

# AT ISSUE

A REPORT FROM NORTHWEST ENVIRONMENTAL ADVOCATES

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## RESTORING AMERICA'S RIVERS...25 YEARS LATE

*AT ISSUE: NWEA's negotiations on a federal committee put within reach the 25-year-old national goal to clean up water pollution as required by the Clean Water Act.*

**B**esieged by lawsuits in over 30 states demanding implementation of Clean Water Act programs that require the clean-up of polluted rivers, lakes, and streams across the country, the U.S. Environmental Protection Agency (EPA) established a federal advisory committee (FACA) two years ago to help jump start the program. Based on its unique expertise, Northwest Environmental Advocates (NWEA), with lawsuits in Oregon and Washington, was asked to participate. As with similar committees, the environmental representatives on this FACA were outnumbered by representatives of industry, land owners, municipalities, and government agencies. Nonetheless, NWEA and other environmental advocates negotiated recommendations that should dramatically change the way water pollution is regulated across the country. In particular, this program should help reform the highly inadequate regulation of so-called non-point sources, which contribute massive amounts of pollution from sources such as dairy farms, row crops, logging, and city streets.

The section of the Clean Water Act at issue — called Total Maximum Daily Loads (TMDLs) — requires states and EPA to clean up all waterbodies with unsafe levels of pollution, whether from sewage, toxic materials, or temperature. The TMDL program begins with the compiling of complete lists of such streams and lakes. For each listed waterway, the state must then develop a TMDL — a calculation of how much pollution the waterbody can tolerate without causing harm to fish, wildlife, and people. Next, the TMDL allocates portions of this total pollution load to different sources.

### COMMITTEE RECOMMENDS STRENGTHENING PROGRAM

Despite huge differences of opinion, the TMDL FACA Committee came to some pivotal agreements that represent major changes in the way the TMDL program currently is structured. One such agreement, and perhaps the Committee's most important, is that implementation of individual TMDLs is central to the program's success; currently the law does not explicitly define TMDLs to include implementation plans and enforcement mechanisms. The Committee's recommendations on implementation included extensive details that centered on controlling pollution from non-point sources such as farms, logging, grazing, and cities. Significantly, it recommended that new regulations should require states to submit implementation plans concurrently with TMDLs to EPA in order for the federal agency to approve the individual TMDLs prepared by the states. With states, such as Oregon and Washington, poised to spend 10 to 15 years developing thousands of TMDLs each, it is critical that these TMDLs,

along with their implementation plans, actively guide necessary pollution controls, rather than become exercises in mindless bureaucracy.

On another issue — a dispute concerning whether TMDLs apply to waters polluted solely by non-point sources — the FACA was divided but still was able to make significant recommendations. The Committee agreed on how TMDLs can restrict pollution from these diffuse sources. Controlling non-point sources is hampered by lack of knowledge about what steps are necessary to reduce their negative impact on streams and lakes. Because of this uncertainty, some argue that TMDLs should only demonstrate that some progress will be made towards meeting standards. This approach, termed "adaptive management" or "the iterative process," while it can be valid in the face of uncertainty, is also likely to be used by states and pollution sources as a delay tactic, perpetuating current practices that fail to control the runoff from logging, farming, etc.. The Committee disagreed with this point of view and confirmed the legal requirement that TMDLs must be designed to achieve water quality standards.

It went a step further by recommending that monitoring and revision of TMDLs should be a required part of the TMDLs themselves, to ensure that lack of knowledge does not slow or halt clean-up activities. The Committee also agreed that TMDLs should be designed to attain water quality standards expeditiously.

### COMMITTEE RECOMMENDS COMPREHENSIVE COVERAGE

Another important area of agreement was the Committee's recommendation that waters remain on the formal list of over-polluted and impaired waters, called the 303(d) list, until they are cleaned up. (Current policy calls for their removal from the list upon development of the TMDL.) This recommendation seeks to ensure that the political pressure to implement the TMDLs for their environmental benefit is as great as the political pressure to develop the TMDLs at the outset. The Committee largely agreed on other issues regarding the list of waters needing TMDLs; its report recommends that all impaired waters, regardless of the type of pollution or habitat problem, be placed on the list and TMDLs developed. Despite the politically-charged issue of western water rights, the Committee agreed that waters with insufficient instream flow to support fish should be included on the list of waters needing TMDLs.

As written, the law does not contemplate any exclusions from the list and, ultimately, the TMDL program. However, states and polluters continue to seek ways to exclude waters from this clean-up program, including waters that have pollution problems stemming from historic,

complicated, and difficult sources. This category includes everything from excess levels of banned pesticides and abandoned mines to hydroelectric dams and old clear cuts. The Committee agreed that all waters must be included on the list, with one unfortunate exception: air deposition. Widespread mercury contamination and acidification of lakes from coal-fired power plant emissions are but one of many examples of this significant source of water pollution.

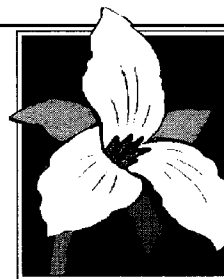
The TMDL FACA Committee also recommended additional protection for waters on the list needing TMDLs. While current law prohibits additional pollution discharges into rivers that already violate water quality standards, the requirement has been ignored by EPA and the states throughout the country. In Oregon, this prohibition was the basis of the state's rejecting a discharge permit to a proposed new pulp mill that would have added additional dioxin to an already over-contaminated Columbia River. The prohibition not only provides environmental protection for impaired waters but also increases the political will to develop TMDLs and clean up pollution.

If EPA accepts the significant changes to the TMDL program proposed by the TMDL FACA, Oregon and Washington will be required to ensure that together their TMDLs and implementation plans include a logical and seamless progression of steps starting with the quantitative, scientific analysis of the TMDL, to the details of non-point source controls that are sufficient to attain water quality standards.

## NWEA'S RESPONSE

NWEA was a strong advocate for the environment throughout the nearly two years the TMDL FACA met, and is now involved in EPA's development of new federal regulations and guidance for the TMDL program. These proposals are expected to go to the public for comments this winter. The strengthening of the TMDL program that is represented by the FACA Committee's recommendations will have a direct impact on whether the TMDL programs in Oregon and Washington succeed in restoring aquatic habitat and reducing pollution to levels that are safe for fish, wildlife, and people.

- For email updates from NWEA send an email to [nwea@advocates-nwea.org](mailto:nwea@advocates-nwea.org), with TMDL as subject.
- If you would like to obtain a copy of the TMDL FACA report, it is available at EPA's website: <http://www.epa.gov/owow/tmdl/advisory.html>



*Northwest Environmental Advocates' mission is to work through advocacy and education to protect and restore water and air quality, wetlands, and wildlife habitat and to stimulate the development of renewable energy sources to replace nuclear and fossil fuels in the Pacific Northwest.*

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