

Politics and Public Perception of TMDLs for Nutrients and Permitting

Ashley Ward, P.E. NPDES Supervisor

Josh Griffin, TMDLs



The Court Case

March 2015 – *Fairfield Cty. Bd. of Commrs. v. Nally*, 143 Ohio St.3d 93, 2015-Ohio-991

- TMDL established by Ohio EPA is a rule subject to requirements of ORC Chapter 119.
- Ohio EPA must follow rulemaking procedure in ORC Chapter 119. before submitting TMDL to U.S. EPA for approval and before implementing in an NPDES permit

Phosphorus Limits with no TMDLs and no Numeric WQS

- Is the WWTP designed to treat for phosphorus? (OAC 3745-33-05 (E))
- 3745-33-05 (D) Present discharge levels. The director may fix the maximum levels of pollutants specified in an Ohio NPDES permit as either final limitations or interim limitations at the levels indicated by the applicant as its current maximum levels of discharge, even where limitations to such discharge levels are not essential to avoid violation of either applicable water quality standards or effluent standards.

Phosphorus Limits with no TMDLs and no Numeric WQS

- Nuisance conditions.
 - Is the discharge contributing significantly?
- Aquatic impairment.
 - Clearly caused by nutrients?
 - If P in discharge is reduced will it “move the needle” on impairment?



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LEGISLATION

Legislation – House Bill 49

- House Bill 49 (State Budget Bill) signed by Governor Kasich 6/30/2017
- Includes new statutory requirements for TMDLs in Ohio Revised Code
 - Section 6111.561 through 6111.564

NPDES Permits

- POTW draft & final NPDES permits containing TMDL-based limits (which might result in new/revised pretreatment limits)
 - Notify POTW & all significant industrial users listed in annual pretreatment report known to discharge significant amount of pollutant to be limited by TMDL
 - Notice to include:
 - Statement that TMDL-based limits may result in more stringent direct or indirect limits
 - Statement that appeal of NPDES may be filed by significant industrial user to ERAC

Schedules of Compliance

- When establishing NPDES schedule of compliance to meet TMDL WLA, shall consider likelihood of appeal and length of time before appeal is concluded.

Contacts

Manager – Marianne Piekutowski

Marianne.Piekutowski@epa.ohio.gov

Supervisor – Melinda Harris,

melinda.harris@epa.ohio.gov



Highlights

- Reinstates previously approved TMDLs
- Reaffirms TMDLs not actions of Director, challenge TMDL based effluent limits through NPDES permit process
- Formalizes stakeholder involvement
- Adds items of consideration in implementation and wasteload/load allocation
- Requires rulemaking for stakeholder notification and determination of significant public interest

Existing TMDLs

Approved by U.S. EPA before March 24, 2015

- Valid and remain in full force and effect as approved
- 56 TMDL projects approved by U.S. EPA from 2000 through 2014
 - Majority of TMDLs for:
 - bacteria
 - total phosphorus
 - Sediment
- Process established for modification (follow same steps as official draft TMDL)

New TMDLs

Approved by U.S. EPA after March 24, 2015

- Stakeholder involvement opportunities throughout process
 - Study plan
 - Biological and water quality report
 - Loading analysis plan (modeling approach, WQ targets)
 - Preliminary modeling results (load allocations, wasteload allocations, margin of safety, future growth, permit limits, implementation plan)
- Notify – dischargers, SWCDs & other stakeholders

TMDLs Already in the Works

- Provide at least two opportunities for stakeholder input
- Over 40 projects in various stages of development
 - From ready to send to U.S. EPA to just beginning

Mandatory Considerations

In developing WLA/LA Director must consider:

- ✓ Relative contribution of point and nonpoint sources.
- ✓ Watershed flow dynamics.
- Degree to which point and nonpoint source reductions would influence attainment of impaired water.
- ✓ Reasonable assurances that reductions can be implemented.
- ✓ Site of impairment relative to source location.
- ✗ Degree to which habitat affects impairment and restoration potential.

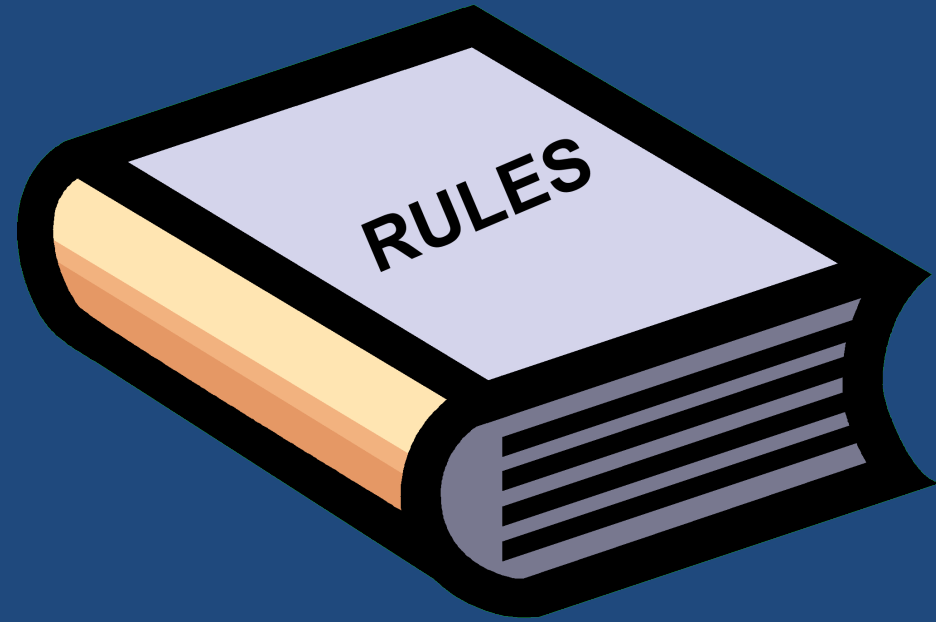
Mandatory Considerations

When developing WLA/LA and Implementation Plans the Director must consider:

- ✗ Feasibility of available demonstrated treatment technology to achieve point source wasteload allocation (WLA).
- ✓ Sources of funding available for point and nonpoint sources.
- Alternative approaches and actions for point and nonpoint sources (agreements between parties, adaptive management).

Mandatory Considerations

- ✓ Implementation of point source WLAs through schedules of compliance over multiple permit cycles.
- ✗ Estimated economic impact on government subdivisions, point sources, agricultural operations and nonpoint sources.
- ✗ Information submitted by indirect dischargers or other stakeholders that may relate to cost, economic impact, environmental benefit and technical feasibility.



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RULEMAKING

Rulemaking Initiated

- As required by the statute, Ohio EPA will adopt rules for significant public interest and stakeholder notification.
- To be included in update of current TMDL rule (OAC 3745-2-12, 5 year rule review)
- Early Stakeholder Outreach notice to stakeholders sent August 10, 2017
- Comment deadline September 12, 2017

http://epa.ohio.gov/Portals/35/rules/ESO_TMDL_3745-2-12_aug17.pdf



ESO Commenters

- Ohio Municipal League, County Sanitary Engineers Association of Ohio, Cities of Dayton, Canton, Lima, Warren, Vandalia, Huber Heights, Tipp City, Union & Englewood, Ohio Soybean Council and Ohio Corn and Wheat Growers Association
- Ohio Environmental Council
- Association of Ohio Metropolitan Wastewater Agencies
- The Nature Conservancy

Next Steps

- Next step in process
 - Step II of internal review
 - Interested Party Review
- Draft rule revisions
 - Procedural/administrative updates
 - No technical details
- Deadline for rule adoption – December 31, 2018