Total Maximum Daily Load (TMDL) Program
- Treatment in a Similar Manner as a State (TAS) Background
- Consultation and Coordination
- Relationship to Potential Reinterpretation of Clean Water Act Provision Regarding Tribal Eligibility to Administer Regulatory Programs
- Working Schedule
- For More Information

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Issue

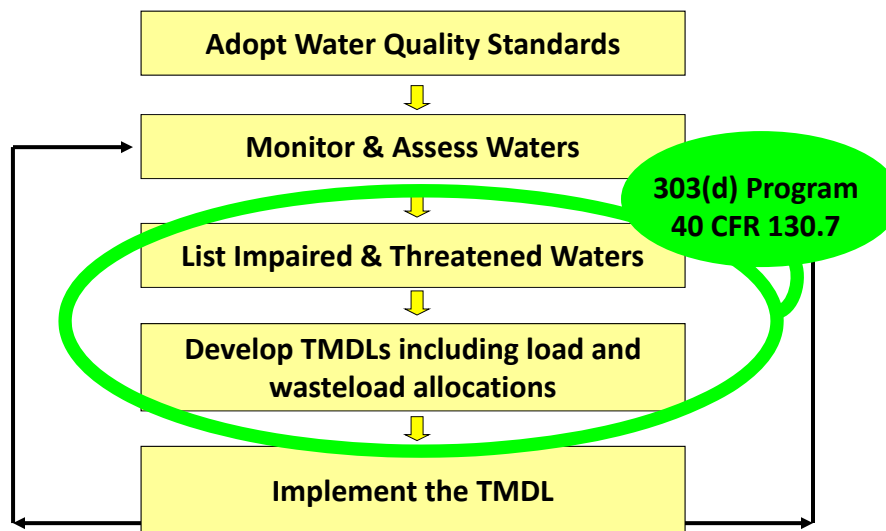
- Section 518 of the Clean Water Act (CWA) authorizes treatment of tribes in a similar manner as states for several programs – including the Section 303(d) Impaired Water Listing and TMDL Program – and directs EPA to promulgate TAS regulations.
- Because existing regulations do not explicitly address TAS for the 303(d) Program, EPA plans to propose a new regulation.
- With 48 tribes having obtained TAS for the Section 303(c) Water Quality Standards (WQS) Program, tribes are now expressing interest in obtaining TAS for section 303(d).

Purpose

To describe a planned proposed rulemaking to establish the process for tribes to obtain TAS for the CWA Section 303(d) Impaired Water Listing and TMDL Program, as required by the CWA.

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Clean Water Act Framework for Restoring Polluted Waters



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What is the Impaired Waters Listing and TMDL Program?

- The CWA provides for states, territories, and authorized tribes to:
 - Solicit and compile existing and readily available water quality data and information
 - Develop lists of impaired waters every two years (2012, 2014, 2016...)
 - Establish TMDLs for waters on the list

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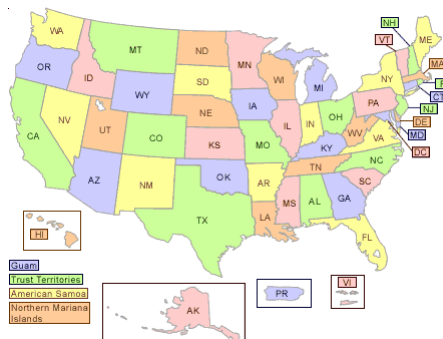
Developing a 303(d) List of Impaired and Threatened Waters

- Assemble all readily available water quality data
- Develop assessment methodology
 - Water quality data and applicable WQS used to make listing decisions
- Identify waters that do not meet WQS (impaired) or are not likely to meet WQS (threatened)
- Establish priority ranking of all listed waters
- Identify specific waters targeted for TMDL development (in next 2 years)
- Request and respond to public comments
- Submit final impaired and threatened waters list to EPA for approval (2 year cycle)

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The National Picture

- ~ 42,000 waters listed as impaired
- Top causes of impairments:
 - pathogens
 - metals
 - nutrients
 - low dissolved oxygen
 - sediment



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What is a TMDL?

- A calculation of the maximum amount of a pollutant that a waterbody can receive and still meet WQS, an allocation of that amount to the pollutant's sources, and a margin of safety.
- *The TMDL comes in the form of a technical document or plan.*



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Developing TMDLs

- TMDLs are established in accordance with priority rankings developed by a 303(d) program authority for each waterbody / pollutant combination.
- TMDLs often address multiple impairments within a watershed
- TMDLs and supporting documents typically include:
 - data summary / analysis,
 - pollutant source assessment,
 - pollutant loading targets,
 - calculations for loading capacity, wasteload allocation (WLA; point sources), load allocation (LA; nonpoint sources), margin of safety (MOS),
 - reasonable assurance demonstration, and
 - summary of and response to public comments
- TMDLs may be accompanied by an implementation plan designed to meet WQS and restore water quality

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Developing TMDLs, cont.

- The CWA provides for states, territories, and authorized tribes to develop TMDLs for waters on the 303(d) list, and in accordance with priority ranking
- Typically, a TMDL could take a year or two to develop, or more if it is very complex
- EPA guidance provides that TMDL development schedules for all impaired waters in a particular jurisdiction should be “expeditious” and “normally extend from eight to thirteen years in length, but could be shorter or slightly longer” depending on jurisdiction-specific factors
- TMDL alternatives may exist in some circumstances

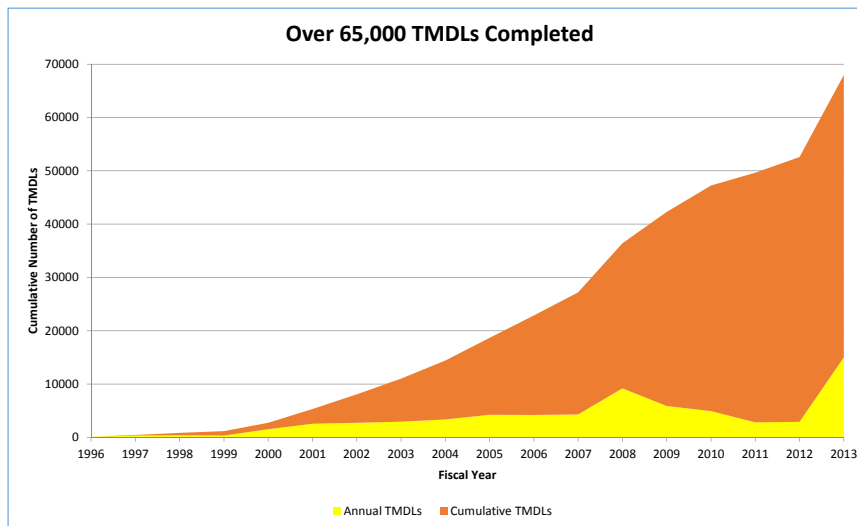
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How is a TMDL Used to Reduce Water Pollution?

- National Pollutant Discharge Elimination System (NPDES) permits must include limits consistent with a TMDL's WLA
- Nonpoint sources are not directly regulated under the CWA. Therefore, TMDL LAs for nonpoint sources provide guidance to inform federal, state, or tribal action under other authorities



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TAS Background

There are 566 federally recognized tribes

Program	Number of Tribes with TAS
Pollution Control Program Grants (106)	268
WQS (303(c))	48 (40 tribes have approved WQS; 1 tribe without TAS has federally promulgated WQS)
Listing and TMDLs (303(d))	0
NPDES (402)	0
Nonpoint Source Grants and Planning (319)	180

Data as of September 5, 2014

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TAS Background

- Under the CWA, EPA shall promulgate final regulations that specify how Indian tribes shall be treated similar to states for purposes of the Act
- Other CWA programs (e.g., 106, 303(c), 319, 402) have promulgated final TAS regulations
- Existing regulations do not explicitly address steps to take for obtaining TAS for 303(d)

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Consultation and Coordination

- Through a rulemaking, EPA plans to propose a process for tribes to apply to EPA for TAS eligibility to establish lists of impaired waters and TMDLs pursuant to section 303(d) of the CWA
 - Statutory TAS criteria would apply
 - EPA is evaluating specific TAS application procedures
- EPA conducted tribal consultation and coordination on the planned proposed rulemaking from April 8 to June 6, 2014
- About 40 tribes provided comments, which were supportive
- EPA is now consulting with intergovernmental associations
- EPA plans to issue a *Federal Register* notice publication of a proposed rule and continue
 - coordination with the Association of Clean Water Administrators (ACWA)
 - tribal consultation and coordination

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Relationship to Potential Reinterpretation of Clean Water Act Provision Regarding Tribal Eligibility to Administer Regulatory Programs

- This planned proposed rulemaking to establish a TAS process for Listing and TMDLs is separate from the EPA Office of Water's potential reinterpretation of the Agency's approach to tribal jurisdiction to administer CWA regulatory programs, a subject about which many state associations have recently been briefed.
- EPA is planning to proceed with the proposed rulemaking to establish a TAS process for listing and TMDLs irrespective of the reinterpretation.

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Working Schedule

- Now to late 2014: EPA begins to draft preamble, rule and supporting documents
 - Intergovernmental Association Outreach Meeting
October 1, 2014; EPA requests PRE-PROPOSAL comments by November 1, 2014, or as soon as possible thereafter
- Late 2014: Publish proposed rule in Federal Register for 60-day public comment; Concurrent tribal consultation; Coordination with ACWA
- Late 2014 to mid-2015: Review / respond to comments; Draft preamble / any rule revisions
- Late 2015: Publish final rule; Outreach / coordination with tribes and others

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For More Information

- To view background materials:
<http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/policy.cfm>
- To ask questions or provide comments/views, please email Sarah Furtak at furtak.sarah@epa.gov by November 1, 2014

References:

- USEPA Impaired Waters and Total Maximum Daily Loads Home Page,
<http://epa.gov/owow/tmdl>
- USEPA New Vision for the CWA 303(d) Program,
<http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/programvision.cfm>
- USEPA "New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs)" Memo,
<http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/ratepace.cfm>
- USEPA Indian Policies and 1984 Indian Policy,
<http://www.epa.gov/indian/basicinfo/presidential-docs.html>
- USEPA Assessment, TMDL Tracking, and Implementation Database,
http://iaspub.epa.gov/waters10/attains_nation.cy.control?p_report_type=T

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Questions?

