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As [Cara](#) and [Dan](#) have explained, [ocean acidification](#) is the other big climate change problem. As atmospheric CO<sub>2</sub> levels rise, more CO<sub>2</sub> dissolves in the oceans. That in turn increases ocean acidity, which changes the ecology of the seas, most obviously by reducing the ability of corals and a variety of other marine organisms to build their “skeletons” and protective shells from calcium carbonate.

Ocean acidification is a pollution problem, just as acid rain and climate change are. So just as the Clean Air Act ought to have something to say about atmospheric dumping of greenhouse gases, the Clean Water Act should have something to say about the accumulation of CO<sub>2</sub> in the oceans. (Note: I’m not saying these first-generation pollution control laws are the *best* way to deal with climate change, but they do provide some tools that are worth trying in the absence of GHG-specific legislation.)

The [Center for Biological Diversity](#) has been pushing the argument that the CWA covers ocean acidification, and EPA under Lisa Jackson is beginning to agree. Over a year ago, [Sean noted](#) that EPA had responded to a Center petition by agreeing to evaluate the possible application of the CWA, and last April EPA issued a [notice that it would review](#) its ocean acidity water quality criteria. As [I pointed out](#) at the time, that put EPA on board for eventual regulation of ocean acidity, but on the very slow train.

Now a new settlement with CBD promises to speed up the process.

The Clean Water Act requires that states designate waters within their boundaries that are impaired by pollution and will not be adequately cleaned up by regulation of point source discharges under the NPDES program. TMDLs, which are essentially pollution budgets, must then be prepared for those waters. In 2007, [CBD requested that the state of Washington](#) list its coastal waters as impaired and tighten its water quality standards for ocean acidity. When Washington did not do so, and EPA nonetheless approved the state’s list of impaired waters, [CBD sued EPA](#). That’s the lawsuit that has now been settled.

I wasn’t able to find a copy of the settlement online, but [according to the New York Times](#) it “requires EPA to begin a rulemaking aimed at helping states identify and address acidic coastal waters.” As a first step, EPA has “agreed to take public comment on ocean acidity, ways states can determine if coastal waters are affected, and how states might regulate ‘total maximum daily loads’ of pollutants linked to acidification.” That process will begin with [submission by March 15](#) of a notice to be published in the Federal Register. By November 15, EPA will decide what to do.

Of course, even assuming that EPA decides that states must list coastal waters impaired by CO<sub>2</sub> and create TMDLs for them, the very real practical problem remains of what measures those TMDLs would contain and how they would be implemented. But maybe that problem is not as sticky as it seems. EPA has provided [guidance for development of mercury TMDLs](#) when atmospheric deposition is the primary source. It encourages multi-state TMDLs, and allows states which have in place a comprehensive mercury reduction program to [defer TMDL development](#). Creative approaches like that could use the CWA's water quality requirements to catalyze a broad review of sources of CO<sub>2</sub> emissions and opportunities for emission reduction.

**\*Full disclosure:** Miyoko Sakashita, CBD lead attorney for this effort, is a Berkeley Law alum and a member of the Center for Law, Energy and the Environment's [Advisory Board](#).