TMDL
Technical and Legal Challenges

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Total Maximum Daily Loads

- TMDLs are a pollution budget.
  - **Amount** of a pollutant a waterbody can receive and still meet water quality standards.
  - **Fair** allocations among the sources

- EPA requires that waters on the impaired waters list have TMDLs developed.

- **...Not new**
  - >70,000 TMDLs completed nationwide since 1996
  - 250+ in Wisconsin
**TMDL Development Steps**

- Monitor and summarize load data from all applicable sources
- Estimate maximum pollutant load
- Calculate allocations to meet water quality standards
- Draft TMDL report
- Public comment period (30 day) conducted by DNR
- Respond to comments and submit TMDL to EPA for approval
- Develop Implementation Plan
  - Nonpoint compliance voluntary based on cost sharing (see NR 151)
  - For point sources, WLA in next permit issued after approved TMDL.
Baseline Development

- Monitor and summarize load data from all applicable sources
- Monitoring Data
- For Point Sources:  \[ \text{Load} = \text{[permitted concentration]} \times \text{[design flow]} \]
- For Nonpoint Sources: Modeling
Baseline Development

- Confirm sources of monitoring data, e.g., WDNR monitoring, USGS gauge stations, citizens groups
- Understand assumptions re: NPS contributions
- Confirm your load is accurate – check permit assumptions & design flow assumptions.
TMDL Development: Overview of Steps

- Estimate maximum load for the river; estimate wasteload allocations; issue draft TMDL

- Use modeling to determine how much the load must be reduced to meet the water quality standards \textit{everywhere} on the river.

- Once the total allowable load has been determined, choose how to allocate it among various sources.
Waste Load Allocation

- WWTPs / POTWs
- Industries
- Permitted MS4s
- Non-Metallic Mines
- Construction Sites
- NCCWs

Load Allocation

- Agricultural (includes load from CAFO land spreading)
- Non-permitted Urban
- Background
Controllable Load

Uncontrollable Load

Original Load

Allowable Load
Allocating Allowable Load to Sources

- **LA**: Loading Capacity
  - Background
  - Agricultural
  - Non-Permitted Urban

- **WLA**: General Permits
  - MS4s and WisDOT
  - POTWs
  - CSOs
  - Industrial Permits

- **MOS**: Margin of Safety

- **RC**: Reserve Capacity
TMDL Development: Opportunities for Challenge

Technical Challenges

- Review modeling assumptions and conclusions – overly conservative?

- Challenge allocation methodology – proportional among sources? Designed for success?

Legal Challenges

- See NR 212, subchapter III, “Development of Total Maximum Daily Loads”

- During this stage, there is likely no “final agency action” to challenge legally, unless technical review reveals a concern substantial enough to enjoin further WDNR action.
Public Process & Administrative Approval

- DNR issues draft TMDL report
- Public comment period (30 day) conducted by DNR
- DNR responds to comments and submits TMDL to EPA for approval
- EPA approval finalizes the TMDL
Public Process Tips

- Participate in the public hearings & submit comments on the technical underpinnings of the TMDL
- WDNR must respond to comments
- Opportunity for legal challenge comes at the point at which EPA approves the TMDL.
Develop Implementation Plan

- TMDL serves as the foundation for developing a detailed implementation plan

- Development of an implementation plan begins during TMDL allocation process
  - Generating restoration scenarios
  - Conducting feasibility analysis
  - Selecting best option that achieves pollutant load reduction

- Form implementation team
  - Including affected stakeholders & partners
Implementation – Engagement Tips

- Conversion of WLA to WQBEL in permit is covered by NR 212 – confirm WLAs are accurately converted.
- Potential for challenging the implementation for failing to meet TMDL goals.
- Consider involvement on the implementation team.
Future TMDL Priorities

- Impaired Waters List is updated biennially
  - New water quality information will inform assessments

- Regularly review the prioritization scheme and update as information becomes available

- Incorporate public comment (WDNR, EPA and stakeholders) to determine priority areas & reevaluate previous designations
Prioritization Considerations

- Public health concerns
- Severity of impairments
- Recovery potential
- Ongoing water quality studies or restoration work
- Social / economic importance and impact on effluent limits
- Stakeholder engagement
TMDLs on the Horizon
Takeaways

- Many of the challenges to TMDLs are rooted in extremely technical information.

- Ensure that WDNR is starting from the right information about your facility to begin with.

- Understand how the TMDL is being developed – the assumptions, goals, etc. will all drive your ultimate WQBEL.

- Challenging the TMDL late in the game requires sophisticated technical arguments, so get involved early to understand deficiencies.

- TMDLs are not going away.
Questions?

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