

**State’s Recommended Water Quality Assessment, Protection and Restoration Process (SWQPRP)  
Key to Flow Chart (Figure 1)**

States are committed to protecting and restoring the quality of the nation’s waters as set out by the Clean Water Act ; Section 101(b) – *“It is the policy of the Congress to recognize, preserve and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution, to plan the development and use (including restoration, preservation and enhancement) of land and water resources ...”* To that end States find the proposed revisions to 40 CFR 130 related to total maximum daily loads (TMDLs) to be in conflict with Congressional policy set out by Clean Water Act Section 101(b). States believe that clean water outcomes can be achieved through the process depicted on Figure 1 and annotated below.

***Process Overview***

The SWQPRP starts with the Continuing Planning Process (CPP) States prepare pursuant to Section 303(e). The CPP describes State 1) plans for establishing effluent limits and schedules of compliance, 2) procedures for incorporating provisions of Section 208 area wide waste management plans, 3) process for establishing and administering *total maximum daily loads* (see item 2 of flow Figure 1, annotation below) 4) procedures for revision, 5) procedures for intergovernmental cooperation, 6) developing and administering water quality standards, 7) controls over disposition of water treatment residual waste, and 8) inventory and ranking of waste treatment construction needs. Pursuant to Section 303(e)(3), EPA reviews and approves the CPP. The SWQPRP described herein is based on three fundamental elements – 1. Assessment, 2 Total Maximum Daily Loads and 3. Implementation. States believe the Clean Water Act provides adequate authority to apply and execute the process and that implementation of this process will provide clean water outcomes more expeditiously and efficiently than can be achieved through the proposed revisions to 40 CFR 130.

I.D	Title	Description	Clean Water Act Reference
1	<b>Assessment</b>	<p>Assessment is the process of determining the status and conditions of the nation’s water resources and progress being made in restoration and protection of these waters. The Clean Water Act calls for assessments in various ways, however Section 305 (b) reports is the most prominent provision. Assessment type activities are stipulated at various other places including Section 314 - clean lakes and Section 319 nonpoint source threatened waters. <i>States recommend the biennial 305b Report serve as the basis for a comprehensive inventory of the status of conditions and trends in the nation’s water resources.</i></p> <p>The assessment process includes several elements. The manner in which these elements are integrated is described through the Section 303(e) Continuing Planning Process which States prepare and EPA reviews and approves.</p>	305 (b) 303(d)(1)(A)&(B) 304(l) 314(a)(1)(F) 319(a)(1)(A) 208(a)(2) 303(e)

1.1	Monitoring System and quality assurance program.	<p>As a condition of receiving Federal water pollution control program grants, Section 106(e) requires States to establish and operate <b><i>“appropriate devices, methods, and procedures necessary to monitor and to compile and analyze data on (including classification according to eutrophic condition) the quality of navigable waters and the extent practicable, groundwaters</i></b></p> <p>Section 104(a)(5) directs the EPA to <b><i>“in cooperation with States and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans.”</i></b></p> <p>Quality assurance is a system of rules and procedures States follow to assure that water quality samples are collected in a manner to assure they accurately represents the water body, appropriate and correct laboratory procedures are followed and the resulting analytical data is correctly interpreted. The quality assurance program is the means by which data collected by organizations outside the direct supervision of the State water quality agency can be evaluated to determine if this outside data can be used to accurately assess the condition of the water body.</p> <p>Monitoring activities are also conducted pursuant to NPDES permit administration and nonpoint source pollution control programs. (Links are noted by the “M” connector.)</p>	<p><b><i>States recommend the only data used to make water quality protection and compliance decisions be that which has been evaluated by the State quality assurance program.</i></b></p> <p>Regarding the Section 104(a)(5) monitoring system the EPA is to establish and maintain, States are not aware of the status of this system. Such a monitoring system could compliment State monitoring systems established by States.</p>	106(e) 104(a)(5)
1.2	Water body	States, EPA, USGS and USDA - NRCS have established an extensive watershed and water resources identification based on nested watersheds and stream reaches. This system is widely used and provides the means to account for the status and trend of the nation’s water resources. The Unified Watershed Assessment States completed pursuant to the Clean Water Action Plan demonstrates the utility of the system.		
1.3	Point source present?	The 1972 Act initially emphasized control of point sources discharges of pollutants. The first step in the assessment of a given water body’s condition starts with a determination of whether or not the water body receives point source effluent. All point source discharges are required to have a National Pollutant Discharge Elimination System (NPDES) discharge permit (see item 3.2.). Effluent limits define the quality of the effluent and can be either <i>technology based</i> (see item (3.1) or <i>water quality based</i> (see item 3.4).		

1.4	Effluent limits met?	<p>NPDES permit holders are required to monitor the quality of the effluent and compare the result to the permit effluent limit. Two types of monitoring is performed – 1) self monitoring by the permit holder and 2) compliance monitoring by the permitting authority (delegated States or EPA).</p> <p>Self monitoring data (known as DMR’s discharger monitoring reports) are submitted to the permitting authority on a regular basis. Failure to submit a report is a violation of the an NPDES permit condition.</p> <p>Compliance monitoring is performed to assure the validity of the DMR data.</p>		
1.5	NPS program fully implemented?	<p>A fully implemented nonpoint source pollution management program would occur when it can be established that all pollutant sources within an area (watershed, river basin, county, wellhead protection area, State, etc.) are actively implementing and maintaining water quality protection measures (best management practices) designed to either prevent the occurrence of water quality (water pollution problems) or abate (restore or repair) polluted water bodies. See item 3.5.</p>	<p>The Clean Water Act does not provide an explicit definition of a nonpoint source. Section 502(14) explicitly defines point source. In the absence of an explicit definition of “nonpoint source” some States have defined a nonpoint source as any source of pollutants not required to have an NPDES discharge permit.</p>	
1.6	Water quality standards met?	<p>Pursuant to Section 303(a), (b) and (c) States adopt water quality standards. Simply stated water quality standards are regulations which provide a legal definition of desired water quality (or conversely polluted water). To determine the status of a given water body, water quality data obtained from the water body are compared to criteria contained within water quality standards. Water quality standards also provide the basis for determining total maximum daily loads (see item 2). If the water body fails to meet water quality standards, the water body is found to be <i>impaired</i>.</p>		303(a), (b) & (c)

1.7	Water quality standards violation due to point sources?	When a water body is impaired (fails to meet water quality standards), it is critical to determine the source of pollutants causing the violation so that a cost effective water quality restoration plan can be prepared and implemented. If the water body does not receive effluent from a point source discharge, the violation is obviously due to nonpoint pollutant sources. If the water body receives point source effluent, determining the source of pollutants causing the violation is somewhat more difficult. If the water quality standards violation can be attributed to point source discharges, the <i>total maximum daily load</i> is prepared (see item 2).		
1.8	Uses fully supported?	Even though a water body may meet water quality criteria set out by State water quality standards habitat and stream channel modifications, introduced exotic species and hydrologic modifications may cause the river or lake to not support desired aquatic life species or populations.	<p>The proposed regulations describe the case of a water body not supporting aquatic life due to habitat, exotic species or hydrologic modification as being impaired due to pollution.</p> <p>States object to the use of the term pollution in this context. Pollution is defined at Section 502(19) as <i>“man-made alteration of the chemical, physical, biological and radiological integrity of water.”</i> Pursuant to this definition pollution would seem to be the condition of a water body containing too great a quantity of pollutants (defined at Section 502(6) and (13)).</p> <p>The Clean Water Act does not appear to be the most effective means of addressing habitat loss, exotic species or hydrologic modification.</p>	502(6), (12), (13) & (19)

1.9	Biennial 305b Report	<p>Report prepared by States on a biennial basis. Report includes</p> <ul style="list-style-type: none"> <li>✓ Description of States' waters correlated with water quality criteria.</li> <li>✓ Analysis to extent State waters provide protection and propagation of balanced population of fish and allows recreation in and on water.</li> <li>✓ Analysis to the extent that discharge of pollutants has been eliminated and the level of water quality provides for aquatic life and recreation.</li> <li>✓ An estimate of environmental impact, economic and social costs, economic and social benefits and date of achieving the objectives of the Clean Water Act.</li> <li>✓ A description, nature and extent of nonpoint source pollution, recommendations of programs needed to control nonpoint source pollution and an estimate of the cost of implementing nonpoint source pollution controls.</li> </ul>	<p><b><i>States recommend the Section 305b report be used as the principle means of accounting for status and trends in the water quality of the nation's waters.</i></b></p> <p>To the extent the Section 305b report does not now provide the necessary information to adequately communicate the condition of the nation's to the public cannot be blamed on the States as EPA prepares the guidance for preparing the report.</p>	<p>305(b) 304(a) 106(e)(1) 314(a)(1) &amp; (2) 319(a)(1) &amp; (2)</p>
2	<b>Prepare TMDL</b>	<p>Total maximum daily load, in the simplest context is the total mass quantity of a substance (expressed on a daily basis) that a water body can receive without suffering a violation of water quality criteria of the water body. It is essentially the product of the daily flow rate of the water body multiplied by the water quality criteria of the water body.</p> <p>Section 303(d) directs States to <b><i>“identify ... waters for which the effluent limitations required by section 301(b)(1)(A) and (B) are not stringent enough to implement the water quality standard applicable to the water in question”</i></b> Section 303(d)(1)(C) directs States to establish the total maximum daily load for the waters identified as not meeting water quality standards due to point source discharges.</p> <p>A TMDL identifies the total waste load the water body is able to receive and meet water quality standards. The portion of this load that is allocated to point sources is known as the “waste load allocation” and the portion that is allocated to nonpoint sources is known as the “load allocation”. Waste load allocations to point sources are administered through NPDES permits (see item 3.4). Load allocations for nonpoint sources are administered via procedures set out in the State’s nonpoint source pollution management</p>	<p><b><i>States recommend that TMDL regulations be limited to the authority set out by the Clean Water Act.</i></b></p> <p>The Clean Water Act provides explicit authority for establishing and implementing TMDLs for point sources. Section 301 prohibits the discharge of any pollutant by any person except in compliance with effluent limitations set out by Section 301(b) and the provisions of Sections 302, 306, 307, 318, 402 and 404. <b><i>Discharge</i></b> is defined at Section 502(14) and (16) as the discharge of pollutants from a point source. Section 502(14) explicitly States that agricultural stormwater discharges and return flows form</p>	<p>301(b) 302 303(d) 303(d)(1)(C) 306 307 318 319(b) 402 404 502(14) &amp; (16)</p>

		program prepared and approved by EPA pursuant to Section 319(b). See item 3.5	irrigated agriculture are not point sources.  The Clean Water Act does not provide any Federal authority to require implementation of nonpoint source load allocations.	
<b>3</b>	<b>Implementation of Restoration and Protection Actions</b>	This element of the SWQPRP consists of the plans, practices, methods and means available to assure that water resources suffering water quality standards violations are restored to the extent feasible or protected from deterioration by point and nonpoint pollutant sources. The fundamental tools are NPDES permits for point sources (items 3.1, 3.2, 3.3 and 3.4) and State Nonpoint Source Management Plans for nonpoint sources (items 3.5, 3.6, 3.7, 3.8 and 3.9).		
3.1	Technology based effluent limits	The Clean Water Act established minimum pollution control requirements, known as technology based effluent limits for all point sources.		301 304 306 307
3.2	NPDES Permit	The NPDES Permit defines the conditions under which point sources may discharge treated effluent. This permit is a fundamental contract between the regulatory agency (EPA or States which have been delegated NPDES permit administration responsibilities) and the owner of the point source. The permit contains effluent limitations (restrictions established by the permitting authority on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from points sources and schedules of compliance). Failure to comply with the terms of the permit is a violation of law and will subject the permit holder to enforcement proceedings.		402
3.3	Implement effluent limits	The owner of the point source implements effluent limitations by constructing, operating and maintaining a wastewater treatment system designed to meet the effluent limitations stipulated by the NPDES permit. Failure to comply with terms of the an NPDES permit is a violation of Federal law.		309
3.4	Water quality based effluent limit.	Where technology based effluent limits are not sufficient to prevent the occurrence of a water quality standards violation in the receiving water body, more restrictive effluent limitations are established via a waste load allocation from a TMDL. Water quality based effluent limitations assure that the point source discharge does not cause a violation of water quality standards.		302 303(d)

3.5	State NPS Management Plan	<p>The Clean Water Act also sets out a nonpoint source pollution (NPS) control program. Section 101(a)(7) sets out the national policy, however specific program details are found at Section 208(b)(1)(F) and Section 319. Both Section 208 and Section 319 establish State leadership responsibilities for abating and preventing nonpoint source pollution.</p> <p>✓ Section 208(b)(1)(B) stipulates that either a <i>designated area wide waste treatment management agency</i> or the <i>State</i> prepare a plan which provides <i>a process to identify agricultural and silvicultural related nonpoint sources of pollution, including return flows from irrigated agriculture and their cumulative effects, runoff from manure disposal areas, and from land used for livestock and crop production and (ii) set forth procedures and methods to control to the extent feasible such sources (208(b)(1)(F)</i>. Section 208(b)(1)(G through K) stipulate that procedures and methods be also developed for other pollutant sources including – mine-related, construction activity, salt water intrusion, disposition of residual waste and disposal of pollutants on land or in subsurface excavations. While these are nonpoint pollutant sources, these are not explicitly defined as such.</p> <p>✓ Section 319(b)(2) stipulates the <i>State management program</i> shall include <i>an identification of best management practices and measures and identification of nonregulatory or regulatory programs for enforcement, technology transfer and demonstration projects</i> needed to <i>achieve implementation of best management practices</i>.</p> <p>If a nonpoint source pollution control program is to be truly effective, it must provide for protection of water bodies which do not suffer water quality standards violations as well as restore those water bodies which have water quality standards violations. The strategy to restore damaged water quality is described in a restoration plan (item 3.6). The strategy to prevent the occurrence of water pollution problems is described in a protection plan (item 3.8).</p>	<p><i>States recommend that EPA approved State NPS Management Programs be the cornerstone of prevention and abatement of nonpoint source pollution.</i></p> <p>While States may find a <i>TMDL type process</i> is effective in achieving nonpoint source pollution goals, it is at the <i>State’s discretion to use this tool.</i></p> <p>The Clean Water Act does not define an extensive Federal enforcement program for nonpoint source pollution control.</p> <p>The State management plan establishes the nature of enforceable nonpoint pollution control. The role of Federal enforcement is contingent on that which is established by other statutes such as FIFRA, Clean Water Act - Section 404 (dredge and fill administered by Corps of Engineers), etc.</p>	<p>101(a)(7) 208(b)(1)(F - K) 319 404 <b>FIFRA</b></p>
3.6	Watershed Water Quality	<p>When a water body suffers a water quality standards violation due to nonpoint pollutant sources, the action plan taken to restore (to the extent feasible) the water resource to an undamaged condition is described in a <i>watershed</i></p>		<p>208(b)(1)(F-K) 319</p>

	Restoration Plan	<i>water quality restoration plan.</i>		
3.7	Implement Nonpoint Source Pollution Controls	Nonpoint source pollution control implementation can be mandatory or voluntary (or a combination). The typical strategy consists of information and education activities, technical assistance and financial assistance. In a <i>restoration plan</i> , implementation be targeted to specific critical sites within the watershed. Regulatory and enforcement based activities may also occur where restoration is the goal of the plan.		208(b)(1)(F-K) 319
3.8	Water Quality Protection Plan	Where a water body does not suffer water quality standards violations, water resources may be threatened unless <i>all nonpoint pollutant sources</i> are implementing some minimum level of water quality protection designed to prevent the occurrence of water pollution problems. This minimum water quality protection measure is analogous to the technology based effluent limitations of point sources. The goal of the plan is <i>prevention of future water pollution problems.</i>	At the present time, there is no national consensus on what constitutes a minimum water quality protection measure for nonpoint pollutant sources. Some States believe that significant further improvements in water quality conditions will not occur until there is a national consensus on minimum water quality protection measures for nonpoint sources.	208(b)(1)(F-K) 319
3.9	Implement nonpoint source pollution controls	Implementation of nonpoint source pollution controls can be mandatory or voluntary (or a combination). The typical implementation strategy consists of information and education activities, technical assistance and financial assistance. In a <i>protection plan</i> , implementation is less likely to be targeted to specific critical sites within the watershed because of the lack of a clear water quality standards violation. Regulatory and enforcement based activities may take place where there are requirements such as pesticide application (compliance with labels, on-site wastewater treatment design standards (on-site wastewater treatment systems, State livestock pollution control regulations, etc.).		208(b)(1)(F-K) 319
3.10	Habitat/Species Restoration Plan	Species Recovery Plans and Habitat Conservation Plans are provisions of the Endangered Species Act administered by the US Fish and Wildlife Service.  Some States have similar provisions established under State authorities.	States believe the Clean Water Act provides limited authority to address habitat conservation and endangered species recovery.	<b>Endangered Species Act</b>
3.11	Implement habitat and species restoration actions.	Actions are implemented by Federal, State and private sector organizations and individuals. Federal enforcement of such provisions is the responsibility of the US Fish and Wildlife Service or a State agency where the State has established the condition or action.		