

Reasonable Assurance and Implementation Plans

When the *E. Coli* hits the fan...



#1 Question: What is required*?

- Short answer: Nothing
- Long answer: Not required, but it goes a long way in demonstrating that a TMDL has been well-thought out, and will likely have an impact at addressing an impaired waterbody.
- ***Legal Disclaimer:** This applies only to the Federal requirements. State requirements may vary.

Court decisions

- **Prosolino (2002) 9th Appeals Court**
“California chose both if and how it would implement the Garcia River TMDL. States must implement TMDLs only to the extent that they seek to avoid losing federal grant money; there is no pertinent statutory provision otherwise requiring implementation of § 303 plans or providing for their enforcement. See CWA § 309, 33 U.S.C. § 1319; CWA § 505, 33 U.S.C. 1365.19”
- **Sierra Club vs EPA, 2002 11th Appeals Court**
- **Amigos Bravos (2004) DC Circuit**
- **Ninth Circuit (Pinto Creek) (2007) permit issuance**

So, now what?

- Still a good idea to submit implementation information
 - Shows stakeholders and public that the State has a plan and/or on-going activities to address the problem
 - At a minimum, can lay out a menu of options and programs that could be used
 - Can highlight the activities already underway
 - Can help support decisions/assumptions in the TMDL
 - Example: efforts to reduce phosphorus load will also reduce sediment loads

What to submit

- Explain what the ongoing activities are in the watershed (Federal, state, county, local)
- Explain what are the expected/planned activities (Federal, state, county, local)
- If nothing is ongoing or planned, then list out the options that could be used
- Provide for both point and non-point

Questions?

