

**TMDL Decision Document
Wisconsin Otter Creek TMDL**

Total Maximum Daily Load (TMDL) Decision Document

TMDL: Total Maximum Daily Loads for Otter Creek, Iowa County, Wisconsin

Status: Final

Date of U.S. EPA Decision: October 2, 2008

Water Body Addressed by TMDL as identified on Wisconsin’s 2006 303(d) list and draft 2008 category 5 of the Integrated Report (IR):

Table 1: Uses and Impairments of Otter Creek as identified on Wisconsin’s draft category 5 2008 IR

Water body Name	WBIC	Impaired Stream Miles	Existing Use	Codified Use	Pollutant	Impairment
Otter Creek	1237100	0 - 14.89	Warm water forage fish communities	Warm water sport fish communities	Sediment	Degraded Habitat
Otter Creek	1237100	14.89 - 19.86	Cold water communities III	Cold water communities II	Sediment	Degraded Habitat
Otter Creek	1237100	21.37 - 23.3	Cold water communities III	Cold water communities II	Sediment	Degraded Habitat

Pollutant: total suspended solids (TSS)

Summary: Otter Creek is impaired due to degraded habitat because of excessive sediment loading from surrounding agricultural lands to the Creek. Otter Creek is currently not meeting the applicable narrative water quality standard (WQS) that prohibits objectionable deposits on the shore or in the bed of a water in amounts that interfere with public rights in the water. Additionally, Otter Creek is not meeting its codified fish uses. To address the degraded habitat impairments, Wisconsin Department of Natural Resources (WDNR) determined that sediment, specifically TSS, is the pollutant that must be addressed to attain designated uses and meet WQS. WDNR used a load duration curve to establish a loading capacity, nonpoint source load allocation and an explicit margin of safety for Otter Creek. There are no point sources located on or discharging to Otter Creek, therefore, a zero wasteload allocation was established.

Conclusion: After a full and complete review of the TMDL report and supporting documents received by U.S. EPA on August 19, 2008, U.S. EPA finds that pursuant to Section 303(d) of the Clean Water Act, 33 U.S.C. Section 1313(D), and U.S. EPA’s implementing regulations at 40 CFR Part 130, the TMDLs for Otter Creek satisfies the elements of an approvable TMDL. This decision approves three TSS TMDLs which will address the degraded habitat impairment. Table 2 of this decision and Table 3 of the August 14, 2008 TMDL report sets forth the approved TMDLs for Otter Creek.

U.S. EPA’s approval of these TMDLs extends to Otter Creek as identified in this decision document, with the exception of any portions of Otter Creek that are within Indian Country, as defined in 18 U.S.C. Section 1151. At this time, U.S. EPA is taking no action to approve or disapprove these TMDLs with respect to those portions of Otter Creek within Indian Country. U.S. EPA, or eligible

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Indian Tribes, as appropriate, will retain responsibilities under Section 303(d) for these water bodies or portions of these water bodies within Indian Country.

Table 2: Approved TSS TMDLs for Otter Creek

TMDL Component	High Flows (10%)	Moist Conditions (10%-40%)	Mid-Range Flow (40%-60%)	Dry Conditions (60%-90%)	Low Flows (90%-100%)
Loading Capacity TMDL = LA + WLA + MOS (tons/day)	47.2	25.1	14.8	11.6	10.0
Load Allocation (LA) (tons/day)	36.1	17.0	13.0	10.5	8.1
Wasteload Allocation (WLA) (tons/day)	0	0	0	0	0
Margin of Safety (MOS) (tons/day)	11.1	8.1	1.8	1.1	1.9

U.S. EPA REVIEW OF THE ELEMENTS OF OTTER CREEK TMDLS

Section 303(d) of the Clean Water Act (CWA) and U.S. EPA’s implementing regulations at 40 CFR Part 130 describe the statutory and regulatory requirements for approvable TMDLs. Additional information is generally necessary for U.S. EPA to determine if a submitted TMDL fulfills the legal requirements for approval under Section 303(d) of the CWA and U.S. EPA regulations, and should be included in the submittal package. Use of the verb “must” below denotes information that is required to be submitted because it relates to elements of the TMDL required by the CWA and by regulation. Use of the term “should” below denotes information that is generally necessary for U.S. EPA to determine if a submitted TMDL is approvable.

1. Identification of Water body, Pollutant of Concern, Pollutant Sources, and Priority Ranking

The TMDL submittal should identify the water body as it appears on the State’s/Tribe’s 303(d) list, the pollutant for which the TMDL is being established, and the priority ranking of the water body. The TMDL submittal should include an identification of the point and nonpoint sources of the pollutant of concern, including location of the source(s) and the quantity of the loading, e.g., lbs/per day. The TMDL should provide the identification numbers of the National Pollutant Discharge Elimination System (NPDES) permits within the water body. Where it is possible to separate natural background from nonpoint sources, the TMDL should include a description of the natural background. This information is necessary for U.S. EPA’s review of the load and wasteload allocations, which are required by regulation.

The TMDL submittal should also contain a description of any important assumptions made in developing the TMDL, such as: (1) the assumed distribution of land use (e.g., urban, forested, agriculture); (2) population characteristics, wildlife resources, and other relevant information affecting the characterization of the pollutant of concern and its allocation to sources; (3) present and future growth trends, if taken into consideration in preparing the TMDL; and (4) an explanation and analytical basis for expressing the TMDL through surrogate measures, if applicable. Surrogate

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measures are parameters such as percent fines and turbidity for sediment impairments; chlorophyll a and phosphorus loadings for excess algae; length of riparian buffer; or number of acres of best management practices.

Comments and Assessment:

Identification of Water Body: Otter Creek was identified on Wisconsin's 2006 303(d) list as impaired due to degraded habitat caused by excessive sedimentation. The 2006 303(d) list specifically identified two segments of Otter Creek as being impaired; river miles 0-15.3 and river miles 15.3-23.3. In Wisconsin's draft category 5 of the 2008 IR, the only change to the identification of Otter Creek as impaired is a change in the river miles distinguishing the specific impaired segments of Otter Creek. In the 2008 IR, Wisconsin has divided Otter Creek into three reaches and clearly identifies by the specific river miles provided in the IR, that Black Hawk Lake is not included in Otter Creek's impairment designation on Wisconsin's 303(d) list, nor is it included in these TMDLs. Appendix A to the TMDL report provides a map of the current impaired reaches of Otter Creek. Also, Table 1 of this decision document and Table 1 in the TMDL report identify the impaired segments of Otter Creek.

Otter Creek is a 25 mile stream in Iowa County, Wisconsin, that flows north until it reaches the Wisconsin River near Lone Rock, Wisconsin (Appendix A and Figure 1 of the TMDL report). The stream was impounded in the late 1960s about 20 miles upstream from the mouth to create Black Hawk Lake Recreation Area. The headwaters of the Creek is a 3.5 mile segment above Black Hawk Lake that flows through the state owned land that is part of Black Hawk Recreation Area.

Pollutant of Concern: The pollutant of concern is sediment, specifically TSS.

Sources of Pollutant Loads: WDNR states in the TMDL report that there are no point sources located on or discharging to Otter Creek. Nonpoint sources identified in the TMDL report as contributing to the impairment include streambank erosion and runoff from agricultural practices.

Land Use, Population Characteristics, and other Relevant Information: Agricultural land use makes up 17% of the watershed and is concentrated in the middle and lower segments of Otter Creek. In the upper reach of Otter Creek to the headwaters, the stream corridor is well protected by non-agricultural pasture. Non-agricultural pasture land use makes up 51% of the watershed. Table 2 in the TMDL report provides percentages of land use coverage from the National Agricultural Statistical Service (NASS).

Priority Ranking: According to Wisconsin's 2006 303(d) list and the draft category 5 of the 2008 IR, Otter Creek has a high priority ranking. A ranking of high indicates likely completion of a TMDL within a two-year time period.

Surrogate measures: To address the degraded habitat impairment, WDNR determined that sediment, specifically TSS, is the pollutant that must be addressed to attain the warm water sport fishery and cold water communities designated uses of Otter Creek. As described in the Linkage Analysis section of the TMDL report, WDNR has determined that fine sediment covers the substrate in Otter Creek and

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fills in pools, reducing the suitable habitat for fish and macroinvertebrate communities. The filling in of pools reduces the amount of available cover for juvenile and adult fish. Sedimentation of riffle areas reduces the reproductive success of fish by reducing the exposed gravel substrate necessary for appropriate spawning conditions. Sedimentation also increases turbidity in the water column, which reduces light penetration necessary for photosynthesis in aquatic plants, reduces feeding capacity of aquatic macroinvertebrates due to clogged gilled surfaces, and reduces the visibility of predator fish species to find prey. TSS is used by WDNR as an indicator of increased sediment loading to Otter Creek. As sediment loadings to Otter Creek increase, typically during high flows, TSS concentrations have been documented as increasing when compared to TSS concentrations during normal flow conditions thus indicating increased sediment loading during high flows. As the energy of the flowing water decreases to a point where the water is unable to keep the amount of existing suspended solids in suspension, the sediment loaded into the stream during the high flow conditions will fall out of suspension and deposit onto the stream bottom. This sediment cycle results in substrate dominated by silt and sand which reduces the quality of the stream habitat. TSS concentrations in Otter Creek during 2005-2006 have been measured at high flow near 350 mg/L and on average during normal flow at 35 mg/L. When best management practices are implemented, especially during high flows when the stream is most vulnerable to excess sediments entering the system, there will be less TSS in the stream. Less sediment loading to the stream will occur and more stream energy will be available to remove the existing silt and sand dominated substrate. More suitable habitat for fish and macroinvertebrates will be exposed.

U.S. finds that the Otter Creek TMDLs submitted by the State of Wisconsin adequately identifies the water body, pollutants of concern, pollutant sources, priority ranking, and important assumptions made in developing these TMDLs.

2. Description of the Applicable Water Quality Standards and Numeric Water Quality Target

The TMDL submittal must include a description of the applicable State/Tribal water quality standard, including the designated use(s) of the water body, the applicable numeric or narrative water quality criterion, and the antidegradation policy. (40 CFR §130.7(c)(1)).

U.S. EPA needs this information to review the loading capacity determination, and load and wasteload allocations, which are required by regulation.

The TMDL submittal must identify a numeric water quality target(s) – a quantitative value used to measure whether or not the applicable water quality standard is attained. Generally, the pollutant of concern and the numeric water quality target are, respectively, the chemical causing the impairment and the numeric criteria for that chemical (e.g., chromium) contained in the water quality standard. The TMDL expresses the relationship between any necessary reduction of the pollutant of concern and the attainment of the numeric water quality target. Occasionally, the pollutant of concern is different from the pollutant that is the subject of the numeric water quality target (e.g., when the pollutant of concern is phosphorus and the numeric water quality target is expressed as Dissolved Oxygen (DO))

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criteria). In such cases, the TMDL submittal should explain the linkage between the pollutant of concern and the chosen numeric water quality target.

Comments and Assessment:

Use Designation and Applicable Water Quality Standard: The designated use applicable to Otter Creek as set forth at Chapter NR 102.04(3) intro., (a), and (b) of the Wisconsin Administrative Code (WAC) is cold water communities and warm water sport fish communities (Refer to Table 1 of this decision and Table 1 in the TMDL report for identification of the specific use applicable to each of the three segments). To meet this designated use, Wisconsin Department of Natural Resources (WDNR) has identified the narrative standard set forth at Chapter NR 102.04(1) of the WAC as the applicable standard for sediment and phosphorus. The standard states in part, “Substances that will cause objectionable deposits on the shore or in the bed of a body of water, shall not be present in such amounts as to interfere with public rights in waters of the state.” WDNR considers sediment to be an objectionable deposit. The goal of the Otter Creek TMDL is to reduce sediment loading to the Creek. As sediment load reductions are achieved, banks will stabilize and in-stream habitat will improve so that the applicable narrative WQS will be attained and the fish and aquatic life uses will be restored.

TMDL target: The State does not have a numeric WQS for TSS therefore, a TMDL specific in-stream TSS target of 100 mg/L was established by WDNR to achieve the necessary sediment load reductions needed to attain the WQS and the designated uses of the Creek. This in-stream TSS concentration needs to be achieved during high flow conditions. If it is achieved during high flow conditions the Creek’s designated uses will be protected during other flow conditions. In establishing the 100 mg/L TSS in-stream target, the State considered (1) the majority of sediment load to the Creek occurs during rain and snowmelt events, (2) the amount of sediment reduction needed to be less than the estimated median observed sediment load during high flow periods, and (3) a 100 mg/L in-stream TSS will not exceed the median values for flows other than high flows.

U.S. EPA finds that the State of Wisconsin adequately described the applicable WQS, including the designated use of Otter Creek, and adequately demonstrated the appropriateness of the numeric TMDL target of 100 mg/L TSS.

3. Loading Capacity - Linking Water Quality and Pollutant Sources

A TMDL must identify the loading capacity of a water body for the applicable pollutant. U.S. EPA regulations define loading capacity as the greatest amount of a pollutant that a water can receive without violating water quality standards (40 CFR §130.2(f)). The TMDL submittal should describe the method used to establish the cause-and-effect relationship between the numeric target and the identified pollutant sources. In many instances, this method will be a water quality model. The TMDL submittal should contain documentation supporting the TMDL analysis, including the basis for any assumptions; a discussion of strengths and weaknesses in the analytical process; and results from any water quality modeling. U.S. EPA needs this information to review the loading capacity determination, and load and wasteload allocations, which are required by regulation.

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TMDLs must take into account critical conditions for stream flow, loading, and water quality parameters as part of the analysis of loading capacity. (40 CFR §130.7(c)(1)). TMDLs should define applicable critical conditions and describe their approach to estimating both point and nonpoint source loadings under such critical conditions. In particular, the TMDL should discuss the approach used to compute and allocate nonpoint source loadings, e.g., meteorological conditions and land use distribution.

Comments and Assessment:

The loading capacity for Otter Creek can be found in Table 1 of this decision and Table 3 in the TMDL report. WDNR determined the loading capacity using a load duration curve. Since sediment loading to the Creek is largely dependent on flow conditions, use of a load duration curve, which is flow-based, is reasonable. The load duration curve for Otter Creek can be found in Appendix C of the TMDL report.

Overview of TMDL Development: The State established a loading capacity for Otter Creek using the TMDL TSS target of 100 mg/L and two years of continuous flow data measured at a United States Geological Survey (USGS) gage. When plotted, the resultant is a load duration curve which defines the loading capacity as a function of flow. At a given flow the load duration curve provides the corresponding loading capacity of the Creek. Rather than identify one loading capacity for all flows under the curve, WDNR divided the loading capacity into five flow intervals and identified the mid-point of each interval as the loading capacity for that flow interval. After identifying the loading capacity for each flow interval, the State calculated the difference between the mid-point and low end of each flow interval. This difference was defined as the margin of safety for the respective flow interval. Since WDNR has not identified any point sources, the remaining capacity after applying the margin of safety to each flow interval, was assigned as load allocation for nonpoint sources. Further discussion on the margin of safety, load allocation, and wasteload allocation can be found in other sections of this decision.

Loading capacity: As discussed above, WDNR used two years of flow data along with the 100 mg/L TSS TMDL target to establish the loading capacity for Otter Creek. Specifically, the loading capacity can be calculated using the equation found in the TMDL Development section of the TMDL report, where TSS in the equation is defined as the 100 mg/L TMDL target. The five flow intervals selected by WDNR for assignment of loading capacities represent general stream conditions that are useful to understanding potential sources of existing sediment concentrations. Establishing loading capacities for each of these flow intervals will help guide implementation efforts. Appendix C of the TMDL report presents the load duration curve and a water quality curve. The load duration curve displays the entire loading capacity curve along with the selected TMDLs. Respectively, load duration curve and the water quality curve present existing data in relation to the loading capacity and the 100 mg/L TSS TMDL target. Both the water quality curve and the load duration curve present high flows as the flow interval where in-stream TSS concentrations are greater than the TMDL target.

Critical Condition: WDNR states in the TMDL report that there really is not a specific critical

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condition for sediment. This statement is true when considering the impacts of sediment on the aquatic communities. The impairments to the habitat caused by the excessive sediment in Otter Creek exist year-round. Under some flow conditions sediment is deposited in the Creek, and at other times, sediment is scoured and transported downstream. Sediment is considered a conservative pollutant because it will not degrade over time. The impacts of sedimentation on the Creek bed vary in response to the flows in the Creek. The load of sediment entering the Creek has been shown to be greater during high flows. The TMDL report identifies high flows as the flow condition which the Creek is most vulnerable to an increase in sediment load. In consideration of this high flow vulnerability, the State considered the amount of sediment reduction needed to achieve less than the estimated median sediment load during high flows in establishing the 100 mg/L TSS TMDL target.

U.S. EPA finds that the State of Wisconsin adequately established a loading capacity for Otter Creek that accounts for critical conditions.

4. Wasteload Allocations (WLAs)

U.S. EPA regulations require that a TMDL include wasteload allocations, which identify the portion of the loading capacity allocated to individual existing and future point source(s) (40 CFR §130.2(h), 40 CFR §130.2(i)). In preparing the wasteload allocations, it is not necessary that each individual point source be assigned a portion of the allocation of pollutant loading capacity. When the source is a minor discharger of the pollutant of concern or if the source is contained within an aggregated general permit, an aggregated wasteload allocation can be assigned to the group of dischargers.

Comments and Assessment:

There are no point sources that are located on or discharge to Otter Creek; therefore, a zero wasteload allocation is appropriate.

U.S. EPA finds that the State of Wisconsin satisfied all requirements for establishing a wasteload allocation for Otter Creek.

5. Load Allocations (LAs)

U.S. EPA regulations require that a TMDL include LAs, which identify the portion of the loading capacity attributed to existing and future nonpoint sources and to natural background. Load allocations may range from reasonably accurate estimates to gross allotments (40 CFR §130.2(g)). Where possible, load allocations should be described separately for natural background and nonpoint sources.

Comments and Assessment:

The load allocation for Otter Creek can be found in Table 2 of this decision and in Table 3 of the

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TMDL report. WDNR established load allocations for each of the five flow intervals as previously discussed in Section 3 above. To achieve the load allocation, the TMDL report states that reductions are necessary in the agricultural land use areas in the watershed. Existing conditions identified in Table 3 and Appendix C of the TMDL report show that most exceedances of the loading capacity and load allocation occur in the high flow interval.

U.S. EPA finds that the State of Wisconsin satisfied all requirements for establishing load allocations for Otter Creek.

6. Margin of Safety (MOS)

The statute and regulations require that a TMDL include a margin of safety to account for any lack of knowledge concerning the relationship between load and wasteload allocations and water quality (CWA §303(d)(1)(C), 40 CFR §130.7(c)(1)). U.S. EPA's 1991 TMDL Guidance explains that the margin of safety may be implicit, i.e., incorporated into the TMDL through conservative assumptions in the analysis, or explicit, i.e., expressed in the TMDL as loadings set aside for the margin of safety. If the margin of safety is implicit, the conservative assumptions in the analysis that account for the margin of safety must be described. If the margin of safety is explicit, the loading set aside for the margin of safety must be identified.

Comments and Assessment:

The explicit margin of safety established for Otter Creek can be found in Table 2 of this decision document and Table 3 in the TMDL report. As previously discussed in Section 3 of this decision, the margin of safety is the difference between the loading capacity calculated at the mid-point of each flow interval and the loading capacity calculated at the minimum flow of each flow interval. This results in a value for each flow interval that is proportional to the flow variability in each flow interval. Since sedimentation in Otter Creek is highly dependant upon flow conditions assigning a margin of safety that is proportional to flow variability in Otter Creek is reasonable.

This margin of safety is also appropriate because the use of the load duration curve allows for an accurate relationship to be developed between actual stream conditions (existing data multiplied by daily flows and displayed on the load duration curve) and the loading capacity (daily flows multiplied by the TMDL TSS target). This relationship as shown on the curves in Appendix C of the TMDL report allows for calculation of accurate reduction needed in the watershed thereby minimizing uncertainty.

U.S. EPA finds that the State of Wisconsin adequately included an explicit margin of safety into the TMDLs for Otter Creek.

7. Seasonal Variation

The statute and regulations require that a TMDL be established with consideration of seasonal

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variations. The TMDL must describe the method chosen for including seasonal variations. (CWA §303(d)(1)(C), 40 CFR §130.7(c)(1)).

Comments and Assessment:

Although the TMDL report states that there is no seasonal variation in the sedimentation of the Creek, sediment loads to the Creek are influenced by flow, and flow does vary seasonally. WDNR accounted for seasonal variation in flow by using two years of continuous flow data to develop the load duration curve. Flow data over time takes into consideration variations in flow due to seasons and annual variation within a season.

U.S. EPA finds that the State of Wisconsin adequately considered seasonal variation in the establishment of loading capacities and allocations for Otter Creek.

8. Reasonable Assurances

When a TMDL is developed for waters impaired by point sources only, the issuance of a NPDES permit(s) provides the reasonable assurance that the wasteload allocations contained in the TMDL will be achieved. This is because 40 CFR §122.44(d)(1)(vii)(B) requires that effluent limits in permits be consistent with “the assumptions and requirements of any available wasteload allocation” in an approved TMDL.

When a TMDL is developed for waters impaired by both point and nonpoint sources, and the wasteload allocation is based on an assumption that nonpoint source load reductions will occur, U.S. EPA’s 1991 TMDL Guidance states that the TMDL should provide reasonable assurances that nonpoint source control measures will achieve expected load reductions in order for the TMDL to be approvable. This information is necessary for U.S. EPA to determine that the TMDL, including the load and wasteload allocations, has been established at a level necessary to implement water quality standards.

U.S. EPA’s August 1997 TMDL Guidance also directs Regions to work with States to achieve TMDL load allocations in waters impaired only by nonpoint sources. However, U.S. EPA cannot disapprove a TMDL for nonpoint source-only impaired waters, which do not have a demonstration of reasonable assurance that LAs will be achieved, because such a showing is not required by current regulations.

Comments and Assessment:

U.S. EPA finds that the State of Wisconsin provided adequate reasonable assurances that the load allocations will be implemented in a manner to achieve WQS. The State has identified streambank protection and riparian buffers as best management practices that should be implemented and maintained in the watershed to control sediment from nonpoint sources.

The State also identified the following funding opportunities in the Reasonable Assurance section of the TMDL report that nonpoint sources could pursue for assistance with implementation of best

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management practices.

- Targeted Runoff Management grants
- Conservation Reserve Program
- Conservation Reserve Enhancement Program
- Environmental Quality Incentives Program
- Farmland Preservation Program
- Land and Water Resource Management Plan Implementation Cost-sharing Program
- Managed Forest Law Program
- Wildlife Habitat Incentive Program

9. Monitoring Plan to Track TMDL Effectiveness

U.S. EPA's 1991 document, Guidance for Water Quality-Based Decisions: The TMDL Process (U.S. EPA 440/4-91-001) recommends a monitoring plan to track the effectiveness of a TMDL.

Comments and Assessment: The TMDL report states Otter Creek will be monitored on a 5 to 6 year interval as part of a special project strategy. This monitoring will consist of metrics contained in WDNR's baseline protocol for wadeable streams. Additionally, based upon the rate of implementation activities, WDNR will monitor Otter Creek to determine its response rate to implementation activities and will continue to monitor the Creek until it has sufficiently responded to the point where it is meeting its designated uses and applicable WQS.

U.S. EPA finds the TMDL report submitted by the State adequately describes future monitoring efforts designed to track the effectiveness of these TMDLs, although U.S. EPA is not approving any recommendations for monitoring contained in this TMDL report or any other aspect of Wisconsin's monitoring program through this decision.

10. Implementation

U.S. EPA policy¹ encourages Regions to work in partnership with States/Tribes to achieve nonpoint source load allocations established for 303(d) listed waters impaired by nonpoint sources. Regions may assist States/Tribes in developing implementation plans that include reasonable assurances that nonpoint source load allocations established in TMDLs for waters impaired solely or primarily by nonpoint sources will in fact be achieved. In addition, U.S. EPA policy recognizes that other relevant watershed management processes may be used in the TMDL process. U.S. EPA is not required to and does not approve TMDL implementation plans.

Comments and Assessment:

¹ Perciasepe, B., U.S. EPA, Office of Water, *New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs)*, August 8, 1997.

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An implementation plan is currently not required under current federal regulation, consequently the State did not provide a formal implementation plan with the TMDL report. However, the State did recognize the need for implementation of best management practices for streambank stabilization and riparian buffers to successfully attain the designated uses of Otter Creek.

11. Public Participation

U.S. EPA policy is that there should be full and meaningful public participation in the TMDL development process. The TMDL regulations require that each State/Tribe must subject calculations to establish TMDLs to public review consistent with its own continuing planning process (40 CFR §130.7(c)(1)(ii)). In guidance, U.S. EPA has explained that final TMDLs submitted to U.S. EPA for review and approval should describe the State's/Tribe's public participation process, including a summary of significant comments and the State's/Tribe's responses to those comments.

Provision of inadequate public participation may be a basis for disapproving a TMDL. If U.S. EPA determines that a State/Tribe has not provided adequate public participation, U.S. EPA may defer its approval action until adequate public participation has been provided for, either by the State/Tribe or by U.S. EPA.

Comment and Assessment:

In June 2008, WDNR released a news release announcing the availability of the draft TMDL report for review and comment. This release was sent to local newspapers, television stations, radio stations and other interested parties. The news release, public notice announcement and draft TMDL report were available on WDNR's website. The draft TMDL report for Otter Creek was available for public review and comment from June 11, 2008 through July 14, 2008. WDNR received no public comments.

U.S. EPA finds that the State adequately provided the public the opportunity to participate in the development and review of these TMDLs.

12. Submittal Letter

A submittal letter should be included with the TMDL, and should specify whether the TMDL is being submitted for a technical review or final review and approval. Each final TMDL submitted to U.S. EPA should be accompanied by a submittal letter that explicitly states that the submittal is a final TMDL submitted under Section 303(d) of the Clean Water Act for U.S. EPA review and approval. This clearly establishes the State's/Tribe's intent to submit, and U.S. EPA's duty to review, the TMDL under the statute. The submittal letter, whether for technical review or final review and approval, should contain such identifying information as the name and location of the water body, and the pollutant(s) of concern.

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Comment and Assessment: On August 19, 2008, U.S. EPA received the final Otter Creek TMDL report as an enclosure to a correspondence from Russ Rasmussen, Director, Bureau of Watershed Management, addressed to Kevin Pierard, Branch Chief, Watersheds & Wetlands Branch, U.S. EPA, Region 5, requesting that the final TMDL for Otter Creek submitted under Section 303(d) of the Clean Water Act be approved by U.S. EPA. The TMDL and supporting documentation received by U.S. EPA on August 19, 2008, provided the necessary information for U.S. EPA to complete its review and approval of three TMDLs for sediment for Otter Creek in Iowa County, Wisconsin.