

Chapter 12

Industry's Role in Challenging the Total Maximum Daily Load (TMDL) Process

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¹ The authors would like to thank Jennifer Bennington and Lesley Ofsa for their contributions to this chapter.

§ 12.01. Introduction.

In 1972, the United States Congress passed the Federal Water Pollution Control Act (“Clean Water Act”) in an effort to “restore and maintain the chemical, physical, and biological integrity of the nation’s waters.”² To this end, the Clean Water Act created a Total Maximum Daily Load (TMDL) program to ensure that the nation’s polluted waters are identified and programs are developed to bring such waters into compliance with applicable water quality standards. Only in recent years, however, have the United States Environmental Protection Agency (USEPA) and state environmental agencies begun to implement the TMDL program. In many ways, the programs are still in their formative stages, with regulators and affected industries working to determine how to best approach TMDL development and enforcement. This chapter outlines the TMDL process and identifies the stages that may be of the greatest interest to affected permit holders or industries.

§ 12.02. Overview of the TMDL Program.

Although the United States Code and the Code of Federal Regulations mandate a several step process that must be employed in all states’ TMDL programs, there is some room for states to determine how to approach the process. Specifically, the federal statute and regulations require that all state programs involve the following elements: (1) establishment of water quality standards; (2) identification and listing of impaired waters; and (3) preparation of a TMDL.

[1] — Establishing Water Quality Standards.

The Clean Water Act requires that each state establish water quality standards to be approved by the Administrator of the USEPA.³ These water quality standards “are the basis for establishing enforceable limits on pollutants that deteriorate water quality.”⁴ The state entities responsible for establishing the water quality standards first establish an “intended use” for

² 33 U.S.C. § 1251(a)(2000).

³ 33 U.S.C. § 1313 (2000).

⁴ W. Va. Env’tl. Quality Bd., *Water Quality Standards*, <http://www.wveqb.org/water.asp> (last visited June 15, 2005).