

Incorporating Environmental Justice Considerations into TMDL Development

Agenda

- Overview on EJ in TMDL development and implementation (15 min)
 - Miranda Chien-Hale (EPA HQ)
- Colorado's incorporation of EJ into TMDLs and an example underway in a rural part of the state (20 mins)
 - Barbara Bennett (CO)
- Working Across Government in Rhode Island to Incorporate EJ into TMDL Development (30 min)
 - Steve Winnett (EPA R1)
 - Jane Sawyers (RI)
 - Olivia Lopez (EPA RI)
- Q&A and Discussion (25 mins)

What is Environmental Justice ?

Table 1. Comparison of Two Foundational Definitions of Environmental Justice	
<p>Traditional EJ definition adopted by EPA:</p> <p>EJ is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.</p> <p>This goal will be achieved when everyone enjoys:</p> <ul style="list-style-type: none"> ● The same degree of protection from environmental and health hazards, and ● Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.⁹ 	<p>New EJ definition in EO 14096:</p> <p>EJ means the <u>just</u> treatment and meaningful involvement of all people, regardless of income, race, color, national origin, <u>Tribal affiliation, or disability, in agency decision-making and other federal activities</u> that affect human health and the environment so that people:</p> <ul style="list-style-type: none"> ● Are <u>fully protected from disproportionate and adverse human health and environmental effects</u> (including risks) and hazards, including those related to climate change, <u>the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers, and</u> ● Have equitable access to a healthy, <u>sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.</u>¹⁰

Source: <https://www.ecos.org/wp-content/uploads/2024/02/ECOS-EJ-Green-Report-2023.pdf>
 9 <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>
 10 <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nationscommitment-to-environmental-justice-for-all/>

EJ at EPA

- [EPA's Strategic Plan \(FY2022-FY2026\) goal focuses on advancing environmental justice and civil rights](#)
 - Objective 2.2 objective focuses on embedding EJ into EPA's Programs Policies, and Activities
- [2022 Update to EPA's Legal Tools to Advance Environmental Justice](#)
 - Highlights where there are opportunities to integrate EJ into the agency's policies, programs, and activities
- [CWA 303\(d\) Vision 2022-2032](#)
 - Environmental Justice Focus Area that includes opportunities to actively consider EJ in assessment, listing, TMDLs, and other restoration and protection plans

Overview of CWA Section 303(d) and TMDL

Under Clean Water Act (CWA) Section 303(d), states, territories, and authorized tribes are required to develop lists of waters that are either threatened or impaired by pollutants, for example metals, nutrients, and pathogens such as E. coli, and require, but do not yet have, a restoration strategy called a “Total Maximum Daily Load” in place.

For each water on the impaired waters list, the state, territory, or authorized tribe identifies the pollutant causing the impairment, when known. In addition, the state assigns a priority for the development of a Total Maximum Daily Loads (TMDL) (sometimes described as a “pollution budget”) based on the severity of the pollution and the sensitivity of the uses for that waterbody.

Guiding Questions for Practitioners to Consider



Who is being impacted by TMDL allocations?



What pollutants are TMDLs being written for?



Where are TMDLs prioritized for development?



When and how are communities with environmental justice concerns involved in the TMDL process?



How are TMDLs being developed and implemented to support water restoration and protection in communities with environmental justice concerns?

Who is being affected by TMDL allocations?

- States, territories and authorized Tribes exercise some discretion in deciding how to assign allocations when establishing TMDLs.

Opportunities

- When making allocation decisions it's important to consider if communities have been disproportionately affected by pollution.
- The EPA's Legal Tools to Advance Environmental Justice: Cumulative Impact Addendum states "**regulators could exercise their discretion when setting waste load allocations (for point sources) and load allocations (for nonpoint sources) to allocate a lesser share of pollutant loads to discharges in communities experiencing greater cumulative impacts.**"
- TMDLs establish the allowable pollutant load or cap— which is based on the water quality target, a margin of safety (MOS) and a plan to allocate the pollutant load and reduction among sources.

Opportunities

- Consider whether it is appropriate to assign a future growth allocation that allows for new or expanded pollutant sources.

What pollutants are TMDLs being written for?

- Are the TMDLs that are being prioritized target pollutants that communities with environmental justice concerns are affected by?
 - For example, if subsistence fishing is common in the community, the community may want TMDLs for mercury to be prioritized or perhaps there is a local swimming hole that residents without air conditioning rely on to cool off in that is contaminated with pathogens.

Opportunities

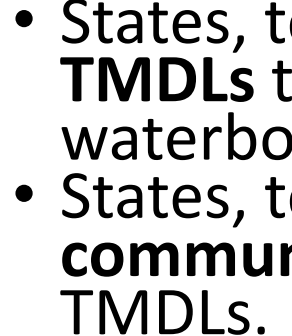
- The **public can often offer insights about their community** that may ensure the success of one pollutant reduction strategy over another. Ensure that there is a process in place that allows for this information to be considered in the development of the TMDL.



Where are TMDLs prioritized for development? Where is TMDL development occurring and where is it not?

- Prioritization of TMDLs is part of the 303(d) listing process.
 - The EPA's Legal Tools to Advance Environmental Justice: *Cumulative Impact Addendum* states that, "provided that states and authorized Tribes satisfy their statutory obligation of 'taking into account' those statutory factors, they could exercise their discretion to prioritize developing TMDLs to address human health impairments in and around communities where cumulative impacts are a concern."

Opportunities

- 
- States, territories and authorized Tribes assign a **priority for development of TMDLs** that takes into account the severity of pollution and sensitivity of the waterbody's uses and may also account for other factors (40 CFR 130.7(b)(4)).
 - States, territories and authorized Tribes can also **work to get input from communities with environmental justice concerns** on where to prioritize TMDLs.

When and how are communities with environmental justice concerns involved in the TMDL process?

Community members may know more about what is happening in their watersheds than state agencies and this knowledge can be a valuable aspect of TMDL development.

Opportunities

- Consider **establishing a stakeholder advisory group** that includes appropriate individuals for each TMDL project so the community feels meaningfully involved from the start and could influence the entire process.
- Make efforts to **ensure local stakeholders can attend meetings** (e.g. hold an in-person and virtual option and/or record the meeting and make it available online for people to access at their convenience, provide childcare services if possible).
- **Identify and build relationships with local leaders** and community members to understand how TMDLs can address their environmental justice concerns.
- **Create presentations and materials that are easily understood by all audiences** (where needed, provide information in other languages).
- **Coordinate with other environmental quality programs** conducting outreach and engagement to take a holistic approach and decrease the burden on the community.
- **Develop and implement a communications strategy** considering language needs and ability to access online materials. See this [compendium of Approaches to Clean Water Communication](#) for ideas.
- **Aim to help stakeholders learn about TMDLs** through this outreach so they can more meaningfully engage in the process.
- **Consider involving groups that are familiar with local watershed issues** that may provide valuable insights to TMDL development.
 - Although the State must establish and submit TMDLs to the EPA, other entities can be directly involved in decisions leading TMDL development.
- States, territories and authorized Tribes **must adhere to their own public participation process** for establishing TMDLs as described in their Continuing Planning Process document.
 - These plans could be updated to include an environmental justice lens.

How are TMDLs being developed and implemented to support water restoration and protection in communities with environmental justice concerns?

- TMDLs and other restoration plans have a greater likelihood of yielding successful implementation when they involve enhanced engagement, coordination with stakeholders, integration among programs and greater overall buy-in.
- States, territories and authorized Tribes describe or reference in TMDLs “reasonable assurance” for how pollutant loadings will be achieved. At minimum, this is done for TMDLs with both point and nonpoint source loadings.

Opportunities

- It is important to **engage appropriate stakeholders** in developing and carrying out implementation approaches.
- States, territories and authorized Tribes can work with stakeholders to **effectively track implementation activities and adjust implementation approaches** as needed.
- States, territories and authorized Tribes should also **strongly consider developing implementation plans** (a discretionary TMDL element).

Related Resources

-
- 2024 [Integrated Reporting Guidance Memo](#) for more on environmental justice and participatory science as it relates to the 303(d) program.
 - [How's My Waterway \(HMW\)](#): Integrated water quality reports and planning documents, including TMDLs, are available in this web application, which also includes other information on water quality at the community, state, territory, tribal and national level.
 - Environmental Justice Screening and Mapping Tool: [EJScreen](#) is an EPA environmental justice mapping and screening tool that provides a nationally consistent dataset and approach for combining environmental and demographic socioeconomic indicators.
 - [Recovery Potential Screening \(RPS\) Tool](#): Each state and U.S. territory has their own publicly available RPS tool, most containing over 300 watershed indicators (e.g. ecological, stressor, and social indicators). These indicators can be used to integrate environmental justice into TMDL prioritization and planning.
 - [ECHO](#): EPA's Enforcement and Compliance History Online website can be used to assess compliance with environmental regulations in your community.
 - [Watershed Academy](#)'s online training modules that look at the Clean Water Act through an environmental justice lens and explores the CWA as a guiding framework to highlight water equity challenges and opportunities in watershed management. Public version to be released summer of 2024!
- Other*
- [Environmental Justice State by State](#): A law library for community advocates, attorneys, scholars, and policymakers.
 - [Federal Environmental Justice Law Tracker](#): An Environmental Law at Harvard tool to provide up-to-date information on the administration's environmental justice commitments and progress made. These include administrative and regulatory actions across the whole of government, and at specific agencies
 - [Third Party TMDL Development Tool Kit Water Environment Federation](#) -- the involvement of appropriate nongovernmental entities in TMDL development may also increase the degree of public understanding of TMDLs and water quality protection issues by providing more opportunities for public involvement and education.