Making Changes to an Approved TMDL

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Disclaimer: This presentation and the information contained in these slides do not represent binding requirements on the states. All such requirements are found in the Clean Water Act and EPA's implementing regulations.

Overview

- As a result of state and EPA efforts over the past 20 years, over 75,000 TMDLs are currently in place
- Given changing circumstances and improved data about impaired waterbodies, there may be value in revisiting some of these TMDLs, particularly older TMDLs
- However, developing new TMDLs for priority waterbodies, or implementing existing TMDLs may lead to greater water quality benefits than revising old TMDLs, depending on the circumstances

Overview

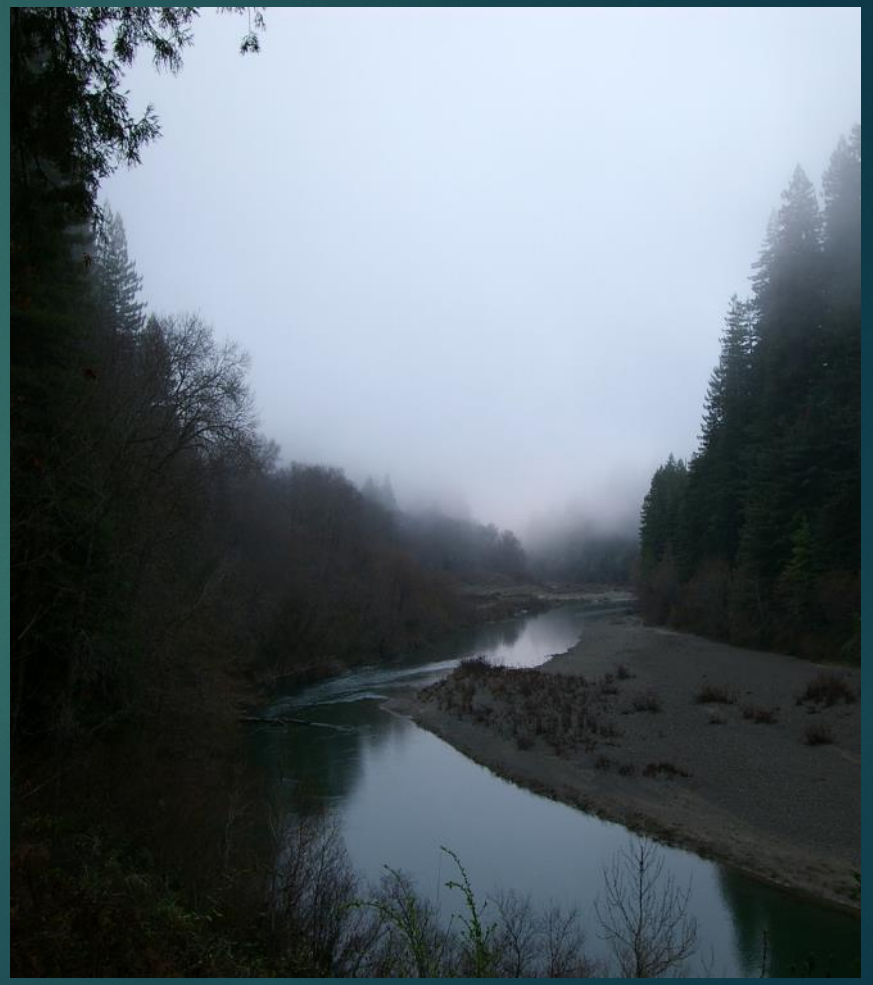
- EPA does not require states to systematically review their TMDLs for revision or updating
- However, when changes are needed in order to make progress toward attaining water quality standards, EPA encourages the states to consult with their EPA Region on a transparent and effective process for documenting these changes
- Some states have chosen to align their Priorities under the 303(d) Vision with the need for TMDL revisions

Scenario #1 – Changes to WQS

- It may be appropriate to revise a TMDL when there have been a change to the EPA-approved WQS
  - Changes to numeric criterion (e.g., 5 mg/L to 4 mg/L)
  - Adoption of site-specific criteria
  - Adoption of new numeric standard which supplements a narrative
  - Changes in interpretation of a narrative standard where existing TMDL is not sufficient to meet the new interpretation

Scenario #1 – Changes to WQS

- In the case of changes to EPA-approved WQS, it is important to evaluate if the existing TMDL is sufficient to meet the new criteria and designated use
- If the TMDL is still sufficient to meet the standard, it may not be necessary to revise the TMDL, unless the state also wishes to revise allocations based on the new WQS



Scenario #1 – Changes to WQS

- However, if the evaluation of the existing TMDL finds that the TMDL is not sufficient to meet the new criteria, the water should be returned to the 303(d) list of impaired waters and a new TMDL prepared (or the existing TMDL revised)
- For pathogens, states have the option of translating the original fecal coliform-based allocations to *E. coli* and/or enterococci-based allocations using site-specific or other available data, without revising the TMDL

Scenario #2 - Changes to Capacity

- It may be appropriate to revise a TMDL when changes to TMDL loading capacity are needed
  - Where modeling assumptions or data have significantly changed since development of the TMDL
  - If there were flawed assumptions or data in TMDL development

Scenario #3 – Changes to Allocations

- It may be appropriate to revise a TMDL when there is a need to shift allocations (within the existing overall loading capacity)
  - Where modeling assumptions or data have significantly changed since development of the TMDL
  - New or expanded point and/or nonpoint sources not accounted for in original TMDL
  - Existing point and/or nonpoint sources that were not assigned WLAs in the original TMDL
  - Shifting individual point source allocations within overall WLA
  - Shifting allocations between WLA, LA, and/or MOS

Scenario #4 - Attainment

- What about when a segment is now attaining WQS for the pollutant identified in the TMDL?
  - EPA does not consider this an appropriate reason to revise or withdraw an otherwise valid TMDL
  - The information and allocations contained within the TMDL may continue to provide environmental benefits and ensure continued water quality goals

National Snapshot

- The need for and frequency of changes to approved TMDLs varies across the country
- Some of the most common reasons changes are needed include:
  - Updated WQS
  - Better data and/or changes to modeling
  - New/expanded WLA for point source dischargers
  - Litigation

Writing New TMDLs to Better Adapt to Changes

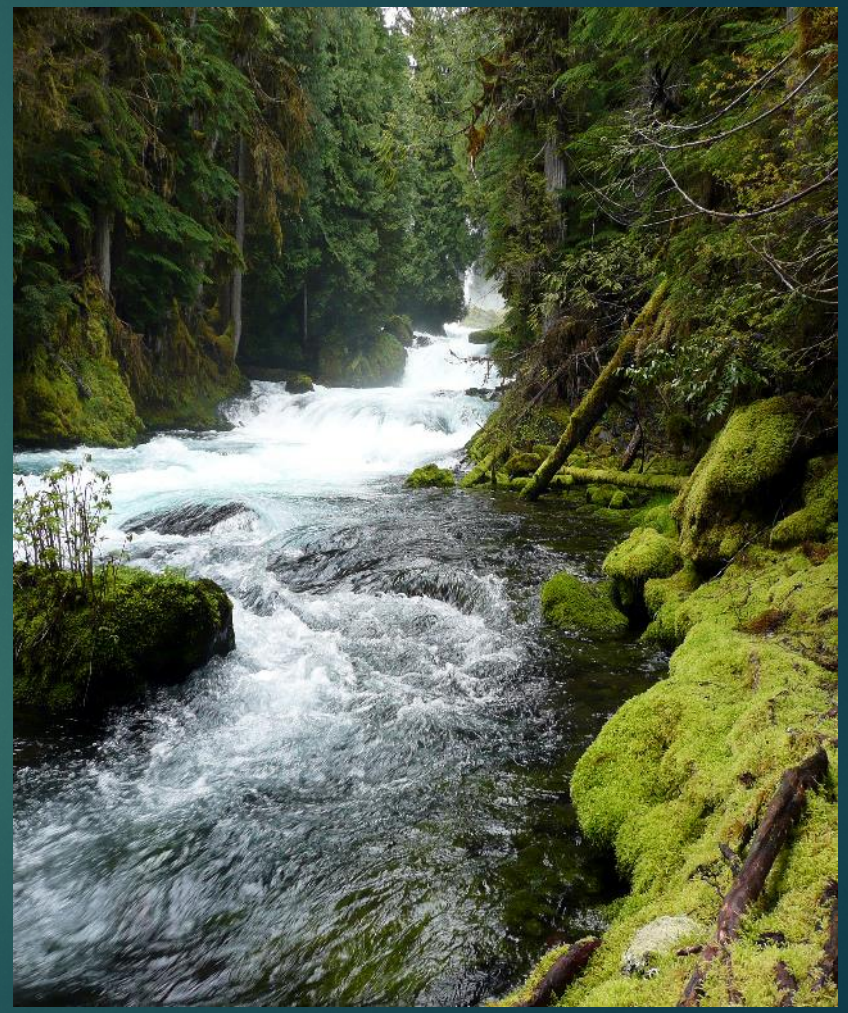
- Because revising TMDLs can involve a significant investment of time and resources, states should consider writing TMDLs in ways that minimizes the need for future revisions, or clarifies and streamlines the process for later revisions

Writing New TMDLs to Better Adapt to Changes

- Some tips for building this kind of adaptability into TMDL development include:
  - Expressly including reserve capacity for future growth and/or new sources
  - Include in the original TMDL document for approval by EPA a set of alternative future WLAs or LAs, along with an estimated timeframe or events that would prompt them to take effect

Writing New TMDLs to Better Adapt to Changes

- Explicitly identify the WLA "assumptions and requirements" that a permit writer would consider in developing WQBELs
- Avoid aggregating WLAs for multiple point sources
- Avoid assigning "de minimus" as a WLA to point sources. Be clear what the reduction expectations are, e.g., "0" or some other number, for all point sources that discharge the pollutant of concern

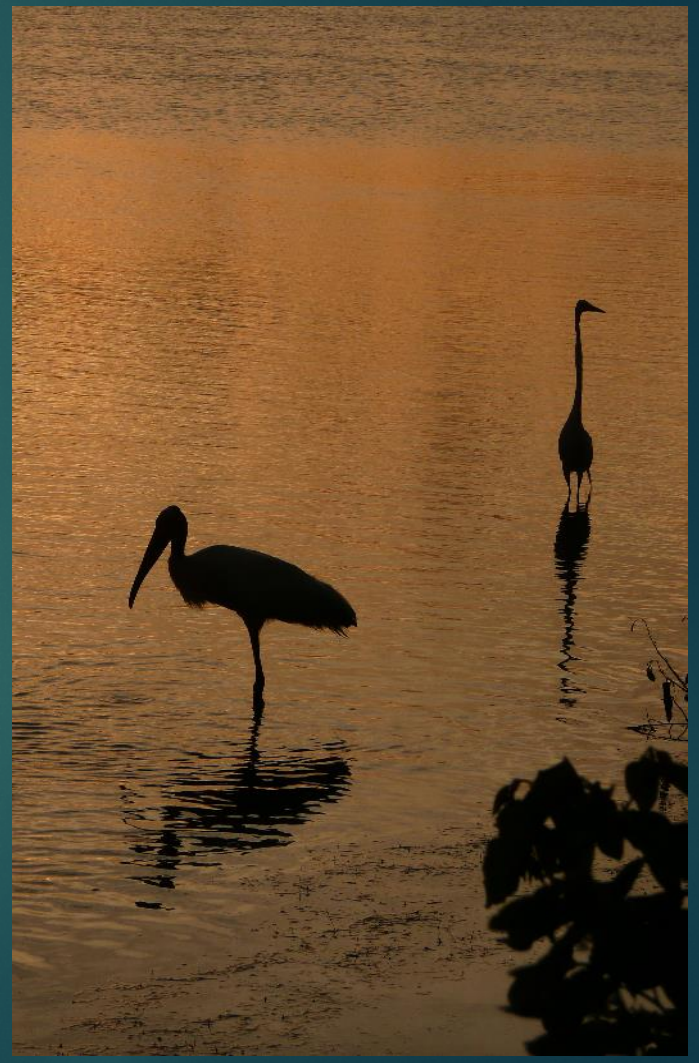


Writing New TMDLs to Better Adapt to Changes

- Include a process for notifying EPA and the public of changes that would allow for specific changes to implementation, but not require formal TMDL submission to EPA under 303(d)
  - Be as specific as possible about identifying the circumstances, steps, & criteria used to evaluate changes
  - Include a process for notifying stakeholders of changes

Working with your EPA Region

- Coordination is key
- Remember to involve all affected programs (e.g., 303(d), NPDES)
- If multiple TMDLs are potentially being changed, consider setting up standardized procedures for changes



Coordinating TMDL Changes with EPA

- There are certain cases where EPA would strongly encourage a state to submit a revised TMDL to EPA, pursuant to 303(d)
- These include:
  - Changes to a TMDL's loading capacity
  - Reallocations between WLA and LA
  - Changes to the TMDL's Margin of Safety
  - Disaggregating point sources so that permit writers can develop appropriate WQBELs.
  - Revisions to a TMDL due to changes in the underlying WQS such that the original TMDL was no longer sufficient to meet the new standard

Coordinating TMDL Changes with EPA

- For other types of TMDL changes, it may not be essential to formally submit a TMDL revision to EPA for review and approval
- However, even in these cases EPA recommends discussion and notification to EPA in advance of making the changes to determine appropriate processes, prevent confusion and establish a strong administrative record

Coordinating TMDL Changes with EPA

- Some examples include:
  - Recategorizing a previously-identified load allocation to WLA, such as a newly permitted stormwater discharge
  - Use of a TMDL's reserve capacity to allow for new or expanded discharges
  - Implementation of a water quality trading program where individual load or waste load allocations remain unadjusted

Questions?

Draft Considerations for Revising and Withdrawing TMDLs

https://www.epa.gov/tmdl/draft-considerations-revising-and-withdrawing-tmdls

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