

What Do They Want?

TMDL Training – November 15, 2007

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Legal Underpinnings



Law and Regulation

■ Clean Water Act – 1972

- (C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section [1314 \(a\)\(2\)](#) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

■ 1992 regulations: what we are operating under

- 2000 rule: withdrawn
- 2004 Watershed rule: faded away.....

Guidance/Policy

- 1991 Guidance - *Guidance for Water Quality–based Decisions: The TMDL Process*
- 1997 Policy – scheduling (8-13 yrs) and NPS
- 1999 – TMDL protocols
- 2000 Rule – approved, never implemented, revoked (2003)
- 2002 WLA memo – numeric WLAs required
- 2002 TMDL review template
- 2006 “Phased” TMDLs – must meet WQS
- 2007 Draft Options for the Expression of Daily Loads in TMDLs , June 2007

Legal Decisions

- NRDC NY (2001) – daily does not mean daily; MOS justification; numeric values for narrative WQSs ok
- Prosolino (2002) – TMDLs can be done for NPS; implementation not required
- Amigos Bravos (2004) – implementation and reasonable assurance not required
- Anacostia (2006) – “daily means daily”
- Ninth Circuit (Pinto Creek) (2007) – NPDES; offsets not allowed, actual capacity must be available

Questions?