

# **Appendix IV**

## **303(d) Listing and Reporting Methodology**

## **303(d) LISTING AND REPORTING REQUIREMENTS**

### **What is the 303(d) List?**

Section 303(d) of the Clean Water Act (CWA) requires states to develop a comprehensive public accounting of all impaired waters. North Carolina's list of impaired waters must be submitted to EPA by April 1 of every even year (40 CFR 130.7). The list includes waters impaired by pollutants, such as nitrogen, phosphorus and fecal coliform bacteria, and by pollution, such as hydromodification and habitat degradation. The source of impairment might be from point sources, nonpoint sources or atmospheric deposition. Some sources of impairment exist across state lines. North Carolina lists impaired waters regardless of whether the pollutant or source of pollution is known and whether the pollutant/pollution source(s) can be legally controlled or acted upon by the State of North Carolina. More complete information can be obtained from *North Carolina's Draft 2000 303(d) List* (<http://h2o.enr.state.nc.us/mtu/>), which can be obtained by calling the Planning Branch of DWQ at (919) 733-5083.

### **303(d) List Development**

Generally, there are three steps to preparing North Carolina's 303(d) list. They are: 1) gathering information about the quality of North Carolina's waters; 2) screening those waters to determine if any are impaired and should be listed; and 3) prioritizing listed waters for TMDL development. The following subsections describe each of these steps in more detail.

#### ***Sources of Information***

North Carolina considers all practical existing and readily available data and information in preparing the 303(d) list. Sources solicited for "existing and readily available data and information" include, but are not limited to the following:

- The previous 303(d) list.
- Basinwide Water Quality Management Plans and Assessment Reports.
- 305(b) reports.
- 319 nonpoint source pollution assessments.
- Waters where specific fish or shellfish consumption bans and/or advisories are currently in effect.
- Waters for which effluent toxicity test results indicate possible or actual excursions of state water quality standards.
- Waters identified by the state as impaired in its most recent Clean Lakes Assessment.
- Drinking water source water assessments under the Safe Drinking Water Act.
- Trend analyses and predictive models used for determining numeric and narrative water quality standard compliance.
- Data, information and water quality problems reported from local, state or federal agencies, Tribal governments, members of the public and academic institutions.

#### ***Listing Criteria***

Waters whose use support ratings were not supporting (NS) or partially supporting (PS) based on monitored information in the 305(b) report are considered as initial candidates for the 303(d) list. Waters that were listed on the previously approved 303(d) list are evaluated and automatically included if the use support rating was NS, PS or not rated (NR).

Guidance from EPA on developing the 1998 303(d) lists indicates that impaired waters without an identifiable problem parameter should not be included on the 303(d) list. However, DWQ feels that waters listed in the 305(b) report as impaired for biological reasons, where problem parameters have not been identified, should remain on the 303(d) list. The Clean Water Act states that chemical, physical and biological characteristics of waters shall be restored. The absence of an identified cause of impairment does not mean that the water should not receive attention. Instead, DWQ should resample or initiate more intensive studies to determine why the water is impaired. Thus, biologically impaired waters without an identified cause of impairment are on the draft 2000 303(d) list.

### ***Assigning Priority***

North Carolina has developed a TMDL priority ranking scheme that reflects the relative value and benefits that a water provides to the state. The priority ranking system is designed to take into account the severity of the impairment, especially when threats to human health, endangered species or the designated uses of the water are present.

A priority of High, Medium or Low has been assigned to all waters on Parts 1, 4, 5 and 6 of the list (the following section describes these parts in more detail). A high priority is assigned to all waters that are classified as water supplies. A high priority is also automatically assigned to all waters harboring species listed as endangered or threatened under the federal Endangered Species Act (ESA). A medium priority has minimally been assigned to waters harboring state listed endangered and threatened species. As a way of addressing anti-degradation concerns, classified Outstanding Resource Waters and High Quality Waters start at the medium priority. The remaining waters on the list are prioritized according to severity of the impairment.

### **New Format of the List**

North Carolina has begun to make the structural changes prescribed in EPA's July 13, 2000 final TMDL rule. The *Draft 2000 § 303(d) List* reflects many of these changes. EPA's final rule will likely eventually require 303(d) lists to be divided into four sections. North Carolina's 2000 list has been divided into six parts and reflects comments made on the proposed rules by North Carolina and other states. This 6-part format meets the requirements of existing rules, and future lists will meet requirements of revised federal rules (when implemented). A summary of each part of the list is provided below. A more detailed discussion is found in the preface to the actual list document.

#### **Part 1 - Waters impaired by a *pollutant* as defined by EPA.**

"The term pollutant means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the water." TMDLs will be submitted for all water/pollutant combinations listed in Part 1.

#### **Part 2 - Waters impaired by *pollution*, not by a *pollutant*.**

EPA defines *pollution* as "The man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of the water" in the CWA section 502(19). EPA believes that in situations where the impairment is not caused by a *pollutant*, a TMDL is generally not the appropriate solution to the problem. In keeping with the principle that the § 303(d) list is an

accounting of all impaired waters; however, these types of waters will remain on Part 2 of the list until water quality uses and standards are attained by some other means.

**Part 3 - Waters for which EPA has approved or established a TMDL and water quality standards have not yet been attained.**

Monitoring data will be considered when evaluating Part 3 waters for potential delisting. Waters will be moved to Part 1 of the list if updated information and data demonstrate that the approved TMDL is inadequate.

**Part 4 - Waters for which TMDLs are not required.**

Other required regulatory controls (e.g., NPDES permit limits, Phase I Federal Stormwater Permits, etc.) are expected to attain water quality standards by the next regularly scheduled listing cycle.

**Part 5 - Biologically impaired waters with no identified cause of impairment.**

Roughly half of the waters on North Carolina's § 303(d) list appear on Part 5. Identification of the cause(s) of impairment will precede movement of these waters to Parts 1 and 2 of the list. EPA recognized that in specific situations the data are not available to establish a TMDL and that these specific waters might be better placed on a separate part of the 2000 § 303(d) list (64 FR, 46025). Data collection and analysis will be performed in an attempt to determine a cause of impairment. North Carolina's proposed plan for managing biologically impaired waters can be found in the preface to Part 5 of the list.

**Part 6 – The *proper technical conditions* do not yet exist to develop a TMDL.**

“*Proper technical conditions* refers to the availability of the analytical methods, modeling techniques and data base necessary to develop a technically defensible TMDL. These elements will vary in their level of sophistication depending on the nature of the pollutant and characteristics of the segment in question” (43 FR 60662). These are waters that would otherwise be on Part 1 of the list. In the proposed TMDL regulations, EPA again recognized that in some specific situations the data, analyses or models are not available to establish a TMDL and that these specific waters might be better off on a separate part of the 2000 § 303(d) list (64 FR, 46025). North Carolina seeks EPA technical guidance in developing technically defensible TMDLs for these waters. DWQ has included fecal impaired shellfish waters on this part of the list. North Carolina's approach to managing shellfish waters impaired because of fecal coliform violations is outlined in the preface to Part 6 of the list.

**Scheduling TMDLs**

North Carolina will submit TMDLs for each water within 13 years of its first listing starting with the EPA-approved 1998 § 303(d) list. TMDLs for waters first listed in 1998 or earlier will be developed by 2011. As a general rule, TMDLs will be addressed according to highest priority in accordance with the rotating basinwide planning approach. Due to the wide range of complexities encountered in TMDL development, TMDLs will not necessarily be submitted to EPA in order of priority.

TMDLs on Part 1 of the § 303(d) list are at many different stages on the path to an approved TMDL. Some require additional data collection to adequately define the problem in TMDL terms. Some require more outreach to increase stakeholder involvement and “buy-in”. Others

need to have a technical strategy budgeted and scheduled. Some are almost ready for submittal to EPA for approval. As the current regulations require, North Carolina has listed waters targeted for TMDL development within the next two years. There are no targeted waters in the Roanoke River basin at this time.

North Carolina has used “biological impairment” to place the majority of waters on the § 303(d) list. Additional consideration and data collection are necessary if the establishment of a TMDL for waters on Part 5 is to be expected. It is important to understand that the identification of waters on Part 5 of the list does not mean that they are low priority waters. The problem parameter identification (PPI) approach is a high priority for the State of North Carolina. However, it should be noted that it may take significant resources and time to determine the cause of impairment. The PPI approach is also a declaration of need for more data and more time to adequately define the problems and whether they are affected by *pollution*, *pollutants* or a combination.

North Carolina believes it to be both practical and honest to schedule TMDL development for only those waters where we have some information about the cause of impairment. Scheduling TMDLs for waters that may not be impaired by a *pollutant* is misleading and counterproductive.

### **Delisting Waters**

North Carolina relies heavily on the existing § 305(b) reporting methodology to complete the § 303(d) process. In general, waters will be removed from the § 303(d) list when data show that a water is fully supporting its uses. In some cases, mistakes have been discovered in the original listing decision and the mistakes are being corrected. Waters appearing on the previously approved § 303(d) list will be removed from the § 303(d) lists under the following circumstances:

- An updated § 305(b) use support rating of fully supporting.
- Applicable water quality standards are being met (i.e., no longer impaired for a given *pollutant*).
- The basis for putting the water on the list is determined to be invalid (i.e., was mistakenly identified as impaired in accordance with 40 CFR 130.7(b)(6)(iv) and/or *National Clarifying Guidance for State and Territory 1998 Section 303(d) Listing Decisions*. Robert Wayland III, Director. Office of Wetlands, Oceans, and Watersheds. Aug 27, 1997.
- A water quality variance has been issued for a specific standard (e.g., chloride).
- Removal of fish consumption advisories.
- Typographic listing mistakes (i.e., the wrong water was identified).