START\_STATUTE49-234.  Total maximum daily loads; implementation plans

A.  The department shall develop total maximum daily loads for those WOTUS listed as impaired pursuant to this article and for which total maximum daily loads are required to be adopted pursuant to 33 United States Code section 1313(d) and the regulations implementing that statute or that the department otherwise determines are required to restore an impaired water.  The department may estimate total maximum daily loads for WOTUS not listed as impaired pursuant to this article to develop information to satisfy the requirements of 33 United States Code section 1313(d)(3) only after it has developed total maximum daily loads for all WOTUS identified as impaired pursuant to this article or if necessary to support permitting of new point source discharges.

B.  In developing total maximum daily loads, the department shall use only statistical and modeling techniques that are properly validated and broadly accepted by the scientific community. The modeling technique may vary based on the type of water and the quantity and quality of available data that meets the quality assurance and quality control requirements of section 49‑232. The department may establish the statistical and modeling techniques in rules adopted pursuant to section 49‑232, subsection D.

C.  Each total maximum daily load shall:

1.  Be based on data and methodologies that comply with section 49‑232.

2.  Be established at a level that will achieve and maintain compliance with applicable surface water quality standards.

3.  Include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. The margin of safety shall not be used as a substitute for adequate data when developing the total maximum daily load.

4.  Account for seasonal variations that may include setting total maximum daily loads that apply on a seasonal basis.

D.  For each impaired water, either of the following applies:

1.  For each impaired WOTUS, the department shall prepare a draft estimate of the total amount of each pollutant that causes the impairment from all sources and that may be added to the WOTUS while still allowing the WOTUS to achieve and maintain applicable surface water quality standards. In addition, the department shall determine draft allocations among the contributing sources that are sufficient to achieve the total loadings. The department shall provide public notice and allow for comment on each draft estimate and draft allocation and shall prepare written responses to comments received on the draft estimates and draft allocations. The department shall publish the determinations of total pollutant loadings that will not result in impairment and the draft allocations among the contributing sources that are sufficient to achieve the total loading that it intends to submit initially to the regional administrator, along with a summary of the responses to comments on the estimated loadings and allocations, in the Arizona administrative register at least forty‑five days before submission of the loadings and allocations to the regional administrator. Notwithstanding this subsection, draft allocations shall be submitted to the regional administrator only if that submission is required by the rules that implement 33 United States Code section 1313(d).

2.  For non-WOTUS impaired waters, the department may prepare a draft estimate of the total amount of each pollutant that causes the impairment from all sources and that may be added to the water while still allowing the water to achieve and maintain applicable surface water quality standards. If the department chooses to prepare a draft estimate for a non-WOTUS impaired water, the department shall do all of the following:

(a)  Determine draft allocations among contributing sources that are sufficient to achieve total loadings.

(b)  Provide public notice and allow for comment on the draft estimates and draft allocations.

(c)  Prepare written responses to comments received on the draft estimates and draft allocations.

(d)  Publish the determinations of total pollutant loadings that will not result in impairment and the draft allocations among the contributing sources that are sufficient to achieve the total loading, along with a summary of the responses to comments on the estimated loadings and allocations, in the Arizona administrative register.

E.  Publication of the loadings and allocations in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the estimated loadings and allocations. In the case of WOTUS, if the department receives a notice of appeal of a loading and allocation pursuant to section 41‑1092.03 within forty‑five days after the publication of the loading and allocations in the Arizona administrative register, the department shall not submit the challenged loading and allocations to the regional administrator until either the challenge to the loading and allocation is withdrawn or the director has made a final administrative decision pursuant to section 41‑1092.08.

F.  The department shall make reasonable and equitable allocations among sources when developing total maximum daily loads. At a minimum, the department shall consider the following factors in making allocations:

1.  The environmental, economic and technological feasibility of achieving the allocation.

2.  The cost and benefit associated with achieving the allocation.

3.  Any pollutant loading reductions that are reasonably expected to be achieved as a result of other legally required actions or voluntary measures.

G.  For each total maximum daily load, the department shall establish a TMDL implementation plan that explains how the allocations and any reductions in existing pollutant loadings will be achieved. Any reductions in loadings from nonpoint sources shall be achieved voluntarily. The department shall provide for public notice and comment on each TMDL implementation plan. Any sampling or monitoring components of a TMDL implementation plan shall comply with section 49‑232.

H.  Each TMDL implementation plan shall provide the time frame in which compliance with applicable surface water quality standards is expected to be achieved. The plan may include a phased process with interim targets for load reductions. Longer time frames are appropriate in situations involving multiple dischargers, technical, legal or economic barriers to achieving necessary load reductions, scientific uncertainty regarding data quality or modeling, significant loading from natural sources or significant loading resulting from discharges or activities that have already ceased.

I.  For impaired waters that are impaired due in part to historical factors that are difficult to address, including contaminated sediments, the department shall consider those historical factors in determining allocations for existing point source discharges of the pollutant or pollutants that cause the impairment. In developing total maximum daily loads for those waters, the department shall use a phased approach in which expected long‑term loading reductions from the historical sources are considered in establishing short‑term allocations for the point sources. While total maximum daily loads and TMDL implementation plans are being completed, any permits issued for the point sources are deemed consistent with this article if the permits require reasonable reductions in the discharges of the pollutants causing the impairment and are not required to include additional reductions if those reductions would not significantly contribute to attainment of surface water quality standards.

J.  After a total maximum daily load and a TMDL implementation plan have been adopted for a protected surface water, the department shall review the status of the protected surface water at least once every five years to determine if compliance with applicable surface water quality standards has been achieved. If compliance with applicable surface water quality standards has not been achieved, the department shall evaluate whether modification of the total maximum daily load or TMDL implementation plan is required. END\_STATUTE