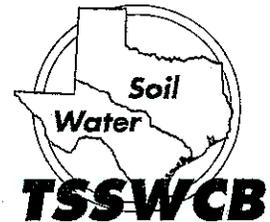




Memorandum of Agreement
Between the
Texas Commission on Environmental Quality
and the
Texas State Soil and Water Conservation Board
Regarding
Total Maximum Daily Loads,
Implementation Plans, and
Watershed Protection Plans



This Memorandum of Agreement (MOA) between the Texas Commission on Environmental Quality (TCEQ) and the Texas State Soil and Water Conservation Board (TSSWCB) sets forth the coordination of program responsibilities relating to the development and implementation of Total Maximum Daily Loads (TMDLs), Implementation Plans (I-Plans), and Watershed Protection Plans (WPPs), by the two agencies. This MOA is intended to clarify and outline the coordination required for the agencies to effectively administer their duties, responsibilities, and functions as provided under Chapters 5 and 26 of the Texas Water Code and Chapter 201 of the Texas Agriculture Code.

The TCEQ has general jurisdiction and primary responsibility over Texas' water quality program including water quality management planning, the issuance of permits for point source discharges, abatement of nonpoint source pollution other than from agricultural and silvicultural sources, and enforcement of water quality rules, standards, orders, and permits. The TCEQ is responsible for establishing the level of quality to be maintained in, and controlling the quality of, water in the state (Texas Water Code §5.013 and §26.0136).

The TSSWCB is the lead agency in Texas for planning, implementing, and managing programs and practices for preventing and abating agricultural and silvicultural nonpoint source pollution (Texas Agriculture Code §201.026).

The federal Clean Water Act (CWA) requires Texas to identify water bodies failing to meet or not expected to meet water quality standards and not supporting their designated uses. This list of impaired water bodies (*Texas 303(d) List*) must be submitted to the U.S. Environmental Protection Agency (EPA) for review and approval every two years. The State must then establish a TMDL for water bodies identified on the *Texas 303(d) List* as prescribed by the CWA. The TCEQ has responsibility for establishing TMDLs for impaired water bodies in Texas. If the State fails to meet its obligations, the CWA requires EPA to establish TMDLs for the State.

A TMDL defines the amount of a pollutant that a water body can assimilate and still meet water quality standards. A TMDL sets a pollution reduction goal for a parameter of concern necessary to restore attainment of the designated use of an impaired surface water body. For a watershed, a TMDL allocates pollutant loads between point sources (wasteload allocation or WLA) and nonpoint sources (load allocation or LA). It also takes into account a margin of safety (MOS), which reflects uncertainty and future growth. The effects of seasonal variation are also included. The development of a TMDL involves an extensive stakeholder process.

After the TMDL is approved, an I-Plan is developed to achieve the goals of the TMDL in the watershed. The I-Plan specifies limits for point source discharges and recommends best management practices for nonpoint sources. It also lays out a schedule for implementation. Commitment to the I-Plan by the citizens who live and work in the watershed is essential to success in reducing the pollutant loads and improving water quality. The I-Plan is also developed and implemented through a public stakeholder process. Together, the TMDL and the I-Plan serve as the mechanism to reduce the pollutant and restore attainment of the designated use of the water body.

A Watershed Protection Plan (WPP) is a coordinated framework for implementing prioritized and integrated water quality protection and restoration strategies driven by environmental objectives. The TCEQ and the TSSWCB provide technical and financial assistance to develop and implement WPPs that are consistent with the nine elements described by EPA as fundamental to achieve success. Through the WPP process, the State encourages stakeholders to holistically address all of the sources and causes of impairments and threats to both surface and ground water resources within the watershed. Developed and implemented through diverse, well integrated partnerships, a WPP assures the long-term health of the watershed with strategies for protecting unimpaired waters and/or restoring impaired waters.

The TCEQ and the TSSWCB both consider how any WPP effort should be coordinated with other efforts to assess water quality associated with an impairment, to avoid duplication with the development of a TMDL. All WPPs, whether developed before, after, or simultaneously with the development of a TMDL for one or more of the same waters, will be written or modified to be consistent with the load reductions described in the TMDL and the implementation strategies described in the I-Plan.

Development and implementation of TMDLs, I-Plans, and WPPs are time-consuming and resource-intensive processes. The TSSWCB and the TCEQ seek to reduce overall costs to the State of Texas, increase efficiency to the greatest extent possible, and prevent duplication of effort while developing effective TMDLs, I-Plans, and WPPs designed to attain and maintain water quality standards. Accordingly, the TCEQ and the TSSWCB intend to collaborate and cooperate so that resources can be devoted to TMDLs, I-Plans, and WPPs without waste or duplication.

The TCEQ and the TSSWCB are also parties to a Memorandum of Understanding (30 TAC §7.102) which coordinates jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution control programs.

NOW THEREFORE, the TSSWCB and the TCEQ agree as follows:

a. The TCEQ agrees to:

1. Accept water quality data provided by the TSSWCB and its contractors that was collected and analyzed under a Quality Assurance Project Plan authorized through the *TSSWCB Quality Management Plan* as approved by EPA and consistent with *EPA Requirements for Quality Assurance Project Plans (QA/R-5)* and that meets the data

quality objectives of the applicable TCEQ water quality management program. TCEQ will consider these data during the development of the State's 303(d) list when the data quality objectives are consistent with the Quality Assurance Project Plan of the TCEQ Surface Water Quality Monitoring (SWQM) program.

2. Consult with the TSSWCB prior to assigning a category to a water body in the Texas Water Quality Inventory and listing or delisting a water body on the State's 303(d) list.
3. Collaborate annually with the TSSWCB before considering future watersheds in which to focus agency resources on TMDLs, I-Plans, or WPPs.
4. Inform the TSSWCB at least quarterly concerning future and ongoing TMDL, I-Plan, and WPP activities for each project that the TSSWCB agrees are within its jurisdiction.
5. Seek the TSSWCB's concurrence on TMDLs and obtain its approval on I-Plans, including those developed by third parties, which seek to attain or maintain water quality standards through load allocation of agricultural or silvicultural nonpoint source pollution or through implementation of regulatory and non-regulatory strategies for control of agricultural or silvicultural nonpoint source pollution.

b. The TSSWCB agrees to:

1. Coordinate with TCEQ to provide water quality data collected and analyzed under a Quality Assurance Project Plan authorized through the *TSSWCB Quality Management Plan* as approved by EPA and consistent with *EPA Requirement for Quality Assurance Project Plans (QA/R-5)* in a timely manner and in a format described in the TCEQ's most recent *SWQM Data Management Reference Guide*.
2. Participate in the development of methodologies used to determine whether an impairment exists and to create the State's 303(d) list, and provide information on sources of pollutants related to agricultural and silvicultural practices.
3. Assist TCEQ in the TMDL process in those waters where agricultural and/or silvicultural activities are believed to contribute to water quality impairments.
4. Collaborate annually with the TCEQ before considering future watersheds in which to focus agency resources on TMDLs, I-Plans, or WPPs.
5. Inform the TCEQ at least quarterly concerning future and ongoing TMDL, I-Plan, and WPP activities for each TSSWCB project.
6. Consider approval of TMDLs and I-Plans proposed by the TCEQ, including those developed by third parties, which seek to attain or maintain water quality standards through load allocation of agricultural or silvicultural nonpoint source pollution, or through implementation of regulatory and non-regulatory strategies for control of agricultural or silvicultural nonpoint source pollution.
7. Finance its participation in TMDLs, I-Plans, and WPPs with funds the TSSWCB deems appropriate for these programs, including but not limited to federal CWA §319(h) grant funds and state funds appropriated for this purpose. All expenditures on these programs will be consistent with the TSSWCB's statutory authority.

c. For projects that address agricultural and/or silvicultural nonpoint source pollution, both parties agree:

1. To collaborate in the solicitation and selection of interested parties who will participate in stakeholder groups.
2. To work together, with stakeholders and other interested parties, to develop TMDLs, I-Plans, and WPPs designed to attain or maintain water quality standards.
3. To jointly participate in providing information to stakeholder groups and other interested parties, so as to provide a unified message of a project under development, its potential impacts and conclusions from data analysis.
4. That TSSWCB approval of TMDLs constitutes agreement on the WLA, LA, and MOS and concurrence with the LA of agricultural and silvicultural nonpoint sources; and, that TSSWCB approval of I-Plans constitutes consent that recommended management measures for control of agricultural and silvicultural nonpoint sources are consistent with the most recent *Texas Nonpoint Source Management Program*.
5. To fulfill their obligations specified in I-Plans and WPPs through regulatory and non-regulatory programs within their respective jurisdictions.
6. Neither agency will fund activities to develop a load allocation for a Category 5a impairment through a WPP.
7. That priority consideration should be given for the development of WPPs in watersheds containing Category 5(c) impairments where a TMDL has not been initiated. In this way, progress towards achieving water quality standards is initiated even before a TMDL is established.
8. That a WPP under development or implementation will not preclude the initiation, development, and establishment of a TMDL.
9. That the TCEQ has a legal responsibility to establish TMDLs in impaired water bodies and to do so in a timely manner. WPPs to address impairments on the 2006 and future 303(d) lists should be developed within six years after the impairment is listed to allow for the development of a TMDL within the mandated timeframe, should one be necessary.

d. General Conditions:

1. Term of MOA. The term of this MOA shall be from the effective date until termination.
2. Effective Date. This MOA is effective upon execution by both parties. By signing this MOA, the signatories acknowledge that they are acting under proper authority from their governing bodies.
3. Modification. Only by mutual agreement and upon written concurrence of both parties can this MOA be modified.
4. Notice of Termination. Either party may terminate this MOA upon thirty (30) days written notice to the other party.
5. Cooperation of Parties. It is the intention of the TSSWCB and the TCEQ that the details of providing the services in support of this MOA shall be resolved, in good faith, by both agencies.

6. Notices. Any written notices required by this MOA shall be addressed to the respective party as follows:

Texas Commission on Environmental Quality
Attn: _____
PO Box 13087
Austin, TX 78711-3087

Texas State Soil and Water Conservation Board
Attn: _____
PO Box 658
Temple, TX 76503-0658

7. Termination of Existing MOA. Upon execution of this MOA by both parties, the *Memorandum of Agreement between the Texas Natural Resource Conservation Commission and the Texas State Soil and Water Conservation Board Regarding Total Maximum Daily Loads*, executed on February 12, 1999 by the TNRCC and on March 5, 1999 by the TSSWCB, is terminated.

Agreed to, on behalf of the TCEQ and the TSSWCB, on September 27, 2006, by



Glenn Shankle
Executive Director
Texas Commission on Environmental Quality



Rex Isom
Executive Director
Texas State Soil and Water Conservation Board