Impaired and Distressed

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Impaired Water

• Impaired water = not meeting water quality standard

• State must submit list of impaired waters to USEPA every two years
  – In Ohio’s Integrated Report

• Impaired water designation triggers obligation to do TMDL

• Clean Water Act § 303(d)
Total Maximum Daily Load

- Maximum amount of pollutant that can enter water daily without exceeding water quality standard
- Sum of wasteload allocations (point sources) and load allocations (nonpoint & background sources) plus margin of safety
- Incorporated into state’s continuous planning process under CWA § 303(e)
  - Water Quality Management Plan
TMDL (continued)

• Is a very useful planning tool; can justify state taking steps to reduce pollution loading from point and nonpoint sources

• Is not a silver bullet
  – Not much of a new legal stick
  – No federal money
  – No requirement to regulate nonpoint sources
State & Federal Roles Under CWA § 303

- State’s duty to submit list of impaired waters and develop TMDL
- USEPA’s duty to approve or disapprove list and TMDL
- If disapproves, USEPA must identify impaired waters and establish TMDL
  - 30 days
  - But still state continuing planning process
Distressed Watershed Rules

• Issued in 2010 per Ohio Agriculture Pollution Abatement program
  – Today, statute is Ohio Revised Code ch. 939 and rules in Ohio Administrative Code ch. 901
• Impose additional nutrient management requirements in watersheds designated as “in distress”
Designation as Distressed

• Factors considered by Director of Department of Agriculture include
  – Listed as impaired
  – Threat to public health
  – Evidence of algae capable of producing toxins
  – Threat of contaminants in water supplies
  – Threat of contaminants in primary contact water

• Needs consent by majority of Soil & Water Conservation Commission
Requirements in Distressed Watersheds

• Threshold amounts of manure
  – 350 tons or 100,000 gallons annually

• Nutrient Management Plan
  – E.g., volume, method and location of manure being applied

• Prohibitions on application of manure
  – Largely superseded by SB1