

Appendix B

New Hampshire's Long-term Vision for Implementing CWA 303(d) Program Responsibilities

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Purpose

The primary purpose of this document is to solicit comments on surface waters that the New Hampshire Department of Environmental Services (NHDES) has selected to complete a Total Maximum Daily Load (TMDL) study, a TMDL alternative plan or a protection plan by the end of federal fiscal year 2022 (see Table 1).

Background

Since 2011, the U.S. Environmental Protection Agency (EPA) has been working collaboratively with the States to develop the framework for a new, long-term “Vision” (through federal fiscal year 2022) for assessing, restoring and protecting surface waters under the Clean Water Act Section 303(d) Program¹. Rather than focusing solely on the development of Total Maximum Daily Load (TMDL) studies to guide the restoration and protection of surface waters included on the Section 303(d) list of impaired waters, the new Vision recognizes that there is no “one size fits all” solution and allows states to develop tailored strategies to implement their CWA 303(d) program responsibilities within the context of their water quality goals. According to EPA guidance², the “Vision is not a requirement and does not alter State and EPA responsibilities or authorities under the CWA Section 303(d) regulations.” Rather “it is a new lens through which to view the State and EPA co-led process to implement these responsibilities and authorities.” Therefore, States have the flexibility to decide how best to implement some or all of the Vision recommendations to fulfill these responsibilities.

The Vision guidance³ includes the following six key Goal Statements:

Assessment -- Identify the extent of CWA section 303(d) impairments through site-specific assessments.

Prioritization -- Review and prioritize waters for restoration and protection in the biennial integrated report.

Protection -- Identify protection planning priorities of healthy waters to prevent impairments.

Alternatives -- Identify potential alternative approaches to consider where adaptive management may be better suited to meeting water quality goals than traditional TMDL development.

Integration -- Coordinate with Federal, State and Local partners to achieve the water quality goals.

Engagement -- Actively engage the public and other stakeholders to improve and protect water quality and enhance the understanding of the TMDL program objectives.

NHDES’ current water quality restoration and protection efforts implement these goals to various degrees. For example, NHDES engages stakeholders through the issuance of notices for public comment on CWA Section

¹ See <https://www.epa.gov/tmdl/new-vision-cwa-303d-program-updated-framework-implementing-cwa-303d-program-responsibilities>.

² See https://www.epa.gov/sites/production/files/2015-07/documents/acwa_ga.pdf.

³ See https://www.epa.gov/sites/production/files/2015-07/documents/vision_303d_program_dec_2013.pdf.

303(d) Lists, TMDLs, and the Consolidated Assessment and Listing Methodology (CALM)⁴. With regards to the Alternatives Goal, several alternative approaches⁵ to TMDLs are addressed in the CALM. To achieve the Protection Goal, the NHDES CWA Section 319 Nonpoint Source program continues to award grant dollars for the protection of high quality surface waters. Finally, with regards to the Prioritization Goal, please see the following section.

Surface water TMDL selection process and results

Over the next several years, NHDES plans to primarily focus TMDL development on surface waters listed on the State's 303(d) list that are impaired for two parameters, 1) bacteria in all waterbody types, and 2) lakes that are impaired due to excess nutrients (i.e., phosphorus). Bacteria impaired waters were selected because high bacteria levels can be an indicator of pathogens and pose a public health risk. Lakes impaired because of excessive phosphorus can also be a health concern to humans as well as animals, because it can lead to potentially toxic cyanobacteria blooms. Elevated phosphorus levels can also cause excessive algal blooms which can be fatal to fish and other aquatic life due to depletion of dissolved oxygen when the dead algae decompose. Another reason for these selections is that NHDES currently has the expertise and resources to perform these types of studies. For example, prior to 2017, NHDES completed bacteria TMDLs for 514 surface waters and nutrient (phosphorus) TMDLs for 28 lakes. To obtain stakeholder input in the prioritization process, NHDES intends to solicit comments on the list of surface waters planned for TMDL, alternative or protection plan development at least every two years when the draft 303(d) list is issued for public comment. A copy of the selected waterbodies will also be made available on the NHDES TMDL website⁶.

Table 1 shows the surface waters that NHDES has selected for TMDL development by September 30, 2022⁷. As shown, NHDES plans to develop TMDLs for four lakes that are impaired for phosphorus from 2017 through 2022. At the time this document was prepared, there were no bacteria impaired waters listed on the State's 303(d) list (which is why no bacteria TMDLs are shown in Table 1) and there were 56 lakes shown as impaired for phosphorus. The nutrient impaired lakes were prioritized based on the severity of impairment and the amount of additional data needed to develop the TMDL. In addition, NHDES considered the potential for stakeholder involvement to lead restoration plan implementation efforts, such as the existence of a local watershed or monitoring group. Should future 303(d) lists include bacteria impaired surface waters, NHDES may add these to Table 1 if there are adequate resources to complete the TMDLs by September 30, 2022.

Table 1 is currently limited to impaired surface waters that NHDES intends to complete TMDLs by the end of federal fiscal year 2022. In the future, NHDES may also include waters with alternative plans for impaired waters and protection plans for high quality waters. Examples of alternative plans are the Watershed Based Plans

⁴See <http://des.nh.gov/organization/divisions/water/wmb/swqa/2014/documents/2014-calm.pdf> for the NH Consolidated Assessment and Listing Methodology which describes the methodology used to list waters on the CWA Section 303(d) list of impaired waters that require a TMDL.

⁵ Examples of alternative approaches to TMDLs include placing a waterbody in Category 4b or keeping the waterbody on the 303(d) List (Category 5), but assigning a lower priority for TMDL development as alternatives (such as Watershed Based Plans prepared under the section 319 Nonpoint Source program) are developed and implemented.

⁶ The NHDES TMDL website is at <http://www.des.nh.gov/organization/divisions/water/wmb/tmdl/index.htm>.

⁷ The end date of September 30, 2022 is based on EPA guidance for a new water quality tracking measure called WQ-27 (see page 38 – 39 at https://www.epa.gov/sites/production/files/2016-11/documents/fy_2017_nwpg_water_quality_measure_definitions.pdf).

(WBPs) developed for the CWA section 319 Nonpoint Source program. From 2002 through 2016, WBPs have been developed on 53 surface waters, and three WBPs are currently under development.

Table 1 Surface Waters Selected for TMDL, Alternative or Protection Plan Development by 9/30/2022

Assessment Unit Identification Number	Waterbody Name	Town	Water Quality Impairment	Development Schedule (subject to change)
NHLAK700061102-03-01	Captain Pond	Salem	Total Phosphorus	Monitoring to be conducted in 2017 (weather permitting). TMDL anticipated to be completed in 2018.
NHLAK600030802-03-01	Phillips Pond, Sandown	Sandown	Total Phosphorus	Monitoring to be conducted in 2018 (weather permitting). TMDL anticipated to be completed in 2019.
NHLAK700060605-04-01	Haunted Lake (aka Scobie Pond)	Francestown	Total Phosphorus	Monitoring to be conducted in 2019 (weather permitting). TMDL anticipated to be completed in 2020.
NHLAK801060105-04-01	Mascoma Lake	Enfield	Total Phosphorus	Monitoring to be conducted in 2020 (weather permitting). TMDL anticipated to be completed in 2021.