

**“Question and Answers” on the *Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program***

**1. What is the Clean Water Act Section 303 (d) Program?**

The Clean Water Act (CWA) Section 303(d) Program encompasses activities primarily focused on the assessment and identification of waters that are not meeting State water quality standards, as well as the development of Total Maximum Daily Loads (TMDLs) to inform restoration of those waters. Other provisions of the CWA deal with the development and adoption by the States of their underlying water quality standards, as well as the implementation of pollution control activities such as permits for point source dischargers and financial support for nonpoint source reduction.

**2. Why is the CWA 303(d) Program pursuing a new Vision?**

State and EPA program managers alike share a belief that we are at an opportune time to improve implementation of the CWA Section 303(d) Program. For the past two decades, many TMDLs have been developed in response to litigation. With most of their consent decree and settlement agreement TMDLs completed, States and EPA are using their program experience to make more informed decisions about selecting and using the tools that have the best opportunity to restore and protect water quality. This experience in assessing and reporting on water quality and in developing about 65,000 TMDLs has revealed opportunities to make better strides toward water quality improvement and protection, both from an environmental standpoint as well as efficient program management.

**3. What process was followed to develop the CWA 303(d) Program Vision?**

EPA and State program managers launched a workgroup to develop a new Vision and Goals for the program in August 2011. State and EPA participants developed a lengthy “wish list” of potential program improvements, distilled these into key issue threads, and formulated a working draft Vision statement and six associated Goal statements that would significantly contribute to achieving that Vision.

In June 2012, the States and EPA provided the proposed Vision and Goals to stakeholders active in the program for their review. As a result of that stakeholder review, additional modifications were made to the Vision and Goals. The revised working draft Vision and Goals were presented in the August 2012 meeting of the Association of Clean Water Administrators (ACWA), with ACWA subsequently endorsing the collaborative process between EPA and the States to develop the new Program Vision. [See attached ACWA letter.]

Following a year of concentrated effort beginning in the fall of 2012, the small workgroup of States and EPA refined the Vision and Goals as well as developed a detailed implementation plan with milestones to guide the achievement of the Vision and Goals. The revised Vision and Goals and Implementation Plan were informed by input received at the ACWA meeting in February 2013, and the State/Tribe/Territory/EPA workshop two months later (attended by almost every State, three Tribes, the District of Columbia, Puerto Rico and one interstate organization and EPA). This revised Vision and Goals were again presented at the ACWA meeting in August, 2013 along with the near-final draft implementation plan. External stakeholder input was subsequently sought again this September before finalizing the Vision and starting its implementation this fall.

#### 4. What is the CWA 303(d) Program Vision and what are the Goals?

A Long-Term Vision for Assessment, Restoration, and Protection under the  
Clean Water Act Section 303(d) Program

*The Clean Water Act Section 303(d) Program provides for effective integration of implementation efforts to restore and protect the nation’s aquatic resources, where the nation’s waters are assessed, restoration and protection objectives are systematically prioritized, and Total Maximum Daily Loads and alternative approaches are adaptively implemented to achieve water quality goals with the collaboration of States, Federal agencies, tribes, stakeholders, and the public*

The Six Goal Statements are:

“Prioritization” For the 2016 integrated reporting cycle and beyond, States review, systematically prioritize, and report priority watersheds or waters for restoration and protection in their biennial integrated reports to facilitate State strategic planning for achieving water quality goals

“Assessment” By 2020, States identify the extent of healthy and CWA Section 303(d) impaired waters in each State’s priority watersheds or waters through site-specific assessments

“Protection” For the 2016 reporting cycle and beyond, in addition to the traditional TMDL development priorities and schedules for waters in need of restoration, States identify protection planning priorities and approaches along with schedules to help prevent impairments in healthy waters, in a manner consistent with each State’s systematic prioritization

“Alternatives” By 2018, States use alternative approaches, in addition to TMDLs, that incorporate adaptive management and are tailored to specific circumstances where such approaches are better suited to implement priority watershed or water actions that achieve the water quality goals of each state, including identifying and reducing nonpoint sources of pollution

“Engagement” By 2014, EPA and the States actively engage the public and other stakeholders to improve and protect water quality, as demonstrated by documented, inclusive, transparent, and consistent communication; requesting and sharing feedback on proposed approaches; and enhanced understanding of program objectives

“Integration” By 2016, EPA and the States identify and coordinate implementation of key point source and nonpoint source control actions that foster effective integration across CWA programs, other statutory programs (e.g., CERCLA, RCRA, SDWA, CAA), and the water quality efforts of other Federal departments and agencies (e.g., Agriculture, Interior, Commerce) to achieve the water quality goals of each state

**5. How is this CWA 303(d) Program Vision different from any previous Vision?**

Prior to this effort, CWA 303(d) Program Vision and goals have largely been described through broader CWA program management goals and specific performance measures, such as the EPA’s annual National Water Program Guidance and the States’ water quality commitments. In particular, CWA 303(d) performance measures focused on the completion of TMDLs by the States and EPA.

The new Vision and Goals provide an updated framework for managing CWA program activities to identify and address impairments. The cornerstones of the new CWA 303(d) Program Vision are the Goals of Prioritization and Assessment – with the Prioritization Goal as the foundation to guide planning and implementation of the other Goals, followed by the Assessment Goal to develop a full understanding of the conditions of priority areas identified. The next two Goals of Protection and Alternatives allow for consideration and use of other tools (as appropriate) in addition to TMDLs, to achieve applicable water quality standards. Equally important to note, however, is that it is expected that TMDLs would continue to be the most effective tool in majority of the cases. In addition, if water quality standards are not attained through the use of alternative approaches in the near term, development of TMDLs would be necessary. The last two Goals of Engagement and Integration recognize the importance of working with partners – the public and other programs within and outside of the CWA – in order to realize environmental results on the ground.

**6. Is the CWA 303(d) Program Vision or the Goals a new regulation or policy? Are States required to implement the new Vision?**

This new, long-term Vision and associated Goals are not regulation, policy or new mandates. Existing CWA 303(d) statutory and regulatory obligations remain in force (including, specifically, identification of impaired or threatened waters and development of TMDLs for such waters). States and EPA retain the flexibility in how they implement their CWA 303(d) Program responsibilities consistent with existing statutory and regulatory authorities and their individual priorities.

While the Vision is not a requirement and does not alter State and EPA responsibilities or authorities under the CWA 303(d) regulations, it is a new lens through which to view the State and EPA co-led process to implement these responsibilities and authorities. Therefore, States could embrace the new CWA 303(d) Program Vision to a greater or lesser degree, as they fulfill those responsibilities. Additionally, not all Goals – those pertaining to protection and alternatives, in particular – would necessarily be implemented by States to achieve the Vision, depending on the particular circumstances and water quality goals of each State.

**7. What opportunities existed (or will exist in the future) for stakeholders to be involved in the development and implementation of the new CWA 303(d) Program Vision?**

As the Vision and Goals and Implementation Plan were developed over the last two years, EPA and State partners solicited input from stakeholders, including municipal, environmental and agricultural interests who have been historically engaged in the implementation of the CWA 303(d) Program. Their input were solicited in the spring of 2012 on the first draft of the Vision and Goal statements, and in the fall of 2013 on the more detailed Vision and Goals along with the Implementation Plan. More importantly, in keeping with the Engagement Goal of the Vision, EPA and States anticipate further engaging stakeholders as the program is implemented in the coming years.

**8. Why is EPA pursuing a new CWA 303(d) Program measure?**

Previous performance measures for the Program have served to draw attention and effort to areas important during those times, such as tracking the number of TMDLs approved. Although it is expected that TMDLs will continue to be the primary feature of the Program, the Program will become better positioned as States and EPA work with stakeholders to carry out this Vision and Goals, to meaningfully capture Vision implementation success through a new measure. Although States will have flexibility in developing strategies to achieve their Vision Goals, a new national measure will allow aggregation of individual state progress in order to communicate overall Program progress and provide accountability.

**9. What is the proposed new CWA 303(d) Program measure and what is the process for developing it? When will it be finalized?**

A workgroup of States and EPA is developing a measure to replace by FY2015 the simple tally of TMDLs completed (the ‘pace’ measure), with one that measures the extent of State priority waters addressed by TMDLs or alternative approaches in impaired waters or by protection approaches in waters of existing good quality. The measure will have a defined universe, baseline, and annual targets. Recognizing that TMDLs and alternative approaches may take several years to be developed, and that States engage in actions outside of priority areas, a complementary measure is also envisioned to track incremental progress toward development of TMDLs or alternative approaches in priority areas, as well as such activities outside of priority areas. This complementary measure approach will provide the opportunity for States not only to report on their focused progress within their priority waters, but also to communicate overall activities state-wide.

EPA is working with States to pilot the proposed measures. There are fourteen States with a variety of prioritization approaches participating in the pilots. The outcome of the pilots will inform the computational guidance for the proposed measures for FY 2015.

**10. What opportunities exist for the States and stakeholders to be involved in the CWA 303(d) Program measure development process?**

In addition to the State workgroup process to develop the new proposed CWA 303(d) Program measures, States and stakeholders will have an opportunity to comment on the proposed measures as part of the public review process for the Agency’s FY 15 National Water Quality Program Guidance in February/March 2014.

**11. What is the role of TMDL development as the new Vision is implemented? Is TMDL development no longer required? Can a state pursue only non-TMDL approaches such as protection or alternative restoration approaches to implement the new Program Vision?**

Current statutory and regulatory CWA 303(d) obligations (including development of TMDLs) remain unchanged, and EPA expects TMDL development to be a primary feature of the Program. While the Vision provides flexibility to States in implementing the program obligations by providing a framework for States to evaluate and use more immediately beneficial tools to address impairments, EPA does not expect the TMDL development tool to disappear. Ensuring that TMDLs continue to be developed is central to the successful

implementation of the Vision, with the appropriate role of TMDLs (and for that matter, protection approaches alongside restoration) couched by States and EPA in the larger context of determining how best to achieve their overall water quality objectives. Additionally, EPA expects that while alternative restoration approaches may be employed to attain water quality standards in the near term, the fundamental requirement to develop TMDLs remain for impaired waterbodies if alternative approaches fall short of fully restoring waters.

**12. Will EPA also consider revising the existing 1997 policy guidance on timely development of TMDLs, with the revision of the program measure that was based on pace of TMDL development?**

EPA is not withdrawing the 1997 policy as guidance for implementation of the CWA 303(d) Program requirements, given that the Vision does not replace program requirements. The 1997 policy’s 8-13 year timeframe for TMDL development will continue to be a general guideline to ensure timely development of TMDLs.

There is an important distinction between the 1997 policy guidance and the TMDL “Pace” measure. The 1997 guidance was in place for eight years before it was used as the basis for the pace measure (which was instituted in 2005). The CWA 303(d) Program evolved to focus mainly, if not exclusively for most States, on TMDLs to address impairments. The Vision, on the other hand, provides a framework for States to consider and use all appropriate tools to address impairments. While the 1997 guidance remains in place, EPA and states believe a new measure that extends beyond counting of TMDLs, is needed to better capture the Program’s overall progress under the new Vision.

Please note that the Vision calls for priority areas to be identified by 2016, assessments of those priority areas to be completed not later than 2020, and evaluations of State success in addressing their priority areas by 2022. In many circumstances, we believe that this focus on priority areas should result in the completion of TMDLs there in much shorter timeframes than 8-13 years.

**13. Why does the new CWA 303(d) Program Vision contain a Protection Goal in addition to those related to restoration?**

The Vision recognizes that TMDLs is but one tool among many to maintain and achieve the integrity of our Nation’s waters. Recognizing the challenges and cost associated with restoration actions, at times it may be beneficial or critical to prevent healthy waters from becoming impaired. While EPA recognizes that not all Goals – such as Protection – would necessarily be implemented by States depending on the particular circumstances and water goals of each State, the Protection goal provides States the opportunity to account for all actions needed to achieve its water quality objectives.

While the proposed program measure allows States to include protection approaches – along with TMDL and alternative restoration approaches – in reporting progress for their priority waters, consistent with past practice EPA will not be approving under the CWA 303(d) Program, protection approaches employed in States’ priority waters.

**14. Where will the State’s priorities be reported? Why is the CWA 303(d) list /Integrated Report intended to be the repository of a State’s priority waters?**

The State prioritization process and its results provide the foundation to guide how the state will implement its responsibilities under the CWA 303(d) Program. EPA intends that the CWA 303(d) lists/Integrated Reports will house the conclusions or results of a State prioritization process, regardless of where such prioritization process occurs. The opportunity for public comment as part of the biennial CWA 303(d) listing process will allow States to publically and regularly test these priorities with their citizens.

**15. Is there a target number or areas of waters/watersheds expected to be identified in state priorities, as part of implementing the Prioritization Goal?**

Each state is unique and its priorities are expected to continue to be shaped by what is important to its public and what resources and information are available, among many other factors. Notwithstanding this flexibility, EPA is confident that states would identify priorities that reflect a meaningful plan (roadmap) on how best to meet their ongoing regulatory requirements to develop TMDLs for impaired waters over time, with their limited resources.

**16. Given the State’s role in identifying its priorities under the CWA 303(d) Program, what is EPA’s role in prioritization process?**

EPA plans to continue to work with States as they develop their CWA 303(d) Program priorities that will guide the location and timing of TMDL development, alternative restoration and protection approaches. Because State priorities will inform allocation of resources, it is likely that State/EPA discussions on priorities will occur in settings as formal as CPP, PPA/PPG or other grant discussions, or in other less formal forums like regularly scheduled meetings. EPA believes that prioritization under the CWA 303(d) Program will lead to a more comprehensive and meaningful conversation among States and Regions because it is not focused only on TMDL production but more on how the CWA 303(d) Program could support overall water quality objectives of a State.

Because prioritization is the lynchpin of the framework for managing the CWA 303(d) Program under the Vision and for meeting our national water program goals (like nutrient reduction), EPA believes that this issue would benefit from a broader conversation with all EPA Regions and States regarding programmatic and technical issues such as minimum expectations and tools. To that end, EPA will work with States and other partners to convene a workshop in early 2014 on prioritization, with representation from as many States and EPA regions as possible.

**17. What are potential alternatives to TMDLs for impaired waters? Will EPA approve alternative restoration approaches?**

EPA recognizes that there are restoration approaches that may be more immediately beneficial than TMDLs in achieving water quality standards. An alternative restoration approach is a plan and/or a set of actions pursued in near-term (other than a TMDL) that in their totality are designed to attain water quality standards. While

appropriateness of alternative approaches is case-specific, examples could include approaches such as CWA 319 plans, “5r” restoration actions, “straight to implementation”, source water protection plans, category 4b activities, or other approaches as appropriate. In all cases (with the exception of the longstanding tool under category 4b), impaired waters remain on the CWA 303(d) list, but are assigned lower priority for TMDL development while alternative restoration approaches are pursued until water quality standards are achieved.

Decisions on the appropriate approaches to pursue for waters in priority areas will be part of the collaborative discussions between EPA and States on priorities. It is likely that such State/EPA discussions will occur in settings as formal as CPP, PPA/PPG or other grant discussions, or in other less formal forums like regularly scheduled meetings. While the proposed program measure allows States to include alternative restoration approaches in reporting progress for their priority waters, EPA will not be approving under the CWA 303(d) Program, alternative approaches employed by states in its priority waters as long as impaired waters remain on the CWA 303(d) list.

**18. If a State changes its priority areas before 2022, how will this affect the new CWA 303(d) Program measure?**

In 2015 and 2016, States are expected to identify their priority areas, for which a baseline and 2022 target for TMDLs or alternative restoration approaches for impaired waters, or protection approaches for unimpaired waters, will be established. States are encouraged to keep changes to their priority areas to a minimum to track progress toward the 2022 target. However, if a State changes its priority areas before 2022, the baseline and 2022 targets would need to be updated to reflect these changes. Before changing their priority areas, States are encouraged to first consider reporting activities outside of priority areas in the complementary metric.

**19. How can a State that uses the rotating basin approach address the Prioritization Goal of the Vision?**

EPA continues to see the utility of the rotating basin approach, and under the new Program Vision, EPA anticipates some States would continue to use the rotating basin approach. Such States should still identify their priority areas in 2015 and 2016. They could choose to identify in 2015 or 2016 as priority areas for the purpose of the measure, those basins wherein the full cycle of monitoring, assessment and TMDL/other restoration/protection approaches are expected to be completed by 2022. In the years leading up to 2022, States could voluntarily report activities in the priority waters leading up to development of TMDL/other restoration/protection approaches, under the complementary indicator measure.

**20. What does EPA expect a State to do with its lower-priority waters?**

EPA expects that States would focus their resources on addressing identified priority waters through TMDLs or other restoration or protection approaches, in the near term. That said, the CWA 303(d) requirement that States must develop a TMDL for impaired waters remain unchanged, although such TMDLs may be given lower priority and developed later.

**21. With the timelines for implementing a majority of the Vision Goal statements occurring within the next 4-6 years, what happens in 2022?**

In 2022, EPA and States will evaluate progress in implementing the Vision Goals overall and assess their relevance as a framework for program implementation. The time horizon from now until 2022 was chosen to provide sufficient time to meet the various milestones of the Vision. As noted above, the 1997 policy on an 8- to-13 year timeframe for TMDL development will continue to be a general guideline to ensure timely development of TMDLs.

**22. In directing resources to monitoring, should a State emphasize a state-scale probabilistic survey or targeted monitoring of priority waters?**

Both state-wide probabilistic and site-specific monitoring approaches play a role in achieving the CWA 303(d) Vision. State-wide probability-based surveys can inform the selection of priority areas by identifying particular pollutants or geographical areas that warrant further State attention. Targeted site-specific monitoring can identify specific water quality issues, inform specific actions to pursue and determine progress in these priority areas. EPA expects States to employ a combination of monitoring approaches to guide the States as they implement their overall water quality objectives.

**23. How does implementing this CWA 303(d) Program Vision align with the CWA 319 Program and EPA’s Healthy Watersheds Initiative?**

Like the CWA 303(d) Program Vision, the updated CWA 319 Grant Guidelines maintain a focus on restoration with flexibility to consider protection of unimpaired/high quality waters, and the Guidelines also provide for better integration between the two programs. Additionally, state NPS management programs are encouraged to be well-integrated with other relevant programs (such as the CWA 303(d) Program) to restore and protect water quality, aligning priority setting processes and resources to increase efficiency and environmental results.

EPA’s Healthy Watersheds Initiative encourages a strategic, systems approach to conserve healthy components of a watershed, and therefore avoid additional water quality impairments. This initiative provides for an assessment framework, examples and tools that could help States interested in implementing the Protection Goal of the CWA 303(d) Program Vision.

**24. Will EPA’s proposed new CWA 303(d) Program measure be the sole vehicle to report on Program progress on the Vision and Goals?**

There are numerous venues for reporting overall CWA 303(d) Program progress. The proposed CWA 303(d) measures provide a critical venue to communicate a State’s priority waters and actions pursued within those waters. In addition, States could informally communicate progress on various milestones in the Vision in other venues such as meetings with EPA. States also have the opportunity to share with their public, progress on achieving their water quality goals, as Minnesota does with its biennial Clean Water Fund Performance Report.