The Florida Senate

Interim Project Report 2003-136 *January 2003*

Committee on Natural Resources | Senator James E. "Jim" King, Jr., President

REVIEW OF PROGRESS IN IMPLEMENTING THE TOTAL MAXIMUM DAILY LOAD (WATER QUALITY IMPROVEMENT) PROGRAM BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUMMARY

The Total Maximum Daily Load Program is the most profound and comprehensive water quality improvement program implemented since the passage of the 1983 Water Quality Assurance Act. In 1999 the Florida Legislature enacted s. 403.067, F.S., the Watershed Protection Act, in response to a federal lawsuit, (and the subsequent consent decree,) that was filed against the Environmental Protection Agency for its failure to enforce the Total Maximum Daily Load provisions in the federal Clean Water Act. A Total Maximum Daily Load or TMDL is the amount of each pollutant a water body can receive without violating water quality standards. The TMDLs are intended to be a quantitative analysis of water bodies where one or more water quality standards are not being met, and to identify management strategies necessary to attain those water quality standards.

As part of the Watershed Protection Act, the Department of Environmental Protection (DEP) was required to establish a priority ranking and a schedule for analyzing impaired waters. In addition, the DEP was required to adopt by rule a methodology for determining those water bodies that are impaired. The Impaired Waters Rule, ch. 62-303, F.A.C., was adopted by the Florida Environmental Regulation Commission on April 26, 2001, and was subsequently challenged. The rule finally became effective on June 10, 2002, after a decision by an administrative law judge was rendered supporting the validity of the rule. The rule contemplates a science-based impaired waters list. A Technical Advisory Committee was appointed by DEP to assist in developing the rule.

To implement the Impaired Waters Rule, the DEP has adopted a watershed approach for identifying such waters. Based on the U.S.G.S. Hydrologic Unit Codes, the state's 52 major watersheds were divided into 30 groups of basins, five in each of the six DEP district offices. A basin rotation schedule was provided when the TMDL schedule for Florida was set in the Consent Decree between EPA Region 4 and EarthJustice. The first set of verified impaired waters are for the waters in the Group 1 watersheds which include St.Marks/Ochlockonee River Basin, Suwannee River Basin, Tampa Bay, Ocklawaha River Basin, Lake Okeechobee Basin, and the Everglades West Coast Basin.

To date, very few TMDLs have been established for Florida waters. Each water segment for which a TMDL will be established will differ in its complexity and the contaminants for which a TMDL will be set.

According to the Consent Decree, a five-phase watershed management approach was provided for developing TMDLs with a 13-year schedule for completion with the State of Florida having the primary responsibility for the establishment of the TMDLs. However, if Florida fails to submit to EPA a TMDL for water quality limited segments according to the schedule that was attached to the agreement, then within 9 months EPA would propose a TMDL for those water segments. Further, the Consent Decree mandated that if at the end of the 13-year period (2012) Florida failed to establish the TMDLs, then EPA would assume responsibility for the establishment of TMDLs for Florida.

Of particular concern to Florida and the DEP appears to be the costs associated with the development of TMDLs and the basin management plans. Also, DEP has stated in its Report to the Governor and the Legislature on the allocation of Total Maximum Daily Loads in Florida that one of the biggest challenges of the TMDL Program and the restoration of Florida Waters will be finding the funding necessary to pay for the restoration activities. As indicated in the agency's

report, these costs could run into the billions of dollars. These costs would include retrofitting urban areas to reduce stormwater runoff and for converting areas with septic tanks to central wastewater treatment plant systems, along with other strategies.

The Florida Stormwater Association in a recent position paper expressed its concern that the state of Florida is moving to comply with the Consent Decree without a clear understanding of potential costs. Their concern is that over the next 12 years, the amount of money needed to complete the program's tasks will far exceed the department's currently available financial resources.

Lawsuits filed by several Florida environmental organizations relating to the state's impaired waters list could delay and hamper the department's efforts to timely implement the TMDL program. It is likely that additional lawsuits will be filed when TMDLs are established for a waterbody because of the potential impacts on existing and future permittees using the waterbody.

BACKGROUND

As a result of a lawsuit brought by several Florida environmental groups in 1998 against the federal Environmental Protection Agency (EPA) for its failure to enforce the Total Maximum Daily Load provisions in the Federal Clean Water Act, a Consent Decree was issued in 1999 that required the EPA and the Florida Department of Environmental Protection to get underway implementing these provisions. In 1999, in response to that lawsuit and the subsequent settlement agreement, the Legislature enacted s. 403.067, F.S., the Watershed Restoration Act, to provide for the establishment of Total Maximum Daily Loads (TMDLs) for pollutants of impaired waters as required by the federal Clean Water Act. The Department of Environmental Protection (DEP) has since adopted its impaired waters rule and is proceeding in its efforts to identify waters that are impaired and will require TMDLs to be established and establishing TMDLs for those waterbodies on a priority basis.

METHODOLOGY

Information obtained for this report came from a variety of sources including the EPA's web site, DEP's web site for the Total Maximum Daily Load (TMDL) Program, and the Florida Stormwater Association. Staff also sent a questionnaire to the DEP. The questionnaire was designed to solicit information for review and analysis on the department's activities as mandated by s. 403.067, F.S. Committee staff met with program officials at the DEP and others with statutory TMDL responsibilities to discuss the progress in implementing the 1999 law. Meetings were also held with private organizations to determine their concerns about how the program is being implemented and its potential impacts on public and private entities. Finally, some history and background information about the TMDL Program was obtained from the report, *"Cleaning Up Florida Water"* by the Florida Public Research Interest Group.

FINDINGS

In 1998, several Florida environmental groups filed a lawsuit against the U.S. Environmental Protection Agency (EPA) for its failure to enforce the Total Maximum Daily Load provisions in the federal Water Pollution Control Act of 1972 (commonly referred to as the Clean Water Act).[1] Section 305(b) of the Clean Water Act requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. Those waters that are deemed "impaired" or do not meet the specific pollutant limits for their designated uses, must be submitted to the EPA under s. 303(d) of the Clean Water Act. States must then develop Total Maximum Daily Loads (TMDLs) for each pollutant that exceeds the legal limits for that waterbody. If the states fail to develop TMDLs, then EPA is required to do so. Florida submitted a comprehensive update of the 303(d) list in 1998. This list must be updated every two years; however the EPA decided to waive the update requirement for the year 2000 because the agency was in the process of formulating new rules for the TMDL process. The required update for 2002 was submitted to EPA on October 1, 2002.

What is a Total Maximum Daily Load (TMDL)? In essence, TMDLs establish the amount of each pollutant a water body can receive without violating water quality standards, and provide for wasteload allocations, load allocations, and a margin of safety to account for uncertainties. The TMDLs are intended to be a quantitative analysis of water bodies where one or more water quality standards are not being met, and to identify management strategies necessary to attain those water quality standards. Wasteload allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and

[1] Florida Wildlife Federation, Inc., et al. v. Browner, No. 4:98CV356 (N.D. Fla.)

sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources and natural background. Nonpoint sources include runoff from farms, urban areas, and natural sources, such as decaying organic matter and nutrients in soil.

According to the EPA's guidance on TMDL submittals, the TMDL submittals must include ten elements:

1. The name and geographic location of the impaired or threatened water body for which the TMDL is being established and the names and geographic locations of the water bodies upstream of the impaired water body that contribute significant amounts of the pollutant for which the TMDL is being established.
2. Identification of the pollutant for which the TMDL is being established and quantification of the maximum pollutant load that may be present in the water body and still ensure attainment and maintenance of water quality standards.
3. Identification of the amount or degree by which the current pollutant load in the water body deviates from the pollutant load needed to attain or maintain water quality standards.
4. Identification of the source categories, source subcategories, or individual sources of the pollutant for which the wasteload allocations and load allocations are being established.
5. Wasteload allocations to each industrial and municipal permitted point source discharging the pollutant for which the TMDL is being established; wasteload allocations for stormwater, combined sewer overflows, abandoned mines, combined animal feeding operations, or any other discharges subject to a general permit may be allocated to categories of sources.
6. Load allocations to nonpoint sources of a pollutant, including atmospheric deposition or natural background sources.
7. A margin of safety expressed as unallocated assimilative capacity or conservative analytical assumptions used in establishing the TMDL.
8. Consideration of seasonal variation and high and low flow conditions such that water quality standards for the allocated pollutant will be met during all seasons of the year and during all design flow conditions.
9. An allowance for future growth which accounts for reasonably foreseeable increases in pollutant loads.
10. An implementation plan, which may be developed for one or a group of TMDLs.

The Department of Environmental Protection (DEP) is the lead agency in administering and coordinating the implementation of the TMDL program and is required to coordinate with local governments, water management districts, the Department of Agriculture and Consumer Services, local soil and water conservation districts, environmental groups, regulated interests, other appropriate state agencies and affected pollution sources in developing and executing the requirements of s. 403.067, F.S. The DEP is required to establish a priority ranking and a schedule for analyzing such waters. In addition, the DEP was required to adopt by rule a methodology for determining those water bodies that are impaired.

The Impaired Waters Rule, ch. 62-303, F.A.C., was adopted by the Florida Environmental Regulation Commission on April 26, 2001, and was subsequently challenged. The rule finally became effective on June 10, 2002, after a decision by an administrative law judge was rendered supporting the validity of the rule. This allowed the DEP to begin officially identifying impaired waters that are in need of restoration. The rule contemplates a science-based impaired waters list. To assist the DEP in developing the rule, the department appointed a Technical Advisory Committee. This committee consisted of experts in aquatic modeling, limnology, hydrology, analytical chemistry, statistics, and lake, wetland, and estuary ecology, and included representative from the EPA, the Water Management Districts, Florida State University and the University of Florida, the Florida Marine Research Institute, private consulting firms, DEP, and the environmental community. The committee met for a year to develop the basic methodology for the rule. During this time, five public meetings and two public workshops were held.

To implement the Impaired Waters Rule, the DEP has adopted a watershed approach for identifying such waters. Based on the U.S.G.S. Hydrologic Unit Codes, the state's 52 major watersheds were divided into 30 groups of basins, five in each of the six DEP district offices. These groupings provide a way to use the limited financial resources of DEP on a priority basis.

A basin rotation schedule was provided when the TMDL schedule for Florida was set forth in the Consent Decree between EPA Region 4 and EarthJustice. The first set of verified impaired waters are for the waters in the Group 1 watersheds which

include St.Marks/Ochlockonee River Basin, Suwannee River Basin, Tampa Bay, Ocklawaha River Basin, Lake Okeechobee Basin, and the Everglades West Coast Basin.

The EPA has requested that as part of the state's submission of their 303(d) lists that they also prepare an Integrated Report that integrates federal reporting requirements and is a comprehensive assessment of the entire state. As part of the Integrated Report, the DEP will assess all of the state's water bodies and place them in one of five categories:

- **Category 1—** Attained all designated uses.
- **Category 2 —** Attained some of the designated uses.
- **Category 3a —** No data and information to determine if any designated use is attained.
- **Category 3b —** Some data and information but not enough to determine if any designated use is attained.
- **Category 3c —** Enough data and information to determine if any designated use is attained pursuant to the Planning List methodology.
- **Category 4 —** Impaired for one or more designated uses but does not require the development of a TMDL
    - TMDL has been completed.
    - Impairment is not caused by a pollutant.
    - Pollution Control Measure.
- **Category 5—**The water quality standard is not attained. This category constitutes the basin specific verified list of impaired waters that will be adopted by the DEP Secretary and Submitted to EPA as Florida's 303(d) list.

To date, very few TMDLs have been established for Florida waters. Each water segment for which a TMDL will be established will differ in its complexity and the pollutants for which a TMDL will be set. The pollutants causing the impairment, called the "pollutants of concern," are included for each water segment listed on the 303(d) list. In Florida, the most commonly listed pollutants of concern are nutrients, sediments, and coliforms. In some cases, waters may be impaired due to "pollution" resulting from physical alterations to the water body (like dams or channelization) or changes in the flow of the water. TMDLs will not be developed for impairment due to pollution that is not the result of pollutant discharges.[2]

The establishment of a TMDL will involve largely the use of computer modeling techniques. To assist in gathering the necessary data for the modeling, the DEP will rely on intensive survey monitoring by the department's Division of Water Resource Management, DEP district staff, and assistance from local governments and the water management districts. The Watershed Management Program is based on a five-phase cycle that rotates through Florida's basins every five years. Those phases are as follows:

- **Phase 1—***Initial Basin Assessment.* Establishment of the general ecological health of the basin, identifying water bodies requiring restoration, protection, and TMDL development, identifying sources of pollution, developing a coordinated monitoring plan, and developing consensus-based water resource protection and restoration goals.
- **Phase 2—***Coordinated Monitoring*. Supplement existing data to further characterize basin condition, investigate areas with identified or potential water quality problems, evaluate the effectiveness of management action, and collect data for TMDL development.
- **Phase 3—***Data Analysis and TMDL Development*. Document the water quality data collected in phase 2, noting any changes in the conclusions of the initial basin assessment, provide a more detailed assessment of major pollutant sources, including the quantification of nonpoint source loadings, and conduct and document TMDLs, as needed.
- **Phase 4—***Basin Management Plan Development*. Work with local stakeholders to develop a Basin Management Plan to specify how established goals will be achieved by recommending management activities, establishing who is responsible for implementation, establishing a schedule for implementation, and noting how the effectiveness of the plan will be assessed.
- **Phase 5—***Begin Implementation of Basin Management Plan.* Begin implementation of the Basin Management Plan and associated water resource protection and restoration

[2] *Report to the Governor and the Legislature on the Allocation of Total Maximum Daily Loads in Florida*, Bureau of Watershed Management, Division of Water Resource Management, Department of Environmental Protection, February 1, 2001.

efforts, including development and implementation of BMPs, habitat protection and restoration activities, environmental infrastructure improvements, and issuance of permits.

The establishment of the TMDLs represents Phase 3 of the state's phased approach. In Phases 4 and 5, the load reduction allocations will be determined and a Basin Management Action Plan (BMAP) will be developed so that specific pollution reduction activities can be implemented.

Similarly, the water management districts have the responsibility for establishing Pollution Load Reduction Goals, or PLRGs, for Surface Water Improvement and Management (SWIM) waters in the district. While a PLRG focuses on pollution reduction from stormwater and nonpoint sources, a TMDL addresses pollution reduction from both point and nonpoint sources. In many cases, the PLRG will serve as the basis for a TMDL. However, many of the waters on the Impaired Waters List are not SWIM waters and therefore will not have a PLRG established.

As stated in materials published by the DEP's Division of Water Resource Management, the overall objectives of the TMDL program are to:

- Identify and quantify all point and nonpoint source loadings to a water body of each pollutant impairing water quality.
- Use computer modeling to determine the assimilative capacity of the water body.
- Allocate the load to all sources, both point and nonpoint sources. This allocation may be a part of a basin management plan or part of ongoing management actions in the area.
- Monitoring of water quality will be conducted to determine the effectiveness of management activities in addressing impaired water quality.

As indicated earlier, the TMDL development schedule for Florida was established in a Consent Decree between the EPA Region 4 and EarthJustice.[3] The consent decree provides for a five-phase watershed management approach to developing TMDLs with a 13-year schedule for completion. The parties understand that the State of Florida has the primary responsibility for the establishment of TMDLs pursuant to s. 303(d) of the Clean Water Act. However, if Florida fails to submit to EPA any TMDL for a water quality limited segment according to the schedule that was attached to the agreement, then EPA would propose a TMDL for those water segments no later than 9 months after the final date Florida was to have submitted those TMDLs to EPA. Further, the Consent Decree mandated that if at the end of the 13-year period (2012) the State of Florida failed to establish the TMDLs, EPA would then have the responsibility to establish the TMDLs for Florida. Under the terms of the Consent Decree, most of the Group 1 verified impaired waters that were on the 1998 303(d) list are scheduled for TMDL development in 2002. If the DEP does not develop TMDLs for this group by December 31, 2002, EPA has nine months to develop those TMDLs. However, the DEP and the EPA have cooperatively developed a list of Group 1 TMDLs that each will be responsible for completing before September 2003. Under this agreement, most of the water segments that EPA will be responsible for have TMDLs done for them, are not impaired, or there is insufficient data upon which to develop a TMDL.

The time which is required to develop a TMDL will vary due to the complexity of the water body. In a relatively simple stream, a TMDL may take about one month to complete while in a more complex aquatic system such as an estuary or waterbodies with a significant ground water to surface water interaction, it could take up to a year to complete.

Not all of the Group 1 water bodies will have TMDLs completed during the next year. Some will be addressed in the second cycle of the rotating basin grouping approach.

The development of basin management plans is scheduled for Phase 4 of the process. The DEP has indicated that in order to assure that stakeholders in the affected watersheds have adequate input, the department will convene stakeholder groups prior to the development of such plans. The DEP has indicated that it will "cluster" the development of TMDLs and the subsequent basin management plans as follows:

Ocklawaha Basin

Lake Apopka (3 water bodies)
3 segments for nutrients
1 segment for dissolved oxygen

Lake Wauberg (1 water body)
1 segment for nutrients

Upper Ocklawaha Chain of Lakes (11 water bodies)
11 segments for nutrients

[3] The actual consent decree is contained in the order *Florida Wildlife Federation, Inc., et al., v. Browner, et al.*, No. 4:98CV356-WS (N.D. Fla.)

3 segments for un-ionized ammonia
1 segment for dissolved oxygen

Ocklawaha River Downstream of Lake Griffin (1 water body)
2 segments for nutrients
2 segments for dissolved oxygen
1 segment for total coliforms

Hatchet Creek (1 water body)
1 segment for total coliforms
1 segment for iron

Hogtown Creek (1 water body)
1 segment for fecal coliforms

Newmans/Lochlosa/Orange (4 water bodies)
4 segments for nutrients
1 segment for dissolved oxygen

Palatlakaha River (1 water body)
1 segment for dissolved oxygen

Tumbling/Sweetwater/Alachua Sink (3 water bodies)
2 segments for fecal coliforms
1 segment for total coliforms
1 segment for nutrients

Suwannee River Basin

Fenholloway River (1 water body)
1 segment for dissolved oxygen
1 segment for BOD
1 segment for coliforms

Suwannee River (3 water bodies)
3 segments for dissolved oxygen

Santa Fe River (1 water body)
2 segments for nutrients
2 segments for dissolved oxygen

Lake Okeechobee Basin

Lake Okeechobee tributaries (9 water bodies)
9 segments for nutrients
3 segments for dissolved oxygen

St. Marks/Ochlockonee River Basins

Lake Lafayette and Tributaries (2 water bodies)
1 segment for nutrients
1 segment for dissolved oxygen
1 segment for total coliforms
1 segment for fecal coliforms

Everglades West Coast (Not due until 2007—may complete in 2002)

Estero Bay Tributaries (4 water bodies)
2 segments for nutrients
2 segments for dissolved oxygen
1 segment for lead

Tampa Bay (None due until 2003)

The DEP estimates that the process to develop the basin management plans will take up to 24 months and could take up to 36 months depending on the complexity of the watershed.

The real question that has to be addressed regarding the development of the TMDLs and the basin management plans concern the issue of costs. In the DEP's R*eport to the Governor and the Legislature on the Allocation of Total Maximum Daily Loads in Florida*, the department stated that one of the biggest challenges of the TMDL Program and to the restoration of Florida Waters will be finding the funding necessary to pay for the restoration activities. Public funds, whether federal, state, or local, will clearly be needed to address pollutant loadings from domestic wastewater treatment plants, septic tanks, and from urban stormwater. Costs of retrofitting urban areas to reduce stormwater runoff and for converting areas with septic tanks to central wastewater treatment plants systems will be particularly high, running into the billions of dollars.[4] Additionally, local governments will need to implement dedicated funding sources such as stormwater utility fees, municipal taxing units, capital improvement planning, and gasoline taxes.[5]

When asked in a questionnaire about how many DEP staff and the overall costs associated with the TMDL program, the department indicated that the resources for the TMDL/watershed restoration program include personnel from the Bureau of Watershed Management and the District Offices. The Bureau of Watershed Management was created by reorganizing existing staff within the Division of Water Resource Management. Some of the previous activities of the bureau have been de-emphasized or eliminated. Of the 51 career service positions in the Bureau of Watershed Management, 37.7 are devoted mainly to TMDL activities. In addition, 15.75 of the current 20 OPS positions are devoted to TMDL activities. In the district offices, of the 39 career service positions, 21.6 are assigned to TMDL related activities. It should be noted that the Bureau of Watershed Management program responsibilities also include:

[4] *A Report to the Governor and the Legislature on the Allocation of Total Maximum Daily Loads in Florida*, Bureau of Watershed Management, Division of Water Resource Management, Department of Environmental Protection., page 32.
[5] Ibid.

- Preparing waste load allocations, site specific alternative criteria, variances, and mixing zones for point source dischargers.
- Preparing the biennial 305(b) report that summarizes the health of Florida's waters.
- Coordinating statewide ambient monitoring of ground and surface waters.
- Coordinating and providing training on the entry of water resource data into STORET, EPA's water quality database.
- Administering the state's Nonpoint Source Management Program and the Section 319 program required by the federal Clean Water Act.
- Administering the state's Coastal Nonpoint Pollution Control Program required by the Coastal Zone Act Reauthorization Amendments of 1990.
- Administering the Florida Forever funds provided for urban stormwater demonstration projects and research projects.
- Administering contracts for legislatively authorized water restoration projects.
- Administering the Groundwater Assessment and Protection Program.
- Administering the NPDES (National Pollutant Discharge Elimination System) stormwater permitting program.

The DEP received $2.2 million in FY 2002-2003 which will be used to contract for activities related to the stakeholder processes and TMDL development. Workload indications suggest that additional resources are needed to adequately carry out Florida's TMDL responsibilities.

The Florida Stormwater Association, in a recent position paper on the *Implementation of Total Maximum Daily Loads Policy in Florida*, has expressed its concern that the state of Florida is moving to comply with the EPA agreement to implement the TMDL program without a clear understanding of potential costs. The Association states that correctly estimating potential costs is essential to successful implementation of the program and will help avoid having the program fail for lack of funding.

In an effort to anticipate the financial impact of the TMDL program on local governments, the Florida Stormwater Association estimated the costs using an example done for the City of Tallahassee. Their example showed that the potential cost for Tallahassee would be over $27 million to achieve a 45 percent retrofit of existing urban development. To achieve 90 percent stormwater treatment retrofit, the cost rose to over $127 million. Using the Tallahassee example, the Association extrapolated the costs for the entire state using a $180 per capita cost and the 2000 Census. Using 33 percent of the 2000 Census population of 15,982,400 as a low estimate of the number of people affected by TMDLs , the total estimated costs for 45 percent retrofit would be $950 million.[6]

The current efforts by the DEP to implement the TMDL Program involve current staff and the use of outside consultants. The DEP in its Legislative Budget Request for FY 2003-2004 is asking for $2.2 million from the department's Permit Fee Trust Fund. To meet the department's schedule as provided in the Consent Decree, it is anticipated that the DEP would request similar funding annually. It is the department's position that a reliable and dedicated source be available for this program.

Shortly after the DEP submitted its updated 303(d) list in October, 2002 to the EPA, a lawsuit was filed against the EPA by four Florida environmental organizations and one private citizen for failure under the Clean Water Act to perform a nondiscretionary duty with respect to the State of Florida. The suit alleges that when Florida finalized the state impaired waters rule they effectively changed Florida's water quality standards in several ways. Under the suit, it is alleged that Florida's water quality standards are changed in six categories:

1. Determination of Natural Conditions
2. Use of Binomial Distribution
3. Exclusion of Data
4. Toxicity
5. Biological Integrity
6. Implementation of Narrative Criteria for Nutrients

Although this suit does not name the State of Florida or the DEP as defendants, it will impact significantly on Florida's efforts to implement the TMDL program in a timely fashion.

In written information presented to the Senate Natural Resources Committee, several members of the environmental community in Florida expressed concerns over the DEP's performance in implementing

[6] *Position Paper—Implementation of Total Maximum Daily Loads Policy in Florida*, Florida Stormwater Association, Inc., pages 4 and 5.

the TMDL Program. The environmental community has objected to the DEP's Impaired Waters Rule implementation because they have stated that the rule in many respects will operate to count water bodies as unpolluted by simply elevating the standards for what is considered polluted.[7] Another major concern of the environmental community is that the presumption that the pollution abatement programs already under development will successfully reduce pollution levels. They state that the effect of this presumption is to delist polluted lakes and rivers when a future pollution control program is planned. Presumptions of effectiveness of pollution abatement programs should be based on proof that the impaired water will in fact meet legal pollution limits before the next impaired waters list is formulated.[8]

The environmental community is also seriously concerned with the lack of funding for this program. As a result of funding cuts, the DEP's baseline monitoring program has been sharply reduced. The failure to fund and implement TMDL allocation in the future will result in much greater costs in future clean up bills.[9]

CONCLUSIONS

- The Total Maximum Daily Load (TMDL) Program as provided in s. 403.067, F.S., is perhaps the most profound water quality improvement program implemented since the passage of the 1983 Water Quality Assurance Act.
- Florida's enactment of s. 403.067, F.S., was in response to litigation filed by several environmental organizations against the U.S. Environmental Protection Agency for failure to implement certain provisions of the federal Clean Water Act.
- The Department of Environmental Protection is currently undertaking efforts to implement the TMDL program using existing staff resources and consultants and is requesting a $2.2 million appropriation from the Legislature. It is the department's position that a reliable and dedicated funding source be available for this program.
- Independent groups that would be affected by the TMDLs established by the department have indicated that the emerging program costs are far greater than those disclosed when the program was created. Some estimate that costs could amount to billions of dollars over the life of the program.
- Lawsuits filed by several Florida environmental organizations over Florida's impaired waters list could delay and hamper the department's efforts to implement the TMDL program.
- It is likely that additional lawsuits will be filed when TMDLs are established for a water body because of the potential impacts on existing and future permittees using the water body.

[7] *Florida Water Watch*, comments on DEP's implementation of Florida's TMDL Program by numerous environmental groups. (December 11, 2002)
[8] Ibid.
[9] Ibid.