

Understanding the Clean Water Act and Impaired Waters

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Clean Water Act

- Fundamentally seeks to control or limit pollutants entering waters of the United States
- Creates a permitting scheme for discharges – NPDES permits
- Establish controls on all pipes
- Limits set in permits
 - Water-quality based
 - Technology-based

Clean Water Act Cont'd

- Originally focused on technology-based limits – end of pipe and treatment capabilities.
- Water quality limits = rules designed to achieve a given level of quality for a natural body of water. Where rubber hits the road.
- Water Quality Standards consider uses of a body of water –
 - Public water
 - Propagation of fish
 - Recreation
 - Agricultural use
 - Industrial use

Pennsylvania's Obligation

- Section 305(b) requires the Commonwealth to survey waters every year to determine which waters do not achieve Federal minimum standards. The state gets to a small fraction of surface waters each year.
- Section 305(b) also sets forth what information can be used to determine whether a water is meeting federal minimum standards (sufficient to sustain aquatic life and provide for recreation on or in the water).
- Pennsylvania established water quality standards which are set forth in Chapter 16 and Chapter 93 of the Pennsylvania Code.
- Water quality standards are made up of:
 1. Designated uses; and
 2. Numeric or narrative criteria to protect those uses.

Pennsylvania's Obligation

- Documented use impairment or criteria violation constitutes a water quality violation under the CWA.
- The Department will screen all outside sources of data for the following minimum requirements:
 1. Written documentation of the protocols used in sampling and analysis describing quality assurance and quality control measures in the form of a Monitoring Study Design or Quality Assurance Project Plan.
 2. Location and extent of the waterbody.

Section 303(d): 33 U.S.C. §1313(d)

- Section 303(d) of the CWA provides that states shall:
 - Identify all waters within the Commonwealth for which effluent limitations required by the CWA are not stringent enough to achieve water quality standard(s) applicable to such waters;
 - After application of technology-based controls;
 - List due April 1, 2012; every third year thereafter.

How does DEP Identify Impaired Waters?

Look at all existing and available water quality related data and information including the following categories of waters:

1. Waters identified by the State in its most recent Section 305(b) report as partially supporting or not supporting designated uses, or as threatened;
2. Waters for which dilution calculations or predictive models indicate non-attainment of applicable water quality standards;
3. Waters for which quality problems have been reported by local, state, or federal agencies; members of the public; or academic institutions.
4. Waters identified by the State as impaired or threatened in a nonpoint assessment submitted to EPA under Section 319 of the CWA.

Can I Submit Information?

- Yes, you can

Division of Water Quality Standards
Bureau of Point and Non-Point Source Management
P.O. Box 8774
Harrisburg, PA 17105-8774

- See Handout A.

Current Susquehanna River Controversy

- DEP asserts insufficient/unreliable information to list; and
- No known cause of the evident fish disease, therefore no known cause of impairment
- Issue: Does a state have to first identify the cause(s) of impairment prior to including the water on the 303(d) list?

ANSWER: No.

Impaired Water Facts

- Pennsylvania has, by far, the most listed waters in the U.S.

Tops the list at 6,957 segments

Washington: 2,420

Michigan: 2,352

- Federal list includes 3 categories
 1. Cause unknown – fish kills (83)
 2. Cause unknown – impaired biota (3,568)
 3. Cause unknown (1,198)
- TMDLs have been created in some of these segments
 1. None reported
 2. 128 TMDLs
 3. 7 TMDLs

Can You Get Involved in the 303(d) Process?

Yes.

1. Determine if able to coordinate QA/QC sampling of water quality;
2. If collecting data, ensure it is in compliance with applicable guidance (Designing Your Monitor Program – Technical Handbook). [(717) 772-5807];
3. Collect data and submit to DEP before draft list is out;
4. When 303(d) list published in draft, submit public comments;
5. When EPA receives 303(d) submission, they review and will approve or disapprove;
6. Able to appeal that decision with legally equipped parties.
 - a. First appeal to agency ALJ;
 - b. Then, review by federal court.

After Submit the 303(d) List – Then What?

- Determine the TMDLs that would be needed to comply;
- Allocate loads of pollutants among dischargers in permits and water quality plans.

QUESTIONS?