

effluent limits must be consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7. *See* 40 CFR 122.44(d)(1)(vii)(B). Similarly, 40 CFR 122.4(i) addresses what requirements must be met for a permit to be issued to a new source or new discharger who proposes to discharge a pollutant for which a TMDL has been prepared.

One State commenter, while supporting withdrawal of the July 2000 rule, recommended that as part of this final rulemaking EPA immediately modify 40 CFR 130.7 to require State 303(d) lists every four (instead of every two) years. As EPA continues to consider whether and how to revise the TMDL program, EPA will consider the commenter's suggestion.

One commenter asked for "an evaluation of potential changes from rule making, implementation and funding of Clean Water Act programs and enforcement relative to the Russian River [California] * * * [and an] assurance that this regulatory shift will not result in degradation of either the quality or quantity of our local resources." The commenter did not appear to take a position on the proposed withdrawal of the July 2000 rule, and EPA believes this comment is beyond the scope of the proposal and does not require a response.

One electronic comment merely stated as follows: "We strongly oppose any reduction of restrictions on wetland maintenance." Again, the commenter did not appear to take a position on the proposed withdrawal of the July 2000 rule, and EPA believes this comment is beyond the scope of the proposal and does not require a response.

More than half the commenters requested or encouraged EPA to pursue further rulemaking once the July 2000 rule was withdrawn. Many of these commenters submitted specific recommendations regarding how EPA should structure a new TMDL rule. Some commenters requested that this new rulemaking occur as quickly as possible. One commenter said it "supports EPA's proposed withdrawal of the 2000 rule, assuming that EPA intends to replace that rule in a timely manner with an improved rule now known as the Watershed Rule." Another commenter said it "will only support withdrawal of the July 2000 rule if EPA moves quickly to propose and promulgate a Watershed Rule that provides a comprehensive framework for the evolving TMDL program." Three commenters who supported withdrawal of the July 2000 rule advised against a

new rulemaking saying that it "would be disruptive and would only derail State momentum to clean up our waterways." Two other commenters cautioned that a new regulatory proposal "could slow needed progress" and strongly urged the Agency "not to propose any regulatory or other changes that would cripple this vitally important water clean up program."

In response to these comments regarding the future direction of the TMDL program, EPA restates that it has not yet completed its evaluation regarding whether and how to revise the currently-effective TMDL rules. Nor can EPA commit to how long it will take to complete that process. EPA is committed to structuring a flexible, effective TMDL program that States, territories and authorized tribes can support and implement. EPA will carefully consider all of the past and recently-provided commenters' recommendations as it continues to evaluate whether and how to revise the currently-effective TMDL regulations using new regulatory or non-regulatory approaches. EPA, to the best of its ability, will continue to meet and share information with stakeholders regarding this effort, and will provide an opportunity for public comment in a separate **Federal Register** notice if the Agency decides to move forward with a new rulemaking.

After carefully considering all the comments received in response to its December 27, 2002, proposal, EPA is today promulgating a final rule that withdraws the July 2000 rule. EPA is withdrawing the July 2000 rule, rather than allowing it to go into effect, because EPA believes that significant changes would need to be made to the July 2000 rule before it could represent a workable framework for an effective TMDL program. EPA needs additional time beyond April 2003 to decide whether and how to revise the currently-effective regulations implementing the TMDL program in a way that will best achieve the goals of the CWA, and EPA is not sure how long that effort will take. In light of the significant progress States have made in the past three years establishing TMDLs under the currently-effective rules, EPA does not believe that withdrawing the July 2000 rule will impede States' efforts to implement section 303(d) to work towards cleaning up the nation's waters and meeting water quality standards.

Today's final rule does not change any part of the currently effective TMDL regulations promulgated in 1985, as amended in 1992, at 40 CFR part 130 or

the NPDES regulations at parts 122—124.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, (October 4, 1993)), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.