

EPA Final TMDL Rule: Fulfilling the Goals of the Clean Water Act

The U.S. Environmental Protection Agency (EPA) issued a final rule to improve the national program for identifying polluted waters, determining the sources of pollution, and designing clean-up plans. This program, known as the Total Maximum Daily Load (TMDL) program, is the framework for working cooperatively with the States to finish the job of cleaning up America's polluted waterways and delivering on the promise of the landmark 1972 Clean Water Act. This new rule will provide a cost-effective, common-sense process for cleaning up America's polluted waters.

Background

Over 20,000 waterbodies across America have been identified as polluted by States, Territories, and authorized Tribes. These waters include over 300,000 river and shoreline miles and 5 million acres of lakes. The overwhelming majority of people in the U.S. live within 10 miles of one of these polluted waters.

The Clean Water Act provides special authority for restoring polluted waters. The Act calls on States to work with interested parties to develop Total Maximum Daily Loads or TMDLs for polluted waters. A TMDL is essentially a "pollution budget" designed to restore the health of the polluted body of water.

In August 1999, EPA proposed changes to its existing regulations to clarify and strengthen the authorities of EPA, States, Territories, and authorized Tribes (hereinafter referred to as "States") to implement the TMDL program. EPA considered over 34,000 comments on this proposed rulemaking and talked with hundreds of people in public outreach and information-sharing sessions.

Goals of the Final Rule

This final rule will make thousands more rivers, lakes, and coastal waters safe for swimming, fishing, and healthy populations of fish and shellfish.

The final TMDL rule will:

- ▶ Strengthen States' ability to clean up polluted waters by identifying pollution reductions needed to meet clean water goals;
- ▶ Provide for a comprehensive listing of all the Nation's polluted waters;
- ▶ Encourage cost-effective clean-up by ensuring all sources of pollution are considered in the development of cleanup plans;
- ▶ Assure that TMDLs include implementation plans that define specific actions and schedules for meeting clean water goals.

Components of the Final Rule

Identification of Polluted Waters:

- ▶ States develop more comprehensive lists of all polluted waterbodies so that the public will have a clear picture of which waters are polluted and when they will be cleaned up.
- ▶ States are required to develop their lists every 4 years instead of the current 2 years.
- ▶ Threatened waters may be included on the list at the State's discretion.

Prioritized Schedule:

- ▶ States will establish a schedule for clean-up plans for polluted waters within 10 years or be given an additional five years if needed.
- ▶ EPA is requesting that higher priority be given to polluted waters that are sources of drinking water or support endangered species. States can explain why a higher priority is not appropriate.

Elements of a TMDL:

TMDLs will contain key elements:

- waterbody name and location; identification of the pollutant and the water quality standard for the waterbody;
- amount of pollutant allowable to meet standards; load reduction needed to meet standards; sources of the pollutant; wasteload allocation for point sources; load allocation for runoff and other sources of pollution; and an implementation plan.
- margin of safety; consideration of seasonal variation; and allowance for reasonably foreseeable increases in pollutant loads.
- There is a transitional period so states can phase in new TMDL elements over time.
- The public will have the opportunity to comment on the methodology, lists, prioritized schedules, and TMDLs prior to submission to EPA.
- EPA will back-stop state efforts to develop TMDLs.

Implementation Plan:

The implementation plan should reflect both point sources, nonpoint sources, and other sources of pollution, including:

- A list of actions needed to reduce pollutant loadings and a time-line for implementation;
 - Reasonable assurances that implementation will occur;
 - A monitoring or modeling plan and milestones for measuring progress;
 - Plans for revising the TMDL if progress toward cleaning up the waters is not made; and
 - The date by which water quality standards will be met—generally within 10 years.
- ▶ Runoff controls should be put in place 5 years after the implementation plan is developed, if practicable.

The final TMDL rule is available at

http://www.access.gpo.gov/su_docs/aces/aces140.html

Reasonable Assurance:

- ▶ For point sources, reasonable assurance is to be provided through National Pollutant Discharge and Elimination System (NPDES) permits.
- ▶ For nonpoint and other sources, load allocations in each TMDL must meet a four-part test:
 - they apply to the pollutant;
 - they will be implemented expeditiously;
 - they will be accomplished through effective programs;
 - they will be supported by adequate water quality funding.

State Flexibility

States have maximum flexibility to make their own choices about which sources of pollution to clean up, and in what manner, and to produce their own plans for local cleanups to ensure the full protection of public health.

- States set the water quality standards that waters need to meet.
- States develop the TMDLs to decide how to clean up their polluted waters.
- States will have more time to learn the problems, tailor implementation to local conditions, and give full credit to voluntary or incentive-based programs.

Key Improvements in Final Rule:

- ▶ The rule has been upgraded to "major rule" status under the Congressional Review Act, allowing Congress ample time to review it if they choose.
- ▶ The proposed public petition process for review of lists or TMDL implementation has been dropped.
- ▶ States are not required to list "threatened waters."
- ▶ The proposal to require "offsets" before new pollution can be discharged to impaired waters prior to TMDL establishment has been dropped.
- ▶ The final rule does not include specific permit requirements for forestry, and EPA withdraws its proposed provisions for expanded authority for permitting aquaculture and animal feeding operations.