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

823/R-86-100

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MAR 25 1986

OFFICE OF WATER

MEMORANDUM

SUBJECT: EPA's Review and Approval Procedure for State Submitted TMDLs/WLAs

FROM: Edmund M. Notzon, Director
Monitoring and Data Support Division (WH-553)

TO: Addressees

I am pleased to transmit to you the final guidance on EPA's review and approval procedure for State submitted total maximum daily loads/ wasteload allocations (TMDLs/WLAs). This guidance was prepared in response to requests from the Regions to define a process that the States and EPA Regional offices can use in reviewing and approving TMDLs/WLAs developed by the States and submitted to EPA for approval. In preparing this guidance, each Region's current procedure was reviewed and a prototype procedure was developed. This prototype was then distributed as draft guidance to Regional and Headquarters offices for review and comment.

Comments on the draft were received from the Office of General Counsel (OGC); the Office of Water Enforcement and Permits (OWEP), Permits Division; the Criteria and Standards Division, Analysis and Evaluation Division, and Industrial Technology Division in the Office of Water Regulations and Standards (OWRS); and four EPA Regional offices. The comments were generally very favorable and were used to improve the document as described below.

The OGC suggested improvement to wording in paragraph H, page 4, with reference to public notices and public hearings, and in Appendix E for EPA's example letter requesting additional information from the State. Their suggestion was to include a statement in the example letter urging prompt response to questions raised by EPA to avoid possible disapproval for not responding in a timely fashion.

The Criteria and Standards Division, in OWRS, suggested adding to paragraph D on page 3, that the States need to develop TMDLs/WLAs where use attainability analyses are required in accordance with section 131.10 of the Water Quality Standards regulation. The other divisions in OWRS had general editorial comments which were incorporated into the text. The Permits Division concurred with the document as being consistent with their program requirements.

The following changes were made to the document in response to comments received from the Regions:

- o EPA's antidegradation policy requirements were added to paragraph D, page 3, as an element in the review/approval process.
- o The text was modified to clarify that fact sheets for minor permits and advanced treatment (AT) project reviews may be used to review State WLAs.
- o Technical references were added to Appendix C to assist in preparing EPA/State agreements.
- o An example letter of disapproval of a State's TMDL/WLA was added to Appendix E.
- o Letters of EPA approval, requests for additional information, and/or disapproval are to be signed by the Regional Administrator.

If you have any questions on this guidance, please contact Ed Drabkowski on FTS 382-7056.

Attachment

Addressees:

Ed Woo, Region I
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Guidance on EPA's Review and Approval Procedure for State Submitted TMDLs/WLAs

Monitoring Management Section
Monitoring Branch
Monitoring and Data Support Divisi
March 1986

CONTENTS

Appendixes

I. INTRODUCTION

Background

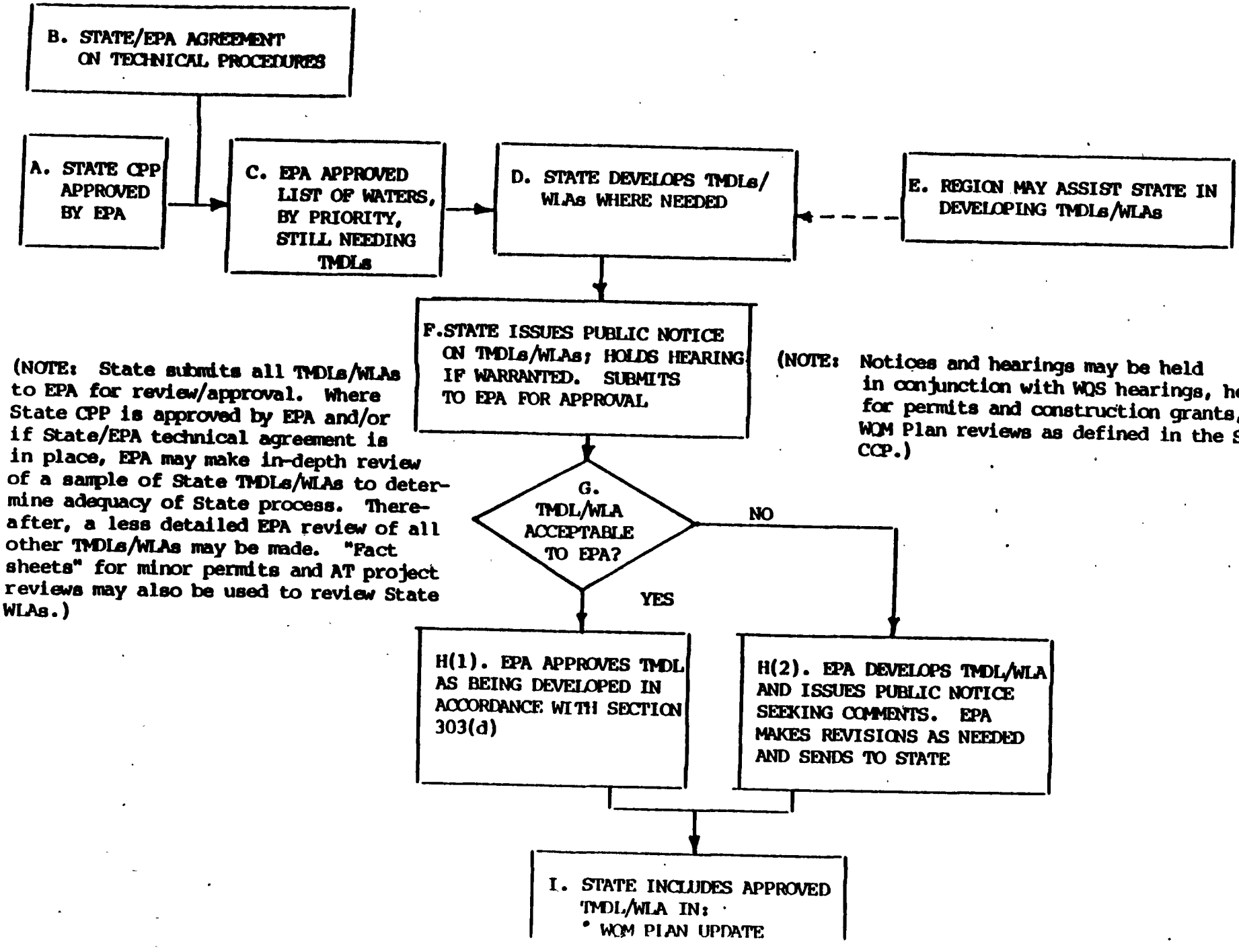
Section 303(d) of the Clean Water Act requires States to identify those waters where water quality-based controls are needed, rank them in priority order, prepare total maximum daily loads and wasteload allocations (TMDLs/WLAs) for each water body, and submit them to EPA for review and approval. The Water Quality Planning and Management (WQM) regulation (40 CFR Part 130, January 1985) describes how States are to identify these areas and prepare submissions to EPA, and requires the States to send these TMDLs/WLAs to the EPA Regional Office for review and approval. Section 130.7 of the regulation, which discusses the process for identifying water quality limited segments, TMDLs/WLAs, setting priorities, etc., is included as Appendix A. Sections 303(d) and 303(e) of the Clean Water Act are also inclu as Appendix B.

Purpose

This guidance outlines a procedure which can be used by the States and the EPA Regional office that will satisfy the requirements of the Clean Water Act and the WQM regulation and allow for adequate review by EPA. This procedure addresses the administrative (i.e., non-technical) aspects of developing TMDLs/WLAs and submitting them to EPA for review and approval. It does not include the technical process for calculating TMDL/WL or EPA's procedures for reviewing individual TMDLs/WLAs. Technic guidance documents for developing water quality-based controls and reviewing individual TMDLs/WLAs (such as technical guidance developed by the Office of Water Regulations and Standards, technical guidance for writing permits developed by the Office of Water Enforcement and Permits, and technical agreements betwee the Region and the States) are available. All TMDLs/WLAs must meet the antidegradation policy (§131.12) and other requirements of the Water Quality Standards (WQS) regulation.

This guidance describes a step-by-step procedure for the review of State submitted total maximum daily loads and wasteload allocations as required by the WQM regulation and the Clean Water Act (CWA) including a list of questions and answers to focus on the key issues. Pertinent sections of the WQM regulatio and the CWA are in the Appendixes which also include an example State/EPA technical agreement on developing TMDLs/WLAs, the antidegradation policy from the WQS regulation, and example transmittal letters between the State submitting TMDLs/WLAs for EPA approval and EPA's letters of approval or disapproval.

REVIEW/APPROVAL PROCEDURE FOR STATE TMDL/WLA



(NOTE: State submits all TMDLs/WLAs to EPA for review/approval. Where State CPP is approved by EPA and/or if State/EPA technical agreement is in place, EPA may make in-depth review of a sample of State TMDLs/WLAs to determine adequacy of State process. Thereafter, a less detailed EPA review of all other TMDLs/WLAs may be made. "Fact sheets" for minor permits and AT project reviews may also be used to review State WLAs.)

(NOTE: Notices and hearings may be held in conjunction with WQS hearings, hearing for permits and construction grants, and WQM Plan reviews as defined in the State' CCP.)

II. OVERVIEW OF THE PROCESS (See Figure 1)

A. The State Includes in Their Continuing Planning Process a Description of the Procedures

Each State is required to establish and maintain a continuing planning process (CPP) as described in section 303(e) of the Clean Water Act. A State's CPP must contain, among other items, a description of the process that the State uses to identify waters needing water quality-based controls, priority rank these waters, develop TMDLs/WLAs, and a description of the process that the State uses to receive public review of each TMDL/WLA. This description may be as detailed as the Regional office and the State feel is necessary to adequately describe each step of the TMDL/WLA development process.

B. The State and EPA Agree on Technical Procedures

As a foundation for all TMDLs/WLAs prepared by the State, EPA and the State should agree on the process that the States will use to develop the WLAs and prepare a written agreement which describes these procedures. Such an agreement promotes consistency between projects and between States (i.e., how background data is applied, how/which models are to be used, how TMDLs are determined, how loads will be allocated, etc.; see Appendix C for sample technical agreement). By agreeing on the procedures that the State will follow (as described in the State's CPP and/or the State/EPA technical agreement), only a sample of WLAs need be reviewed in depth by EPA. This sample in-depth review is to ensure that the State is following the agreed-upon procedures and that the TMDLs/WLAs are acceptable. If a problem is found, all WLAs may then be reviewed in greater detail.

C. State Submits List of Waters, by Priority, Still Needing TMDLs

As required under section 303(d) of the Clean Water Act, each State prepares a list of waters (by priority) that need TMDLs, taking into account the severity of pollution and the uses to be made of such waters. This list of waters is to be submitted by the States to the EPA Regional office for approval. Once approved, the list of waters is to be incorporated into the State's Water Quality Management Plan update. The State is also to identify the pollutants causing or expected to cause violations of the water quality standards in each waterway. (See section 304(a)(2) of Clean Water Act, and 40 CFR 130.7(b)(1))

D. State Develops TMDLs/WLAs Where Needed

From the list of waters identified as needing TMDLs, and where use attainability analyses are required, the State develop TMDLs/WLAs at levels necessary to attain and maintain water quality standards with consideration of the State's antidegradation provisions as required by the WQS regulation (see Appendix D, 40 CFR, Section 131.10 and Section 131.12, Federal Register, November 8, 1983). TMDLs/WLAs should be developed according to the priority ranking established by the State and approved by EP

E. EPA Provides Assistance to States in Developing TMDLs/WLAs

Throughout the process, the EPA Regional offices are available to provide technical assistance and advice to the States in developing TMDL/WLAs.

F. State Issues Public Review Notice on TMDLs/WLAs, Holds Public Hearing, if Warranted, and Sends to EPA for Approval

In accordance with the Water Quality Management regulation and as described in a State's CPP, TMDLs/WLAs are to be made available for public review and comment. The State should issue a public notice offering an opportunity for a public hearing pertinent to the TMDL under review; however, if no interest is shown as a result of the public notice, it is possible to waive the hearing. It is also possible to include TMDL/WLA reviews in conjunction with public notices and hearings on NPDES permits, municipal wastewater treatment works funded with EPA grants, water quality standards revisions, and water quality management plan updates. Each notice should identify TMDLs/WLAs as part of the subject matter.

Also, if a State feels that the water quality-based controls are critical or if they anticipate that they may be controversial, the State should involve the Regional office as well as the public early in the process and continue to involve them throughout the process rather than waiting until WLAs are submitted to EPA for approval. (See Appendix E for an example of a letter submitting a TMDL/WLA to EPA for approval and the information to be included with the letter to facilitate EPA review.)

G. EPA Reviews the State's TMDL/WLA

To meet the requirements of section 303(d) of the CWA and the WQM regulation, EPA must review and approve all TMDLs. EPA may tailor its review to what is reasonable and appropriate; that is, where a State has clearly described its process in its CPP, EPA may conduct an in-depth review of a sample of the State's TMDLs/WLAs

to determine how well the State is implementing its approval process and give a less detailed review of the remaining TMDLs/WLAs. This review of samples of the State submissions, in conjunction with a less detailed review of all other TMDLs/WLAs submitted to EPA by the State, will provide a reasonable basis for EPA approving or disapproving individual TMDLs/WLAs. The in-depth sample review may include TMDLs/WLAs supporting major construction grants and other major control measures. (See Water Quality Planning and Management Regulation, Federal Register, January 11, 1985, page 1777.)

Total maximum daily loads and wasteload allocations must reflect applicable State water quality standards including the antidegradation policy. No wasteload allocation will be approved or NPDES permit revised if it will result in a water quality standard being violated, or, in the case of waters whose quality exceeds that necessary for the section 101(a)(2) goals of the Clean Water Act, results in a lowering of water quality unless the applicable public participation, intergovernmental review, and baseline control requirements of the antidegradation policy have been met. (See 40 CFR 131.12, Appendix D.)

H. EPA Approves or Disapproves State's Submission.

EPA either approves or disapproves the State's TMDL/WLA within 30 days after submission by the State. An approved TMDL/WLA is "certified" by the EPA as having been developed in accordance with section 303(d) of the CWA and a letter of such approval is transmitted to the State.

If EPA disapproves the State's TMDL/WLA, the EPA Regional office, not later than 30 days after the date of disapproval, must develop the TMDL/WLA in accordance with section 303(d) and issue a public notice requesting comment on the revision. After public review, EPA transmits the TMDL/WLA (revised, if necessary) to the State. (See Appendix E for examples of EPA approval, request for additional information, and disapproval letters.)

I. State Includes Approved TMDLs/WLAs in WQM Plan Update, NPDES Permits, and Construction Grants Projects

Once approved by EPA, the State incorporates approved TMDLs/WLAs into its current Water Quality Management Plan and uses them in setting control limits in NPDES permits, construction grants projects, and in nonpoint source controls (i.e., best management practices - BMPs). (The Water Quality Management regulation states that when EPA approves a TMDL submitted by a State under section 303(d), the TMDL/WLA is to be deemed automatically incorporated into the State's Water Quality Management Plan.

The regulation treats this submission and approval as the equivalent of a WQM plan update certification and approval. (See Water Quality Planning and Management Regulation, Federal Register, January 11, 1985, page 1777.)

III. QUESTIONS AND ANSWERS ON THE TMDL/WLA REVIEW AND APPROVAL PROCESS

Q. When should the Region get involved with the development of an individual TMDL/WLA being developed by the State?

A. States may request EPA assistance at any time. If a State anticipates that a WLA project will be complex or controversial, the State should involve the EPA Regional office (and the public) throughout the development process rather than waiting until they are submitted to EPA for approval.

Q. Must the EPA Region review all WLAs/TMDLs submitted by the States?

A. Yes. However, where a State has clearly described its TMDL/WLA development process in its CPP and EPA has approved the process, EPA may conduct an in-depth review of a sample of the State's TMDLs/WLAs to determine how well the State is implementing its process. States are required to submit <u>all</u> TMDLs/WLAs to EPA for review and approval. The in-depth review of a sample of TMDLs/WLAs along with a less detailed review of all other TMDLs/WLAs submitted by the State, will provide a reasonable basis for approving or disapproving individual TMDLs/WLAs. "Fact sheets" prepared for minor permittees and submitted along with the permit application may also be submitted to EPA as a basis for reviewing WLAs for minor permittees.

Q. How does the antidegradation policy affect TMDLs/WLAs and NPDES permits?

A. Explicit procedures are established in the national antidegradation policy. No TMDL/WLA can be developed or NPDES permit issued that would allow a decline in water quality unless all the applicable requirements of the antidegradation policy have been met.

Q. Can individual WLAs be submitted for review along with permit applications or construction grant applications?

A. Yes. Where a State has many waterbodies needing new TMDLs/WLAs, the State's public notice and review process can be accelerated if handled in conjunction with applications for permits and/or construction grants.

Q. After a TMDL/WLA is submitted to EPA, what is the time period in which a decision for approval or disapproval is to be made?

A. The Regional Administrator shall, not later than 30 days after date of submission, approve or disapprove the TMDL/WLA. This length of time also applies to EPA's review of the listing of priority-ranked segments still requiring TMDLs/WLAs.

Q. What is EPA's role if a TMDL/WLA or list of segments requiring TMDLs submitted by the States is disapproved?

A. If the Regional Administrator disapproves the list or an individual TMDL/WLA, it then becomes the responsibility of EPA to establish a listing of segments and/or a TMDL/WLA to implement the applicable water quality standards. After public notice and comment, EPA transmits the listing or loading to the State for incorporation into the State's current water quality management plan.

Q. How are approved TMDLs/WLAs used by the States?

A. Approved TMDLs/WLAs are used by the States in writing NPDES permit limits, establishing limits for construction grants projects, and for implementing nonpoint source controls. Approved TMDLs/WLAs are also incorporated into current water quality management plans.

Q. Can the responsibility for reviewing and approving TMDLs/WLAs be delegated to States?

A. No. Just as the responsibility for reviewing and approving water quality standards under Section 303(c) cannot be delegated, EPA also may not delegate the responsibility for reviewing and approving the effluent limitations (i.e., TMDLs/WLAs) resulting from these water quality standards under Section 303(d). EPA's responsibility for reviewing and approving TMDLs/WLAs is not related to whether or not a State has been delegated activities in permits or construction grants programs.

APPENDIXES

Appendix A

WATER QUALITY PLANNING AND MANAGEMENT REGULATION

Section 130.7 Total Maximum Daily Loads (TMDL) and Individual Water Quality-based Effluent Limitations.

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

(a) *General:* The process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads (WLAs/LAs and TMDLs), setting priorities for developing these loads; establishing these loads for segments identified, including water quality monitoring, modeling, data analysis, calculation methods, and list of pollutants to be regulated; submitting the State's list of segments identified, priority ranking, and loads established (WLAs/LAs/TMDLs) to EPA for approval; incorporating the approved loads into the State's WQM plans and NPDES permits; and involving the public, affected dischargers, designated areawide agencies, and local governments in this process shall be clearly described in the State Continuing Planning Process (CPP).

(b) Identification and priority setting for water quality limited segments still requiring WLAs/LAs and TMDLs.

(1) Each State shall identify those water quality limited segments still requiring WLAs/LAs and TMDLs within its boundaries for which:

(i) technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) more stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (e.g., law, regulation, or treaty); and

(iii) other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority

are not stringent enough to implement any water quality standard (WQS) applicable to such waters. The State shall establish a priority ranking for such water quality limited segments still requiring WLAs/LAs and TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the water quality standards.

(2) Each State shall identify those water quality limited segments still requiring WLAs/LAs and TMDLs or parts thereof within its boundaries for which controls on thermal discharges under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife.

(c) Development of TMDLs and individual water quality based effluent limitations.

(1) Each State shall establish WLAs/LAs and TMDLs for the water quality limited segments identified in paragraph (b)(1) of this section, and in accordance with the priority ranking. For pollutants other than heat, WLAs/LAs and TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS 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. Determinations of WLAs/LAs and TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.

(i) TMDLs may be established using a pollutant-by-pollutant or biomonitoring approach. In many cases both techniques may be needed. Site-specific information should be used wherever possible.

(ii) TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards as identified pursuant to paragraph (b)(1) of this section. Calculations to establish WLAs/LAs and TMDLs shall be subject to public review as defined in the State CPP.

(2) Each State shall estimate for the water quality limited segments still requiring WLAs/LAs and TMDLs identified in paragraph (b)(2) of this section, the total maximum daily thermal load which cannot be exceeded in order to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in the identified waters or parts thereof.

(d) *Submission and EPA approval.* (1) Each State shall submit to the Regional Administrator from time to time for approval the listing of water quality limited segments requiring WLAs/LAs and TMDLs identified under paragraph (b) of this section. All WLAs/LAs and TMDLs established under paragraph (c) for water quality limited segments sh continue to be submitted to EPA for review and approval. Schedules for submission of WLAs/LAs and TMDL shall be determined by the Regional Administrator and the State.

The Regional Administrator shall either approve or disapprove such lis and loadings not later than 30 days a the date of submission. If the Regiona Administrator approves such listing a loadings, the State shall incorporate them into its current WQM plan. If th Regional Administrator disapproves such listing and loadings, he shall, no later than 30 days after the date of su disapproval, identify such waters in such State and establish such loads fc such waters as determined necessary implement applicable WQS. The Regional Administrator shall promptl issue a public notice seeking commen on such listing and loadings. After considering public comment and mak any revisions he deems appropriate, t Regional Administrator shall transmit the listing and loads to the State, whic shall incorporate them into its current WQM plan.

(e) For the specific purpose of developing information and as resourc allow, each State shall identify all segments within its boundaries which has not identified under paragraph (b) this section and estimate for such waters the TMDLs with seasonal variations and margins of safety, for those pollutants which the Regional Administrator identifies under section 304(a)(2) as suitable for such calculati and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildli However, there is no requirement for such loads to be submitted to EPA for approval, and establishing WLAs/LAs and TMDLs for those waters identifiec in paragraph (b) of this section shall b given higher priority.

Appendix B

CLEAN WATER ACT

Section 303(d) and 303(e)

Appendix B

THE CLEAN WATER ACT
As Amended Through December 1981

Section 303(d) and Section 303(e)

SEC 303(d)(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 301 are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation. Such 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.

(D) Each State shall estimate for the waters identified in paragraph (1)(D) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 304(a)(2)(D), for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection

and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife.

SEC 303(e)(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Admendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2), section 306, and section 307, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable areawide waste management plans under section 208, and applicable basin plans under section 209 of this Act;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (e) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302.

Appendix C

GENERAL OUTLINE
EPA/STATE AGREEMENT FOR DEVELOPMENT
OF WASTELOAD ALLOCATIONS

Since conditions, procedures, and methodologies may vary between EPA Regions and their States, a general outline of an example agreement is provided. This outline can be used in conjuction with the referenced technical guidance documents to prepare EPA/State Agreements.

Appendix C

GENERAL OUTLINE
EPA/STATE AGREEMENT FOR DEVELOPMENT OF WASTELOAD ALLOCATIONS

I. General

- A. Purpose, Scope, and Authority
- B. Statement of Policy

II. Water Quality Standards Considerations

- A. General
- B. Type of Stream Classifications

III. Allocation Procedures and Policies

- A. Basic Approach for Establishing Boundaries for Effluent Limitations Determination
- B. Determination of Effluent Limitations Using Water Quality Models
- C. Determination of Effluent Limitations Using Other Analytical Tools
- D. Special Case Policies

IV. Approval of Wasteload Allocations

V. Incorporation of Allocations into NPDES Permits

- A. General
- B. Priority Considerations

References

1. Water Quality Standards Handbook, U.S. EPA, Office of Water Regulations and Standards, Washington, D.C. December 1983.

2. Technical Support Manual: Waterbody Surveys and Assessments for Conducting Attainability Analyses. Volume I. U.S. EPA, Office of Water Regulations and Standards, Washington, D.C. November 1983.

3. Technical Support Manual: Waterbody Surveys and Assessments for Conducting Attainability Analyses. Volume II: Esturine Systems. U.S. EPA, Office of Water Regulations and Standards Washington, D.C. June 1984.

4. Technical Support Manual: Waterbody Surveys and Assessments for Conducting Attainability Analyses. Volume III: Lakes. U.S. EPA, Office of Water Regulations and Standards, Washington, D.C. November 1984.

5. Technical Guidance Manual for Performing Waste Load Allocations, Book II: Streams and Rivers; Chapter 1, BOD/DO Impacts (October 3, 1983) EPA-440/4-84-020.

6. Technical Guidance Manual for Performing Waste Load Allocations, Book II: Streams and Rivers; Chapter 2, Nutrient/ Eutrophication Impacts (November 30, 1983) EPA-440/4-84-021.

7. Technical Guidance Manual for Performing Waste Load Allocations Book II: Streams and Rivers; Chapter 3, Toxic Substances (June 18, 1984) EPA-440/4-84-022.

8. Technical Guidance Manual for Performing Waste Load Allocations, Book VII: Lakes and Impoundments; Chapter 2, Nutrient/Eutrophication Impacts (August 29, 1983) EPA-440/4-84-019.

9. Technical Guidance Manual for Performing Waste Load Allocations, Book VII: Permit Averaging Periods (September 28, 1984) EPA-440/4-84-023.

10. Water Quality Assessment: A Screening Procedure for Toxic and Conventional Pollutants (August 29, 1983) EPA-600/6-82-004 a,b,c.

11. Technical Support Document for Water Quality-based Toxics Control, Office of Water, U.S. Environmental Protection Agency, September, 1985.

12. Policy for Review of Advanced Treatment Projects Notice. Federal Register, Volume 49, page 21462, May 21, 1984.

13. Guidance for State Water Monitoring and Wasteload Allocation Programs, Office of Water, U.S. Environmental Protection Agency, Washington, D.C. (October 1985) EPA 440/4-85-031.

Appendix D

WATER QUALITY STANDARDS REGULATION

Section 131.10 and Section 131.12 Antidegradation Policy

§ 131.10 Designation of uses.

(a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

(b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

(c) States may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold water and warm water fisheries.

(d) At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under Sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control.

(e) Prior to adding or removing any use, or establishing sub-categories of a use, the State shall provide notice and an opportunity for a public hearing under § 131.20(b) of this regulation.

(f) States may adopt seasonal uses as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria should be adjusted to reflect the seasonal uses, however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season.

(g) States may remove a designated use which is *not* an existing use, as defined in § 131.3, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(6) Controls more stringent than those required by Sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

(h) States may not remove designated uses if:

(1) They are existing uses, as defined in Section 131.3, unless a use requiring more stringent criteria is added; or

(2) Such uses will be attained by implementing effluent limits required under Sections 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(i) Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.

(j) A State must conduct a use attainability analysis as described in § 131.3(g) whenever:

(1) The State designates or has designated uses that do not include the uses specified in Section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is specified in Section 101(a)(2) of the Act or to adopt subcategories of uses specified in Section 101(a)(2) of the Act which require less stringent criteria.

(k) A State is not required to conduct a use attainability analysis under this Regulation whenever designating uses which include those specified in Section 101(a)(2) of the Act.

§ 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

Appendix E

EXAMPLE TRANSMITTAL LETTERS

The following letters are provided as examples to initiate the review process and EPA's action. Included as examples are the State's transmittal of completed TMDLs/WLAs to EPA requesting approval, EPA's letter approving the State's TMDL/WLA, EPA's letter requesting additional information prior to approval, and EPA's letter of disapproval.

EXAMPLE: STATE LETTER TO EPA REQUESTING TMDL/WLA APPROVAL

Regional Administrator
U.S. Environmental Protection Agency
Region _____
Street Address
City, State, Zip Code

Dear _____:

In accordance with 40 CFR 130.7(d) and section 303(d) of the Clean Water Act (33 U.S.C. 1251 et. seq.), the (State water pollution control agency) submits for your review and approval the (wasteload allocations and/or total daily maximum load) for the (discharges) to (waterbody) as being established at a level necessary to meet the applicable water quality standard(s) with consideration of seasonal variation and a margin of safety.

This (wasteload allocation/total daily maximum load) was given public review during (date(s) of review period) and approved by the State and will serve as the basis for NPDES permits, construction grants projects, and for incorporation into the State's Water Quality Management Plan. To facilitate your review, we are enclosing the calculations used to develop the WLA/TMDL.

Sincerely yours,

_____
State Water Pollution Control Offici

Enclosure*

* Methods used, analyses, and calculations showing that the WLA is established at a level necessary to implement the applicable water quality standards. [See 40 CFR 130.7(c)]

EXAMPLE: EPA LETTER TO STATE APPROVING TMDL/WLA

Chief, Water Division
State Water Pollution Control Agency
Street, Box Number
City, State, Zip Code

Dear _____:

We have completed our review of the total maximum daily load/wasteload allocation for the (discharges) to (waterbody) as submitted by your agency on (date). From our review, the effluent limits as established (e.g., oxygen demanding substances, nutrients; general toxicity, toxic substances, etc.) for the defined segment are approved.

This total maximum daily load/wasteload allocation meets the requirements for total maximum daily loads and wasteload allocations as specified under section 303(d) of the Clean Water Act and is hereby approved.

Sincerely yours,

_____
Regional Administrator

EXAMPLE: EPA LETTER TO STATE REQUESTING ADDITIONAL INFORMATION

Chief, Water Division
State Water Pollution Control Agency
Street, Box Number
City, State, Zip Code

Dear _____:

We have completed our review of the total maximum daily load/wasteload allocation for the (discharges) to (waterbody) as submitted for approval by your agency on (date). We have the following comments or questions:

1._____

2._____

3._____

etc.

We cannot proceed in our review of your request for approval until a satisfactory reply is received on the above comments or questions. A prompt responce is requested to avoid disapproval.

Should the submitted TMDL/WLA be disapproved, EPA will, in accordance with Section 303(d) of the Clean Water Act, establish the TMDL/WLA for the (discharges) to the (waterbody) as defined and as determined necessary to implement the applicable water quality standard(s).

If you have any questions, or need further clarification of our comments, please contact (name) on (phone number).

Sincerely yours,

_____
Regional Administrator

EXAMPLE: EPA LETTER TO STATE DISAPPROVING TMDL/WLA

Chief, Water Division
State Water Pollution Control Agency
Street, Box Number
City, State, Zip Code

Dear _____:

We have completed our review of your response (dated) to our comments and questions (dated) regarding the TMDL/WLA submitted by your agency (dated) for the (discharges) to (waterbody). We find the TMDL/WLA not acceptable and is hereby disapproved for the following reasons:

1. _____

2. _____

3. _____

etc.

In accordance with section 303(d) of the Clean Water Act, EPA will, within thirty (30) days from this date, establish the TMDL/WLA for (discharges) to (waterbody) necessary to implement the water quality standard(s) including consideration of seasonal variation and a margin of safety.

Sincerely yours,

_____
Regional Administrator