



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: National Coordination on EPA Clean Water Act Section 303(d) Actions

FROM: John Goodin, Director
Office of Wetlands, Oceans, and Watersheds

TO: Water Division Directors, Regions 1 – 10

The purpose of this memorandum is to describe the process and principles for coordination between EPA Regions and Headquarters (HQ) on Clean Water Act (CWA) Section 303(d) lists (CWA 303(d) lists) and Total Maximum Daily Loads (TMDLs) submitted by a state, territory, or authorized tribe (herein referred to as a state). This memorandum addresses the overall process and decision-making principles for determining what and when matters should be coordinated with HQ, and how matters are coordinated within HQ. The goals in developing this guidance are as follows:

- Meet CWA requirements and action deadlines.
- Have approved CWA 303(d) lists that properly identify impairments based on available data and information, and TMDLs that attain and maintain WQS.
- Establish inclusive procedures for EPA Regional and HQ offices to assure national consistency and efficiency of decision-making.
- Promote evidence-based decisions guided by the best available science and data.

Background

The CWA's cooperative state-federal framework for addressing water quality requires each state to identify waters within its boundaries for which existing pollution controls are not stringent enough to meet applicable water quality standards. 33 U.S.C. § 1313(d)(1)(A). These are known as "water quality limited segments" under 40 C.F.R. § 130.2(j) and include impaired waters as well as threatened waters. EPA regulations direct states to submit a list of water quality limited segments still requiring TMDLs every two years, known as the CWA 303(d) list. 40 C.F.R. § 130.7(d)(1). CWA 303(d) lists are due from all 56 states on April 1 each even number year.

States are required to establish TMDLs for each water quality limited segment on their CWA 303(d) lists, in accordance with the priority ranking established by each state. 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.7(c)(1). EPA receives approximately 2,000 TMDLs from states for EPA action each year.

Once a state submits a CWA 303(d) list or a TMDL, EPA must approve or disapprove the submission within 30 days. 33 U.S.C. § 1313(d)(2). The authority to approve or disapprove CWA 303(d) lists and TMDLs is delegated to the Regions (See 40 CFR 130.7(d)(2) and delegations manual 2-11, 2-65 and 2-67).

Coordination Process between EPA Regions and OWOW on CWA Section 303(d) Matters

There is a longstanding history in the Section 303(d) Program of the Office of Wetlands, Oceans, and Watersheds (OWOW) and Regional coordination on disapprovals of state submissions or deferrals of action, as well as approvals with nationally-significant implications. Approvals with nationally-significant implications include those that could:

- articulate a position that is new or is in tension with previous EPA statements on a national policy or regulatory issue,
- result in litigation, and/or
- lead to significant controversy or attention.

This memorandum clarifies the existing coordination approach and builds on that coordination moving forward. Early HQ-Regional engagement on Section 303(d) submissions that may result in disapprovals or deferrals of actions, or on approvals that may have nationally significant implications, is essential to ensure timely discussions, appropriate consideration of options, and well-supported decisions.

There are multiple venues for coordination between the Regions and HQ. As a general matter, the Regional Liaisons in OWOW's Watershed Branch (WB) are the first points of contact for coordination on Section 303(d) actions. Direct communication between WB and Regional Section 303(d) managers continues to be a core element of effective Regional-HQ coordination. Additional opportunities for broader communication among Regions and WB include numerous workgroups, regular Section 303(d) Program calls, and annual meetings. OWOW will continue to support development of resources and tools to support Regions throughout the CWA Section 303(d) process. In addition, Regional senior management and OWOW Division and Office management also communicate on Section 303(d) matters, as appropriate.

Coordination between WB and the Regions on Section 303(d) actions most effectively happens with early and regular communication over different time frames. First, Regions and WB coordinate on actions expected over the time frame of several months, with Regions highlighting submissions expected from states and whether they may raise challenging issues. Second, as Regions work with states on particular submissions (e.g., reviewing and commenting on drafts, discussing state responses to public comments), Regions highlight potentially nationally-significant issues and discuss them with WB where appropriate. Third, once a CWA 303(d) list or TMDL is submitted, Regions alert¹ WB and, as appropriate, coordinate on next steps. Early and regular engagement between Regions and WB can promote quick resolution of any needed elevation and timely action by the Region. WB staff and management are available to discuss questions and provide technical assistance throughout this process. The following decision-making principles can be used to guide engagement with OWOW on CWA 303(d) list and TMDL actions. Where a state submission and proposed action meet the following

¹ For TMDLs where the Regions do not have questions about the TMDL and/or whether it raises nationally significant issues (see Decision-Making Principles table below), the Regions generally alert WB through the backlog tracking system.

criteria, the Region would not need to have a detailed engagement at the Division and/or Office Level within OWOW. Where any of these decision-making principles are not satisfied, further engagement with OWOW should occur.

Decision-Making Principles – Detailed Engagement at the Division and/or Office Level within OWOW not needed	
1	The Region concludes the state submission of a CWA 303(d) list or TMDL is fully consistent with CWA requirements and does not raise issues of national significance.
2	The Region intends to fully approve of the state submission. For TMDLs, unless the Region has a question about the TMDL and/or whether it raises issues of national significance, no further coordination with HQ is needed.
3	The Region has communicated with WB and WB does not have reason to disagree that the submittal is consistent with CWA requirements or that it does not raise issues of national significance.
4	OWOW Division and/or Office management has not asked for detailed engagement after receiving information on the proposed action that may be shared for awareness purposes.

In many cases, Regional actions under Section 303(d) satisfy the above principles. For example, in many cases the Region evaluates a TMDL to determine whether it properly addresses the core elements of a TMDL (e.g., using the 2002 [checklist](#) as an initial guide) and concludes that the TMDL meets statutory and regulatory requirements. The Region concludes that the TMDL does not raise nationally significant issues and proceeds with its approval.

As another example, as part of ongoing communication and tracking of progress on CWA 303(d) lists, a Region may identify a potential challenging issue with a state CWA 303(d) list during regular check-ins with the WB Regional Liaison. After discussing and working through a solution with the state before the CWA 303(d) list is submitted and communicating this solution to WB, detailed engagement with OWOW on the issue is not needed on the state CWA 303(d) list submission.

Where one or more of the above principles are not met and detailed engagement at the Division or Office level within OWOW is needed, the Region would assemble key material from the state submission, including the state’s response to comments. The Region would work with the WB liaison to develop an issue paper, which may include a discussion of options, as appropriate. WB would take the lead on engaging the Office of General Counsel and any other potentially-affected HQ offices. In addition, OWOW would work with the Region to determine if OW Immediate Office (IO) leadership needs to be engaged in the matter.

OWOW senior management will routinely make OW-IO leadership aware of important pending listing/TMDL actions. OWOW would work with the Region to determine if OW-IO leadership needs to be further engaged in the matter, or relay OW-IO interest in further involvement. Where Regions and OWOW determine that a state submission meets the following criteria, detailed engagement with OW management would not need to occur. Where any of these decision-making principles are not satisfied, further engagement with OW should occur.

Decision-Making Principles – Detailed Engagement with OW-IO not needed	
1	Region and OWOW agree that, based on best available data/information and analysis, the submission does or does not meet statutory and regulatory requirements.
2	Region and OWOW agree on the appropriate path forward (i.e., approval, disapproval, deferral, request more information from the state).
3	Action on the submission is generally expected to be non-controversial.
4	OW-IO leadership has not asked for detailed engagement after receiving information on the proposed action that may be shared for awareness purposes.

Where detailed engagement with OW is needed, the Region and OWOW would work together to develop summaries and/or option papers for purposes of engaging OW-IO leadership. Engagement with the OW-IO may take varying forms, which may range from summary briefings/conversations to full option selection briefings. All offices will act as efficiently as possible to meet the statutory deadlines for action while developing well-supported decisions. Early and frequent engagement between the Region and WB, including in advance of the submittal of CWA 303(d) lists and TMDLs, will help assure efficiency and well-supported decisions.

Conclusion

EPA is responsible for ensuring that state CWA 303(d) lists and TMDLs comply with requirements and meet the CWA objective to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. This memorandum clarifies the coordination process and identifies principles to advance the collaborative work and communication between Regional Offices and OWOW for effective management of the CWA Section 303(d) Program. We hope to continue building on this partnership and work together as one EPA to promote well-supported actions that are consistent with sound science and CWA requirements. Please reach out to me, or have your staff contact your WB Regional Liaison or WB management with any questions about the process or principles described in this memorandum.