Summary of the new process implementing House Bill 49 of the 132\textsuperscript{nd} General Assembly.

A Total Maximum Daily Load (TMDL) defines the maximum load (or amount) of pollution that a stream can handle and still be considered healthy and outlines a plan to restore good health to streams that are not meeting water quality goals. A TMDL identifies how much pollution exists and where it is coming from; specifies the amount of pollution reduction needed to meet water quality goals; and recommends actions that will improve water quality in the streams. Section 303(d) of the Clean Water Act requires TMDLs for water bodies that are not meeting water quality goals, and are considered impaired.

TMDLs have been approved by U.S. EPA in approximately 75 percent of Ohio’s watershed assessment units. Currently, 56 TMDL projects have been approved by U.S. EPA and more than 30 others are currently being developed. Please see the map at the end of the fact sheet for current TMDL status.

Supreme Court of Ohio’s March 24, 2015 Ruling

On March 24, 2015, the Supreme Court of Ohio determined that "A TMDL established by Ohio EPA pursuant to the Clean Water Act is a rule that is subject to the requirements of R.C. Chapter 119, the Ohio Administrative Procedure Act. Ohio EPA must follow the rulemaking procedure in R.C. Chapter 119 before submitting a TMDL to U.S. EPA for its approval and before the TMDL may be implemented in an NPDES permit" (Fairfield Cty. Bd. of Commrs. v. Nally, 143 Ohio St.3d 93, 2015-Ohio-991).

Because none of Ohio EPA’s TMDLs had been adopted as rules under Chapter 119 of the Revised Code, the effect of the Supreme Court’s ruling was arguably invalidation of all the previously approved TMDLs and required the development of a new process for finalizing any future TMDLs.

New Process – House Bill 49

On June 30, 2017, Governor Kasich signed into law House Bill (HB) 49 of the 132\textsuperscript{nd} General Assembly, the State biennium budget bill. New requirements for Ohio EPA’s TMDL program were included in the bill. The statutory revisions address the Supreme Court of Ohio’s ruling. Highlights of the bill include:

- Reinstatement of TMDLs approved by U.S. EPA prior to March 24, 2015.
- Reaffirmation that TMDLs are not actions of the director and challenges to TMDL-based effluent limits should occur through the permit appeal process.
- Formalized stakeholder involvement throughout TMDL development.
- Additional items of consideration in implementation and wasteload/load allocation.
- Requirement to undertake rulemaking for stakeholder notification and determining significant public interest.

Stakeholder Involvement

To satisfy requirements enacted by HB 49, stakeholder involvement in the TMDL process will be more formal than in the past. Ohio EPA will release documents for review and comment at specified points during the TMDL development and approval process. These documents include:

- **Watershed study plan** — For each watershed, the Agency prepares a plan that documents the types of samples that will be collected and the locations for routine summer surveys.
- **Biological and water quality report** — This report summarizes the results of the watershed study, documents whether waters are impaired and if so, the causes and sources of impairment.
- **TMDL loading analysis plan** — This plan includes the proposed modeling approach and water quality restoration targets, goals or criteria.
- **Preliminary TMDL modeling results** — After the model has been completed, this report includes load allocations, wasteload allocations, margin of safety and future growth, permit limits necessary to achieve water quality targets, and a preliminary implementation plan.

When the official draft TMDL is completed, the Agency will send a public notice to all individual dischargers, all significant industrial users listed in the dischargers’ annual report and other stakeholders that have provided input through the steps
Total Maximum Daily Loads

listed above. The public notice will also be published in the newspaper with the largest circulation within the TMDL coverage area. Each TMDL will be available for public comment for a minimum of 60 days, and a public hearing held if there is significant public interest.

Upon issuance of a draft or final permit containing TMDL-based effluent limits, the Agency will provide notice to the discharger and significant industrial users listed in the discharger’s annual pretreatment report (that are known to discharge a significant amount of pollutant recommended to be limited by the TMDL and for whom a new or modified pretreatment limit may be required) that more stringent effluent limits may be required.

Considerations

HB 49 includes the following items that the Agency must consider and evaluate in load distribution and implementation. The consideration of these items is not new to the TMDL process, however the documentation in the report will be standardized.

- Relative contribution of point and nonpoint sources.
- Watershed flow dynamics.
- Degree to which point and nonpoint source reductions would influence attainment of impaired water.
- Reasonable assurances that reductions can be implemented.
- Site of impairment relative to source location.
- Degree to which habitat affects impairment and restoration potential.
- Feasibility of available demonstrated treatment technology to achieve point source wasteload allocation (WLA).
- Sources of funding available for point and nonpoint sources.
- Alternative approaches and actions for point and nonpoint sources (agreements between parties, adaptive management).
- Implementation of point source WLAs through schedules of compliance over multiple permit cycles.
- Estimated economic impact on government subdivisions, point sources, agricultural operations and nonpoint sources.
- Information submitted by indirect dischargers or other stakeholders that may relate to cost, economic impact, environmental benefit and technical feasibility.

Additional Information

Ohio EPA has created electronic mailing lists to notify anyone interested in TMDL projects when documents are available for review and comment. To subscribe, please go to https://ohioepa.custhelp.com/app/utils/login_form/redirect/account%252Fprofile. For more information about the TMDL program, please go to epa.ohio.gov/dsw/tmdl/index.aspx or contact Melinda Harris at melinda.harris@epa.ohio.gov or (614) 728-1357.
Ohio Total Maximum Daily Load Program Progress

Total Maximum Daily Loads

Updated 7/19/2017

Ohio Environmental Protection Agency

No data available
Approved by U.S. EPA
First cycle TMDL approved by U.S. EPA; second cycle TMDL under development
First cycle TMDL approved by U.S. EPA; second cycle watershed assessment in progress
TMDL under development
Watershed assessment in progress
ABC As of 7/19/17 the Biological and Water Quality Study Report is not final

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