

sources. A complete list of these guidance documents can be found at: <http://www.epa.gov/edocket>.

Helped by these programmatic initiatives, States have made considerable progress in developing TMDLs despite the fact that the July 2000 rule never became effective. As stated in the December 27, 2002, proposal, between 1996 and 1999, EPA and the States established approximately 800 TMDLs. Since then, and despite the fact that the July 2000 rule never became effective, EPA and the States have established more than an additional 7,000 TMDLs; and States continue to improve the pace at which TMDLs are established. Given this progress and the States' adoption since 1998 of schedules for TMDL development, EPA anticipates no reduction in the pace of TMDLs being developed and the associated improvement in water quality, even if the July 2000 rule does not take effect.

One commenter objected to withdrawing the July 2000 rule because of provisions contained in the rule for expanded public involvement in the listing and TMDL development process. By not implementing the July 2000 rule, the commenter asserted that the public remains "shut out" of the listing and TMDL development process, which allows the States to develop impaired waters lists and establish TMDLs "without adequate public scrutiny." EPA disagrees with this comment. While it is true that the July 2000 rule would have clarified, and, in some measure strengthened, the public participation components of EPA's currently-effective TMDL regulations, the current statutory and regulatory provisions (as supplemented by EPA guidance to the States and its Regional Offices) already allow for public scrutiny and participation in the listing and TMDL development process. EPA's existing regulations require that the process for involving the public in a State's listing and TMDL program "shall be clearly described in the State Continuing Planning Process (CPP)" (40 CFR 130.7(a)), and § 130.7(c)(1)(ii) requires that a State's calculations to establish TMDLs be subject to public review, as defined in the State CPP. Additionally, EPA regulations require that when EPA disapproves and establishes a list or a TMDL, EPA must seek public comment (40 CFR 130.7(d)).

EPA's policy has always been that there should be full and meaningful public participation in both the listing and TMDL development process, and EPA has issued guidance in addition to the regulations to support this effort. In EPA's "Guidelines for Reviewing

TMDLs Under Existing Regulations Issued in 1992" (May 20, 2002), EPA states that, in addition to the TMDL regulatory requirements, "final TMDLs submitted to 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." The guidance also states that "provision of inadequate public participation may be a basis for disapproving a TMDL. If EPA determines that a State/tribe has not provided adequate public participation, EPA may defer its approval action until adequate public participation has been provided for, either by the State/tribe or by EPA."

EPA's "Integrated Report" guidance to States, tribes and EPA Regions (Integrated Water Quality Monitoring and Assessment Report (November 19, 2001)) states that "States and territories should provide for full public participation in the development of their Integrated Report prior to its submission to EPA. EPA believes that public understanding of how standard attainment determinations are made for all A[sessment] U[nits] is crucial to the success of water quality programs and encourages active stakeholder participation in the assessment and listing process.... EPA will consider how the State or territory addressed the comments...when approving or disapproving the 303(d) list of AUs (Category 5)."

Most recently, in May 2002, EPA issued guidance to its Regional Offices stating that when reviewing State 303(d) lists, EPA Regions should review how States provided for public participation to ensure that each State carried out its public participation process consistent with the State's public participation requirements ("Recommended Framework for EPA Approval Decisions on 2002 State Section 303(d) List Submission.") If the Region believes a State has not provided adequate public participation, the guidance provides steps the Region should take in working with a State to provide for additional public participation, and how the State or, if necessary, the Region, should consider and address public comments prior to EPA's approval or disapproval of the list. Finally, it is important to note that nearly all of the States already have public participation requirements under their own State laws for the listing and TMDL development processes, and also provide for public notice.

For all of these reasons, EPA believes that adequate public participation opportunities exist under the currently-

effective regulations and that withdrawing the July 2000 rule will not limit meaningful public participation in the listing and TMDL development process.

One commenter stated that, by not implementing the July 2000 rule, States would continue to have inadequate monitoring programs and continue to develop lists of impaired waters based on inadequate data. EPA disagrees. EPA recognizes that no State has a perfect monitoring and listing program. Monitoring and assessment programs are expensive to assemble and implement. While the July 2000 rule would have clarified certain aspects of the existing TMDL regulations regarding listing methodologies, that rule, by itself, would not have provided the additional funding needed by many States to expand their monitoring and assessment programs. Moreover, many of the important listing clarifications and improvements contained in the July 2000 rule have already been provided to, and are currently being implemented by, States, even without the July 2000 rule having gone into effect.

To assist in implementation of the currently-effective TMDL rules, EPA issued the "2002 Integrated Water Quality Monitoring and Assessment Report Guidance" (November 19, 2001) to promote a more integrated and comprehensive system of accounting for the nation's impaired waters. The guidance recommends that States submit an "Integrated Report" that will satisfy CWA requirements for both section 305(b) water quality reports and section 303(d) lists. The objectives of this guidance are to strengthen State monitoring programs, encourage timely monitoring to support decision making, increase numbers of waters monitored, and provide a full accounting of all waters and uses. The guidance encourages a rotating basin approach and strengthened State assessment methodologies, and is intended to improve public confidence in water quality assessments and 303(d) lists. EPA extended the date for submission of 2002 lists by six months (66 FR 53044) to allow States and Territories time to incorporate some or all of the recommendations suggested by EPA in this guidance. Approximately half of the States and Territories have submitted a 2002 report which incorporates some or all of the elements of this guidance. In addition, EPA also held five stakeholder meetings in 2001 and 2002 to review and comment on a best practices guide that EPA was developing for States on consolidated assessment and listing methodologies. This guidance ("Consolidated Listing and Assessment