FDEP and EPA Process for Amending a TMDL

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Develop and adopt **Water Quality Standards** to protect Florida waters.

Use WQS to assess Florida waters and determine if meeting **Designated Uses**.

If determined impaired, develop **Total Maximum Daily Load** (target to restore water).

Develop and implement **Basin Management Action Plan** to implement restoration.
Authority to Establish TMDLs

- FDEP authority derives from federal & state law
- CWA Section 303(d) requires states to establish TMDLs
- Florida Statutes Section 403.067 grant FDEP authority to develop and execute a TMDL program
Requirements of State Law

• Impairments of biological criteria
  – 403.067(3)(c) addresses narrative and biological criteria
    • For waters that are impaired based upon biological criteria, the TMDL must be developed for those criteria.
    • *Indian River Lagoon was listed for sea grass depth, so the TMDL must be developed for sea grass depth.*

• Phasing in a TMDL
  – 403.067(6)(c) provides authority to phase in a TMDL
    • Additional data collection and analysis are sometimes needed.
    • TMDLs are subject to change as additional data become available.
    • *FDEP can therefore revise an existing TMDL.*
    • Phases or revisions must still go through the rule adoption process.
State Rule Adoption Process

• Procedures of Chapter 120, F.S., apply to TMDLs
  – Notice of Rule Development
  – Public meetings and rule development workshops
  – Notice of Proposed Rule and public comment period
  – Opportunity to request a hearing or file a challenge

• Approval by other agencies and bodies
  – Joint Administrative Procedures Commission (Legislature)
  – Office of Fiscal Accountability and Regulatory Reform (Governor's Office)

• Additional requirements of Sec. and Gov.
  – Statement of Estimated Regulatory Costs (SERC)
Federal TMDL Approval Process

• EPA reviews State adopted TMDL for…
  – Public participation in TMDL development
  – Compliance with other programs and priorities
    • Backsliding / anti-degradation
    • Downstream protection
    • Protective of designated uses
  – Administrative requirements
    • FDEP followed the FDEP rule adoption process
  – Technical and scientific basis for TMDL
  – Criteria for (nutrient) water quality standards
Review of TMDLs as Standards

• Nutrient TMDLs now constitute site specific interpretations of the narrative nutrient criteria.
• Review as a WQ standard includes additional factors.
  • Magnitude, duration, and frequency must be addressed.
  • Criteria must be sufficient to verify impairment or delisting.
  • Criteria must be spatially and temporally representative.
  • Designated uses must be protected by the criteria.
  • Must protect downstream waters relative to WQ standards.
  • Must meet administrative requirements, including public notice.
Indian River and Banana River Lagoons were listed as impaired based on seagrass depth. TMDL must therefore address nutrient loading as an input and seagrass depth as an output.

- Florida Statutes require it for a biological listing.
- EPA will require it as a condition for approval.

TMDL must go through rule adoption process
- Notice of Rule Development through final certification
- Documentation of public participation

TMDL must ultimately be approvable by EPA
- Or EPA remains on the hook to develop federal TMDL