

INTERNAL DELIBERATIVE PRE-DECISIONAL - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

CLEAN WATER ACT SECTION 303(D): ASSESSMENT/LISTING OF IMPAIRED WATERS AND TOTAL MAXIMUM DAILY LOADS

ISSUE SUMMARY:

Under Clean Water Act (CWA) Section 303(d), each state, territory, or authorized Tribe (hereinafter “state”) is required to identify waters for which technology-based permit limits alone are insufficient to implement applicable water quality standards (WQS). CWA Section 303(d)(1)(A). State lists must be submitted to the EPA by April 1 of every even numbered year. 40 CFR 130.7(d)(1). As to each of those “impaired” waters, each state must establish “the total maximum daily load” (TMDL) for the pollutants causing the impairment. CWA Section 303(d)(1)(C). The CWA requires that “[s]uch load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” CWA Section 303(d)(1)(C). A TMDL includes an allocation of loads among the sources and categories of sources of the pollutants. TMDLs for waters on the CWA Section 303(d) list must be submitted to the EPA “from time to time.” CWA Section 303(d)(2). The EPA must approve or disapprove CWA Section 303(d) lists and TMDLs not later than 30 days after submission. If the EPA disapproves a listing or TMDL, the EPA must, not later than 30 days after the date of such disapproval, identify waters for inclusion on the 303(d) list or establish the TMDL to implement the applicable WQS.

KEY POINTS:

The CWA Section 303(d) Program serves **key functions in the middle of the CWA scheme**, among other things, as a bridge between water quality monitoring and WQS, and CWA permitting and nonpoint source implementation activities. Impaired waters lists and TMDLs provide valuable information to the public and other stakeholders on waters not meeting WQS, guide water quality restoration efforts, are used to develop enforceable permit limits for point sources and guide nonpoint source management activities. The CWA Section 303(d) Program engages in extensive efforts to integrate and partner with other CWA programs.

Since 2013, the EPA has been **collaborating with states through a long-term program Vision**, touted by states as a model of state-federal cooperation. The EPA’s most recent long-term 2022-2023 [Vision](#) for the CWA Section 303(d) Program strives to strategically plan and prioritize activities, engage partners, and analyze and utilize data to develop water quality assessments, plans, and implementation approaches to restore, and protect the Nation’s aquatic resources. The 2022 Vision identifies opportunities to manage effectively CWA Section 303(d) program activities to achieve water quality goals for the Nation’s surface waters and articulates goals outlining aspirations and opportunities to implement CWA Section 303(d) program activities in the following categories – Planning and Prioritization, Restoration, Protection, Data and Analysis, and Partnerships. In addition, four focus areas provide cross-cutting themes to consider in CWA Section 303(d) program implementation – Environmental Justice, Climate Change, Tribal Water Quality and Program Development, and Program Capacity Building.

States and the EPA have made great improvements in recent years on **timeliness** of list submittals and EPA actions on submitted lists and TMDLs. For example, timely state list submittals in the two most recent cycles have increased from 4 in 2018 to 22 in 2022 and 18 in 2024. The EPA has virtually eliminated its backlog on actions on state submittals of lists and TMDLs and has been regularly acting on submittals within 30 days in recent years.

The EPA and states have invested significantly in developing and using **data systems**, including the EPA’s Assessment and Total Maximum Daily Load Tracking and Implementation System ([ATTAINS](#)), the [WQX](#), and [How’s My Waterway](#), to help make water quality assessment decisions and TMDL development (among other CWA actions) more efficient and transparent to the public.

The EPA acts on between **two and three thousand lists and/or TMDLs per year**. The EPA has emphasized the importance of early engagement with states and between EPA Regions and EPA HQ to take CWA Section 303(d) actions in an **effective and efficient** manner.

With so many federal actions, in the past 10 or so years, the EPA generally has had a **litigation** docket of about 20 listing and TMDL federal court cases at any given time. These cases are brought by industry, environmental, and/or governmental litigants, and address issues regarding the timeliness and/or content of CWA Section 303(d) lists and TMDLs.

Federally recognized **Indian Tribes** may apply for authorization to implement the CWA Section 303(d) Program but to date no Tribe has applied.

ONGOING/UPCOMING REVIEWS FOR FY2024:

- The EPA continues to review and act on **state lists and TMDLs**. Almost all states have either submitted or are in the process of developing their 2024 CWA Section 303(d) lists.
- Under the CWA Section 303(d) Program long-term Vision, almost all states have developed or are in the process of developing state-specific **long-term prioritization frameworks** for how they plan to prioritize their assessment and planning activities and carry out the Program Vision goals for the next 8 years. The EPA has received about 20 state prioritization frameworks to date. States also will be submitting commitments for EPA's **Vision priority plans metric** by September of this year regarding the TMDLs and other plans the states plan to be developing and/or submitting in the next two years.
- The EPA has developed a 5-day **TMDL Foundations course** for states and others on how to develop TMDLs. This course was piloted with states in the spring of 2024 and will be ready for regular use by the end of 2024.
- The EPA is developing the **2026 Integrated Reporting Memorandum**, to be released in 2024, to provide information for states in developing 2026 Integrated Reports, which include the CWA Section 303(d) list. In 2024, the EPA also plans to release a paper to assist states and EPA Regions on climate change considerations in TMDL development and is working on draft papers regarding revising and withdrawing TMDLs, and multijurisdictional TMDLs.
- The EPA continues to develop **tools** to assist states in developing lists of impaired waters and TMDLs. For example, this summer, the EPA is releasing a web version of its Recovery Potential Screening ([RPS](#)) tool, used extensively by states and others to set priorities for water quality restoration and protection, monitoring, and other activities.
- The EPA will continue to **manage federal court litigation**, including filing briefs and other papers to defend its actions in court. The EPA also will continue to **meet court ordered and settlement agreement deadlines** for CWA Section 303(d) actions.

KEY EXTERNAL STAKEHOLDERS:

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| <input checked="" type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States | <input checked="" type="checkbox"/> Tribes | <input checked="" type="checkbox"/> Media | <input checked="" type="checkbox"/> Other Federal Agency |
| <input checked="" type="checkbox"/> NGO | <input checked="" type="checkbox"/> Local Governments | <input checked="" type="checkbox"/> Public | | | |

MOVING FORWARD:

The EPA will continue to emphasize supporting states in developing timely and well supported lists and TMDLs, meeting its statutory deadlines, and implementing the EPA-State collaborative Long-term CWA Section 303(d) Program Vision.