

The State Environmental Policy Act (SEPA) Reviews and TMDLs.

What is a TMDL?

A Total Maximum Daily Load, or TMDL, is a locally focused scientific study that calculates the pollution a waterbody can receive and still meet water quality standards. All TMDLs have five main parts:

1. An identification of the type, amount, and sources of water pollution in a waterbody.
2. A determination of how much the pollutant needs to be reduced or eliminated to achieve clean water.
3. An allocation showing how much pollution each source will be allowed to discharge.
4. A strategy to meet those allocations.
5. A monitoring plan to make sure the water is getting cleaner as the TMDL is carried out.

How do TMDLs relate to land use?

Land use practices directly affect the health and quality of our local waters. A TMDL includes a study of the land surrounding an impaired waterbody and identifies pollution causing activities and land uses. It also includes recommendations for reducing and preventing the pollutants from entering the impaired waterbody. Therefore, land use planners and project managers can use TMDLs to help prevent new land uses from violating water quality standards.

Why should TMDLs be used in a SEPA review?

A TMDL Provides Locally Relevant Scientific Studies and Evidence

- A TMDL informs threshold determinations, scoping, and Environmental Impact Statement (EIS) development in the SEPA review process.
- A TMDL provides scientific evidence that existing land uses are contributing to a violation of the water quality standards in a specific watershed.
- A TMDL provides information about the existing condition – that there are at-risk systems that will be very sensitive to any more impact no matter how small.

How can I get more information?

To learn more about TMDLs visit

<http://www.ecy.wa.gov/programs/wq/tmdl/overview.html>

To learn more about applying TMDLs to SEPA, contact Todd Bolster at (360) 407- 6551 or email: tbol461@ecy.wa.gov.

SEPA lead agencies may also contact the Ecology TMDL lead to identify and understand water quality concerns within their watershed. You can find the correct Ecology TMDL lead by visiting the web at: <http://www.ecy.wa.gov/programs/wq/tmdl/watershed>

Special accommodations:

If you need this publication in an alternate format, call the Shorelands and Environmental Assistance Program at 360-407-6096. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

SEPA Rules Require Analysis of Environmental Impacts

- SEPA lead agencies and reviewers are required to look at important environmental impacts and alternatives and to document that the necessary environmental analyses have been made.

SEPA Statute Requires Collaboration

- SEPA lead agencies have an obligation to involve agencies that have jurisdiction or special expertise about the environmental impact involved.
- Reviewing a TMDL and following up with the Department of Ecology when questions arise, can help meet this requirement and ensure the environmental analysis is accurate.

State and Federal Law Prohibits Violations of the Water Quality Standards

- The Antidegradation law prohibits human activities from contributing to a violation of the water quality standards, unless otherwise provided for by the law.
- SEPA lead agencies can avoid violations of the Antidegradation laws by consulting TMDLs and adequately considering the impact of the proposed action on water quality.

Considering TMDLs Encourages Defensible Decision-Making

- Using TMDLs to make SEPA determinations allows project leads to make informed and appropriate land use decisions that are responsive to local water quality concerns and are legally defensible.
- Considering water quality impacts up-front in the SEPA decision-making process, will help prevent the project from violating water quality standards in the future.
- Not considering a relevant TMDL before making a decision may increase the chances of administrative review and pollution enforcement proceedings.

How should TMDLs be used in a SEPA review?**Making SEPA Threshold Determinations When Local Waters Have a TMDL**

If the action under review is known to produce the pollutant in the TMDL, then the project may have a significant adverse environmental impact. This is because the waterbody studied in the TMDL is already exceeding its pollution limits—and unless the TMDL has an allocation for growth—it cannot legally receive any more of that pollutant.

New contributions of the pollutant will:

- Violate the water quality standards.
- Further compromise the natural system's capacity to function and hinder its ability to recover.
- Continue to interfere with the water's protected uses.

This means that any proposed land use, likely to cause the pollutant, should be recognized as having "significant impacts." Having "significant impacts" is a valid reason for issuing a Mitigated Determination of Nonsignificance (if the significant impacts are reduced to a nonsignificant level) or issuing a Determination of Significance.

Mitigated Determination of Nonsignificance

A Mitigated Determination of Nonsignificance would be appropriate if the pollution could be prevented by using best management practices. These might include stormwater management techniques, meeting low impact development standards, or downsizing foot prints to avoid stormwater generation. To issue a Mitigated Determination of Nonsignificance, the agency must be confident the identified mitigation will be performed and will be effective (that often involves the applicant committing to the mitigation or the proposal changes). A TMDL contains recommendations about how to reduce the pollutants, and may be helpful in identifying mitigation or conditions.

Determination of Significance

A Determination of Significance would be appropriate if the potential impacts of a proposal are unknown, or are likely to be significant even after considering the applicant's proposed mitigation. In these cases, an Environmental Impact Statement (EIS) is necessary. Information in the TMDL can be used for both **scoping** and producing an **EIS**.

Scoping: A TMDL can help define the scope of environmental impact analysis before preparing an EIS. For instance, when conducting scoping, a lead agency may review a TMDL to find special local water quality concerns associated with that land use. This information highlights a proposal's potential for serious water quality impacts and can influence the alternatives and mitigation that may be considered.

EIS: A TMDL can help characterize water quality impacts that may result from the proposed land use. The lead agency may choose to identify the TMDL and associated science in the EIS as existing information (incorporating by reference). Doing so will ensure the proposal's water quality issues:

1. Become part of the record.
2. Are appropriately considered.
3. Influence alternatives, mitigation, and final decisions on the proposal.

Does a TMDL apply if the project or action is not adjacent to the water?

Yes, because nonpoint source pollutants travel through indirect pathways to the impaired waters. For example, intermittent creeks, tributary streams, roads and roadside ditches, ground water, and storm sewers, allow pollution to travel to water courses on the impaired waters list. Therefore, projects and actions "upstream" of the impaired waters and in the upper watersheds are likely to contribute to the water pollution problem.

How do I know if a TMDL applies to my area?

If you want to find out if your area has a TMDL, you can:

1. Visit the Ecology website at <http://www.ecy.wa.gov/programs/wq/tmdl/watershed>
2. Contact Todd Bolster at Ecology's headquarters at (360) 407- 6551 or email: tbol461@ecy.wa.gov