

# TMDL UPDATE FROM THE DISCHARGER'S PERSPECTIVE

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CRASH COURSE  
IN CARING  
ABOUT TMDLS

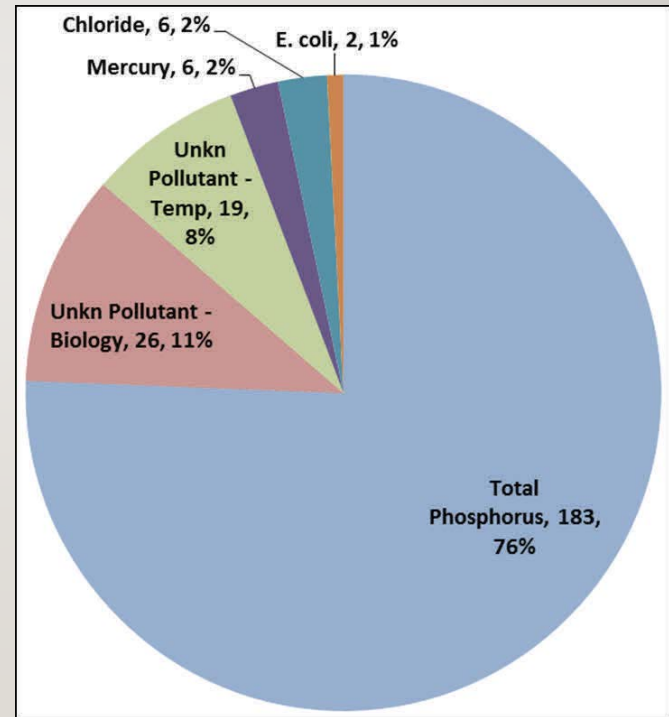
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FROM A  
LAWYER'S  
PERSPECTIVE

# WHAT ARE THEY? - BASIC OVERVIEW

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- EPA requires that waters on the impaired waters list be improved.
  - TMDL is the most commonly used tool.
- Many waters are impaired for Phosphorus.



Breakdown of Updates to 2018  
Impaired Waters List

# WHAT ARE THEY?

## - BASIC OVERVIEW

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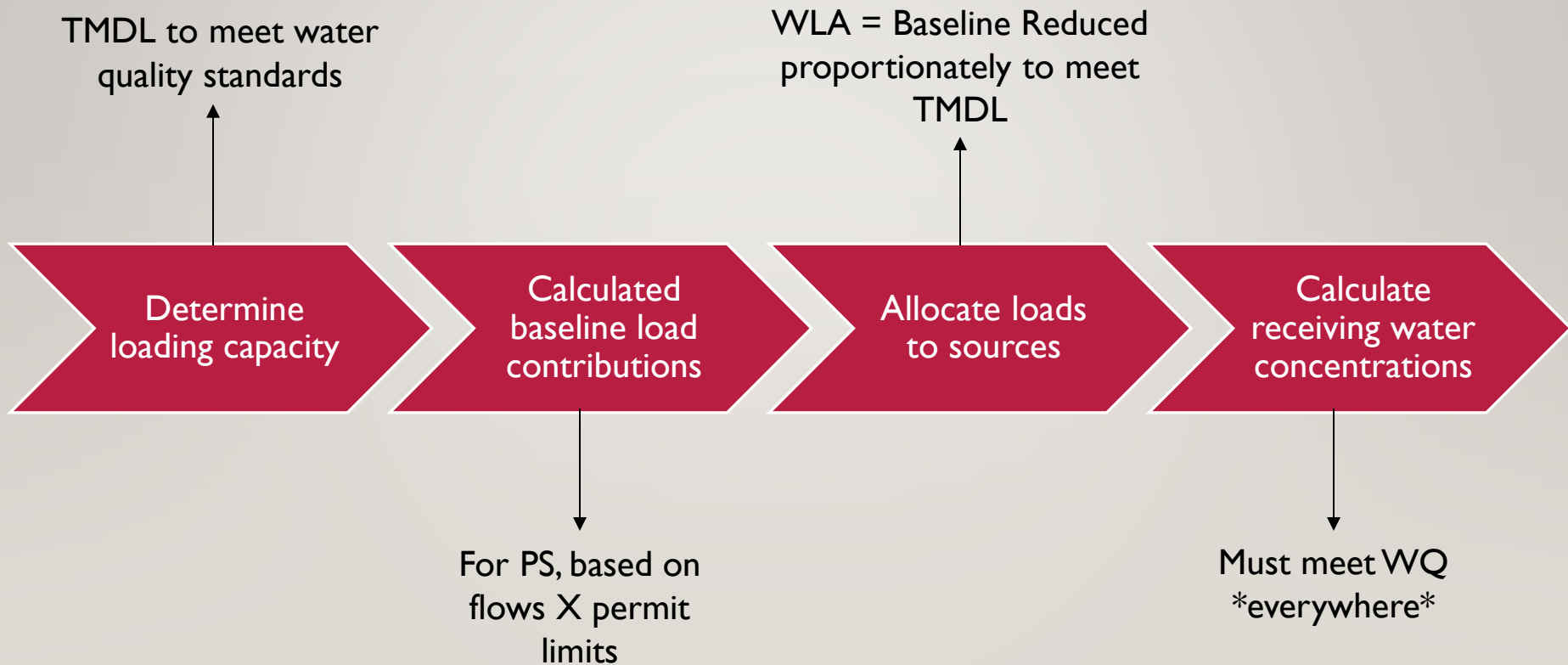


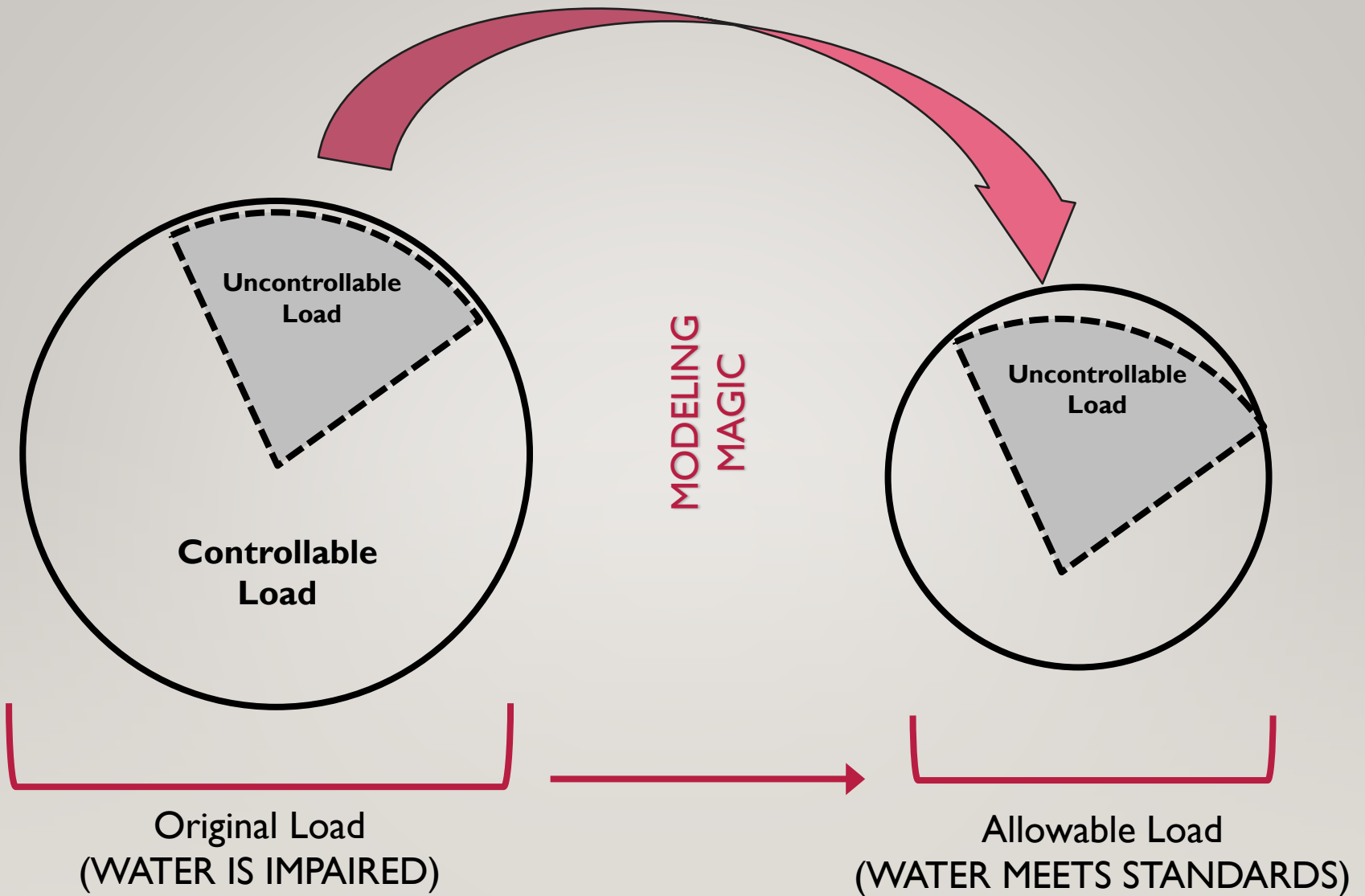
- TMDLs are a pollution budget.
  - **Amount** of a pollutant a waterbody can receive and still meet water quality standards.
  - **Fair** allocations among the sources.
  - Includes **both** point and non-point sources.

# WHAT ARE THEY?

## - BASIC OVERVIEW

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# WHAT ARE THEY?

## - BIGGEST TAKEAWAY

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TMDLS are a planning tool using a LOT of data to determine – more precisely – how much of a pollutant should be allowed in a watershed.

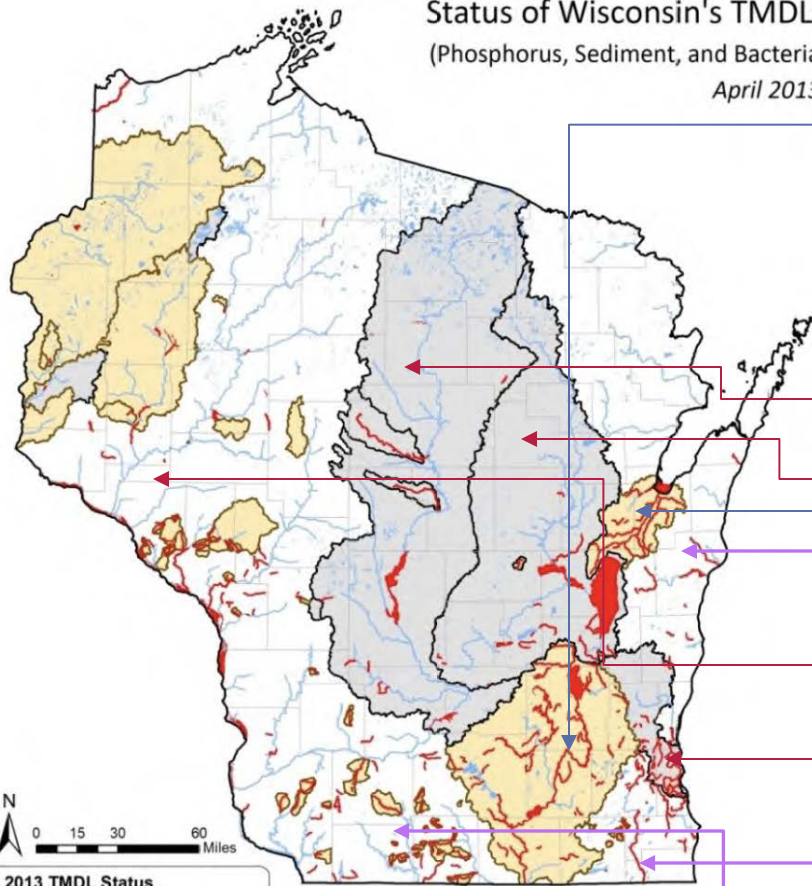
# WHY SHOULD YOU CARE?

## - PERMIT LIMITS OVERVIEW






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- In your permit, you can get a number of different limits on discharges. Most common:
  - Technology Based Limit (TBL)
  - Water Quality Based Effluent Limit (WQBEL)
  - TMDL-Derived Limit (WLA)
- TBL v. WQBEL → MOST RESTRICTIVE GOVERNS
- TBL v. WQBEL v. WLA → WLA Governs

Status of Wisconsin's TMDLs  
(Phosphorus, Sediment, and Bacteria)  
April 2013



**2013 TMDL Status**

-  TMDL Development
-  TMDL Approved
-  303d Impaired Water (TP, TSS, Bacteria)
-  River Network
-  County Boundary

**Notes:**

1. The map reflects TMDLs for total phosphorus, total suspended sediment, and bacteria reported in the WDNr WATERS database as of April 2013.
2. Sub-HUC12 watersheds were delineated using the WDNr PRESTO model
3. The reaches identified as 303d waters reflect total phosphorus, total suspended sediment, and bacteria impairments as of the 2010 303d listing



Date: April 04, 2013  
Cartographer: Adam Freihofer, Bureau of Water Quality

- **Effective TMDLS**

- *Rock River*
- *Lower Fox River*

- **TMDLS Expected 2018/19**

- *Wisconsin River*
- *Upper Fox/Wolf*
- *Milwaukee River*
- *Lake Pepin (MN)*

- **Coming soon...**

- *NE Lakeshore (Manitowoc/Sheboygan)*
- *Illinois Fox (IL)?*
- *Pecatonica / Sugar (IL)?*

# WHY SHOULD YOU CARE? - BIGGEST TAKEAWAY

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DISCHARGE LIMITS FOR A  
MAJORITY OF WISCONSIN  
PERMIT HOLDERS WILL BE  
DETERMINED BY TMDLS \*

\* AT LEAST FOR PHOSPHORUS

# WHAT TO DO ABOUT THEM?

## - BASIC OVERVIEW

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- In a TMDL on the horizon?
  - Watch data gathering process.
  - Understand that your DMR and permitted limits will be used to determine the baseline.
- In an approved TMDL?
  - May be able to challenge \*how\* it is being implemented.
  - Otherwise, no challenge unless & until the TMDL is revised.
- In a TMDL not yet approved by EPA?
  - You may have options...

# WHAT TO DO ABOUT THEM?

## - TMDLS NOT YET APPROVED

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- Planning document...
- Does not become effective (i.e., controlling over your permits) until it is approved by EPA.
- Public process at the state level during development of the TMDL allows participation (highly technical).
- EPA approval includes a public participation component (still highly technical, but has a clear administrative process).

# PUBLIC PROCESS & ADMINISTRATIVE APPROVAL

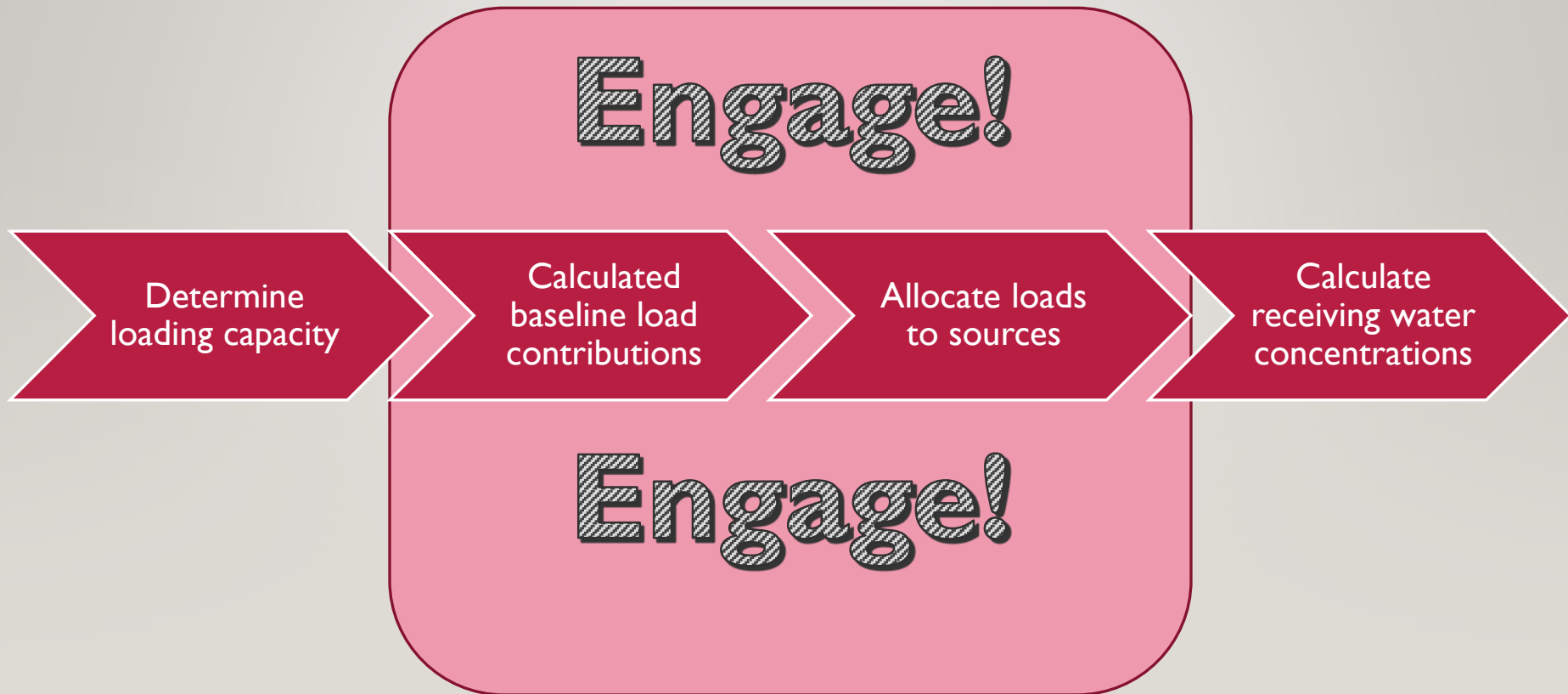
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- DNR issues draft TMDL report
- Public comment period (30 day) conducted by DNR
- DNR responds to comments and submits TMDL to EPA for approval
- EPA approval finalizes the TMDL (30 day public comment period on agency action)

# WHAT TO DO ABOUT THEM?

## - OPPORTUNITIES FOR ENGAGEMENT

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# WHAT TO DO ABOUT THEM?

## - DATA YOU CAN CHECK

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

# WHAT TO DO ABOUT THEM?

## - OPPORTUNITIES FOR CHALLENGE

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### TECHNICAL CHALLENGES

- Review modeling assumptions and conclusions – overly conservative?
- Challenge allocation methodology – proportional among sources?  
Designed for success?

Technical  
Only?

### 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.
- EPA approval is a “final agency action” which can be challenged – but must have a basis for challenge.

# WHAT TO DO ABOUT THEM?

## - BASIC TIPS BEFORE APPROVAL

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- 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.



# WHAT TO DO ABOUT THEM?

## - BASIC TIPS AFTER APPROVAL

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- 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.

# WHAT TO DO ABOUT THEM?

## - TAKEAWAYS

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- 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, but you can ensure they are being implemented consistent with the TMDL planning document submitted to the USEPA.

# QUESTIONS?

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