

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460**



OFFICE OF
WATER

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On November 12, 2010, the Environmental Protection Agency (EPA) issued a memorandum entitled "Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs". The memorandum is available at: http://www.epa.gov/npdes/pubs/establishingtmdlwla_revision.pdf. The 2010 memorandum reflects the considerable experience States and EPA have obtained in developing TMDLs and stormwater permits since 2002.

A number of stakeholders expressed concern that they did not have the opportunity to provide input before the memorandum was issued and have asked questions about the substance of the memorandum. EPA is soliciting comments on the 2010 memorandum and will accept comments until May 16, 2011. EPA plans to make a decision by August 15, 2011 to either retain the memorandum without change, to reissue it with revisions, or to withdraw it.

A key issue addressed in the 2010 memorandum is the feasibility of including numeric effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits for stormwater discharges. The 2002 memorandum stated that EPA expected that numeric effluent limitations for stormwater discharges would be rarely used. The guidance provided in the 2010 memorandum recognizes developments over the past eight years and reflects current use of numeric limitations in stormwater permits. EPA has found that the use of numeric effluent limitations no longer is a novel or unique approach to stormwater permitting. As such, the 2010 memorandum reflects EPA's view that there has been an incremental evolution of the stormwater permits program and the TMDL program that has been occurring since 2002, such that numeric effluent limitations are no longer as rare as they were in 2002.

Some stakeholders are concerned that the 2010 memorandum can be read as advising NPDES permit authorities to impose end-of-pipe limitations on each individual outfall in a municipal separate storm sewer system. In general, EPA does not anticipate that end-of-pipe effluent limitations on each municipal separate storm sewer system outfall will be used frequently. Rather, the memorandum expressly describes "numeric" limitations in broad terms, including "numeric parameters acting as surrogates for pollutants such as stormwater flow volume or

percentage or amount of impervious cover.” In the context of the 2010 memorandum, the term “numeric effluent limitation” should be viewed as a significantly broader term than just end-of-pipe limitations, and could include limitations expressed as pollutant reduction levels for parameters that are applied system-wide rather than to individual discharge locations, expressed as requirements to meet performance standards for surrogate parameters or for specific pollutant parameters, or could be expressed as in-stream targets for specific pollutant parameters. Under this approach, NPDES authorities have significant flexibility to establish numeric effluent limitations in stormwater permits.

EPA emphasizes that the discussion in the November 12, 2010 memorandum is intended solely as guidance to regulatory authorities as they implement CWA Programs. The statutory provisions and EPA regulations described in this document contain legally binding requirements. This memorandum is not a regulation itself, nor does it change or substitute for those provisions and regulations. Thus, it does not impose legally binding requirements on EPA, States, or the regulated community, nor does it confer legal rights or impose legal obligations upon any member of the public. In the event of a conflict between the discussion in this document and any statute or regulation, this document would not be controlling.

The general description provided here may not apply to a particular situation based upon the circumstances. Interested parties are free to raise questions and objections about the substance of this guidance and the appropriateness of the application of this guidance to a particular situation. EPA and State permit writers and other decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from those described in this guidance where appropriate.

Comments on the November 12, 2010, memorandum should be submitted by May 16, 2011 by either:

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