

Chapter 16

North Carolina's Impaired Waters List

16.1 Introduction to North Carolina's Impaired Waters List

The *North Carolina Water Quality Assessment and Impaired Waters List* is an integrated report that includes both the 305(b) and 303(d) reports. The *305(b) Report* is compiled to meet the Section 305(b) reporting requirement of the federal Clean Water Act (CWA). The 305(b) portion of the integrated report presents how well waters support designated uses (e.g., swimming, aquatic life support, water supply), as well as likely stressors (e.g., sediment, nutrients) and potential sources of impairment. The *303(d) List* is a comprehensive accounting of all Impaired waters and is derived from the 305(b) Report. North Carolina refers to the Impaired Waters List as the *Integrated Report* because it fulfills both the 305(b) and 303(d) requirements.

Section 303(d) of the CWA enacted in 1972 required States, Territories and authorized Tribes to 1) identify and establish a priority ranking for waters for which technology-based effluent limitations are not stringent enough to attain and maintain water quality standards, 2) establish total maximum daily loads (TMDLs) for the pollutants causing impairment in those waters, and 3) develop and submit the list of Impaired waters and TMDLs biennially by April 1st of every even numbered year to the US Environmental Protection Agency (EPA). EPA is required to approve or disapprove the state-developed 303(d) list within 30 days. For each segment Impaired by a pollutant and identified in the 303(d) list, a TMDL must be developed. TMDLs are not required for waters Impaired by pollution. Here, pollution is defined by the EPA as, “man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of the water,” and is related to water control structures.

16.2 Introduction to TMDLs

A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. The calculation must include a margin of safety to ensure that the waterbody can be used for the purposes the state had designated. The calculation must also account for seasonal variation and critical conditions in water quality.

A TMDL includes a water quality assessment that provides the scientific foundation for an implementation plan that outlines the steps necessary to reduce pollutant loads to restore and maintain standards and aquatic life. For more information on TMDLs and the 303(d) listing process, visit the TMDL website at <http://h2o.enr.state.nc.us/tmdl/>.

Point source implementation plans are included in TMDLs. Thus, any point source discharging to Impaired waters will receive a discharge allocation within the TMDL. In some cases, the allocation may be equal to existing permit limits and therefore not require further action by the wastewater permittee. In other cases, the allocation may require a reduction in loading.

Nonpoint source implementation plans are not included in TMDLs, nor are they required by federal law. Nonpoint source implementation plans can be developed by DWQ, other agencies within DENR, COGs or local government offices.

EPA has provided guidance regarding TMDLs and NPDES stormwater permits. As a result, selected NPDES stormwater permits may contain additional language when subject to a TMDL. Per EPA, MS4s identified in TMDLs as contributors to impairment may be required to develop a management plan that includes additional monitoring and BMP installation associated with pollutants of concern.

16.3 Contents of the Integrated Report

The Integrated Report includes descriptions of monitoring programs, the use support methodology, and the Impaired waters list. New guidance from EPA places all waterbody assessment units into one unique assessment category (EPA, 2001b). Although EPA specifies five unique assessment categories, North Carolina elects to use seven categories. Each category is described in detail below:

Category 1: Attaining the water quality standard and no use is threatened. This category consists of those waterbody assessment units where all applicable use support categories are rated "Supporting". Data and information are available to support a determination that the water quality standards are attained and no use is threatened. Future monitoring data will be used to determine if the water quality standard continues to be attained.

Category 2: Attaining some of the designated uses; no use is threatened; and insufficient or no data and information are available to determine if the remaining uses are attained or threatened. This category consists of those waterbody assessment units where at least one of the applicable use support categories are rated "Supporting" and the other use support categories are rated "Not Rated" or "No Data". Also included in this category are waters where at least one of the applicable use support categories, except Fish Consumption, are rated "Supporting"; the remaining applicable use support categories, except Fish Consumption, are rated "Not Rated"; and the Fish Consumption category is rated "Impaired-Evaluated". Data and information are available to support a determination that some, but not all, uses are attained. Attainment status of the remaining uses is unknown because there are insufficient or no data or information. Future monitoring data will be used to determine if the uses previously found to be in attainment remain in attainment, and to determine the attainment status of those uses for which data and information were previously insufficient to make a determination.

Category 3: Insufficient or no data and information to determine if any designated use is attained. This category consists of those waterbody assessment units where all applicable use support categories, except Fish Consumption, are rated "Not Rated", and the Fish Consumption category is rated "Impaired-Evaluated". Measured data or information to support an attainment determination for any use are not available. Supplementary data and information, or future monitoring, will be required to assess the attainment status.

Category 4: Impaired or threatened for one or more designated uses but does not require the development of a TMDL. This category contains three distinct sub-categories:

Category 4a: TMDL has been completed. This category consists of those waterbody assessment units for which EPA has approved or established a TMDL and water quality standards have not yet been achieved. Monitoring data will be considered before moving an assessment unit from Category 4a to Categories 1 or 2.

Category 4b: Other pollution control requirements are reasonably expected to result in the attainment of the water quality standard in the near future.

This category consists of those waterbody assessment units for which TMDLs will not be attempted because other required regulatory controls (e.g., NPDES permit limits, Stormwater Program rules, etc.) are expected to attain water quality standards within a reasonable amount of time. Future monitoring will be used to verify that the water quality standard is attained as expected.

Category 4c: Impairment is not caused by a pollutant. This category consists of assessment units that are 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." EPA staff have verbally stated that this category is intended to be used for impairments related to water control structures (i.e., dams). Future monitoring will be used to confirm that there continues to be an absence of pollutant-caused impairment and to support water quality management actions necessary to address the cause(s) of the impairment.

Category 5: Impaired for one or more designated uses by a pollutant(s) and requires a TMDL. This category consists of those waterbody assessment units that are Impaired by a pollutant and the proper technical conditions exist to develop TMDLs. As defined by the 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". When more than one pollutant is associated with the impairment of a single waterbody assessment unit in this category, the assessment unit will remain in Category 5 until TMDLs for all listed pollutants have been completed and approved by the EPA.

Category 6: Impaired based on biological data. This category consists of waterbody assessment units historically referred to as "Biologically Impaired" surface waters; these assessment units have no identified cause(s) of impairment although aquatic life impacts have been documented. The waterbody assessment unit will remain in Category 6 until TMDLs have been completed and approved by the EPA.

Category 7: Impaired, but the proper technical conditions do not yet exist to develop a TMDL. As described in the Federal Register, "proper technical conditions" refer 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, December 28, 1978). These are assessment units that would otherwise be in Category 5 of the integrated list. As previously noted, EPA has recognized that in some specific situations the data, analyses or models are not available to establish a TMDL. North Carolina seeks EPA technical guidance in developing technically defensible TMDLs for these waters. Open water and ocean hydrology fecal coliform Impaired shellfishing waters are included in this category.

For this integrated list, Categories 1 and 2 are considered fully supporting any assessed uses. This portion of the integrated list is extensive (thousands of segments); thus, a printed copy is not provided. A table of waters on Categories 1 through 3 is available for downloading on the DWQ website (http://h2o.enr.state.nc.us/tmdl/General_303d.htm). Categories 5, 6 and 7 constitute the 2004 North Carolina 303(d) List for the State of North Carolina.

16.4 How North Carolina Proposes Delisting Waters

In general, waters will move from Categories 5, 6 or 7 when data show that uses are fully supported or when a TMDL has been approved by EPA. In some cases, mistakes have been discovered in the original listing decision and the mistakes are being corrected. Waters appearing on the previously approved Impaired waters list will be moved to Categories 1, 2, 3 or 4 under the following circumstances:

- An updated 305(b) use support rating of Supporting, as described in the basinwide management plans.
- Applicable water quality standards are being met (i.e., no longer Impaired for a given pollutant) as described in either basinwide management plans or in technical memoranda.
- 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 or modification of fish eating advice.
- Typographic listing mistakes (i.e., the wrong water was identified).
- EPA has approved a TMDL.

16.5 Scheduling TMDLs

Category 5 waters, those for which a TMDL is needed, 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. Others need to have a technical strategy budgeted, funded and scheduled. Some are ready for EPA submittal.

North Carolina has prioritized TMDL development for waters Impaired due to bacteria or turbidity. The approach of prioritizing TMDL development based on pollutant has been successfully used in other states. Limited resources are used more effectively with a focus on a particular pollutant. Waters Impaired by other pollutants (i.e., not bacteria) are not excluded

from the schedule. However, the majority of waters prioritized for the next few years are associated with bacterial contamination. Compliance with TMDL development schedules provided in the Integrated Report depends upon DWQ and EPA resources.

North Carolina uses biological data to place the majority of waterbody assessment units on the 303(d) list. Additional consideration and data collection are necessary if the establishment of a TMDL for waters on Category 6 is to be expected. It is important to understand that the identification of waters in Category 6 does not mean that they are low priority waters. The assessment of these waters is a high priority for the State of North Carolina. However, it may take significant resources and time to determine the environmental stressors and potentially a cause of impairment. Assigning waters to Category 6 is a declaration of the need for more data and time to adequately define the problems and whether pollution, pollutants or a combination affects waters.

According to EPA guidance (EPA, 2003), prioritization of waterbody assessment units for TMDLs need not be reflected in a “high, medium or low” manner. Instead, prioritization can be reflected in the TMDL development schedule. Generally, North Carolina attempts to develop TMDLs within 10 years of the original pollutant listing. Other information for each assessment unit is also utilized to determine the priority in the TMDL development schedule. This information includes the following:

- Year listed. Assessment units that have been on the 303(d) list for the longest period of time will receive priority for TMDL development and/or stressor studies.
- Reason for listing. (Applicable to Category 5 AUs only) AUs with an impairment due to a standard violation will be prioritized based on which standard was violated. Standard violations due to bacteria or turbidity currently receive priority for TMDL development.
- Classification. AUs classified for primary recreation (Class B), water supply (Class WS-I through WS-V), trout (Tr), high quality waters (HQW), and outstanding resource waters (ORW) will continue to receive a higher priority for TMDL development and/or stressor studies.
- Basinwide Planning Schedule. (Applicable to Category 6 AUs only). The basinwide schedule is utilized to establish priority for stressor studies.

16.6 Revising TMDLs

Current federal regulations do not specify when TMDLs should be revised. However, there are several circumstances under which it would seem prudent to revisit existing TMDLs. The TMDL analysis of targets and allocations is based upon the existing water quality standards, hydrology, water quality data (chemical and biological), and existing, active NPDES wastewater discharges. Conditions related to any of these factors could be used to justify a TMDL revision. Specific conditions that the Division will consider prior to revising an existing, approved TMDL include the following:

- A TMDL has been fully implemented and the water quality standards continue to be violated. If a TMDL has been implemented and water quality data indicate no improvement or a decline in overall water quality, the basis for the TMDL reduction or the allocation may need to be revised;

- A change of a water quality standard (e.g., fecal coliform to *E. coli*). The Division will prioritize review of existing TMDLs and data to determine if a revision to TMDLs will be required;
- The addition or removal of hydraulic structures to a waterbody (e.g., dams). Substantial changes to waterbody hydrology and hydraulics have the potential to change many aspects of target setting, including the water quality standard upon which the TMDL was developed, the water quality data, and the water quality modeling;
- Incorrect assumptions were used to derive the TMDL allocations. This would include errors in calculations and omission of a permitted discharge.

Should a TMDL be revised due to needed changes in TMDL targets, the entire TMDL would be revised. This includes the TMDL target, source assessment, and load and wasteload allocations. However, the Division may elect to revise only specific portions of the TMDL. For example, changes may be justifiable to the load and wasteload allocation portions of a TMDL due to incorrect calculations or inequities. In these cases, revisions to the TMDL allocations would not necessarily include a revision of TMDL targets.