

EPA Approves 2008 Version of 303(d) List of Impaired Water Bodies for Nebraska, Missouri

by James Hart

The **U.S. Environmental Protection Agency** (EPA) has approved both Nebraska's and Missouri's 2008 lists of impaired waters, the agency announced Feb. 3. Some significant changes were made in both lists since their last approval in 2006, including new impaired water categories in Nebraska and impaired segment classifications in Missouri.

Section 303(d) of the Clean Water Act requires each state to develop lists of impaired waters that do not meet water quality standards, and to submit these lists every two years to EPA. The law also requires that the state establish priority rankings for each of these waters, and to develop total maximum daily load (TMDL) allocations for pollutants for those listed as impaired. Whether or not a water body is listed as impaired by the state can sometimes impact the discharge permits one can obtain for that water body.

Nebraska

According to EPA, Nebraska requested data from collection agencies and stakeholders, held public meetings and provided a 30-day public comment period in order to prepare its 2008 list. As of Feb. 3, EPA approved the state's decision to list 177 waters as impaired, but is postponing final action on 37 lakes and reservoirs.

Since 2006, Nebraska has developed nutrient criteria values for total nitrogen, total phosphorus, and chlorophyll-a for lakes and reservoirs as new water quality standards. According to EPA, the adopted criteria were used as assessment targets for developing their impaired listings. EPA performed an initial review for the adopted nutrient criteria and found that they might not be scientifically feasible.

Specifically, EPA took issue with the state's establishment of new lake and reservoir classes, the establishment of certain reference conditions, the lack of consideration for biological responses and the incongruence this new criteria had with other established standards.

In response to these concerns, the **Nebraska Department of Environmental Quality** (NDEQ) worked with EPA in February 2008 to revise the previously developed criteria for lakes and reservoirs. NDEQ set an October 2009 deadline for finalizing the numeric criteria to serve as numeric translators for the previous narrative criteria for the state during assessments for its 2010 impaired water listing. For this and other reasons, EPA is deferring its action for the lakes and reservoirs found on the state impaired waters list.

EPA also expressed concern with a new category assigned to some Nebraska lakes and reservoirs. NDEQ developed a new category in its 2008 listing – Category 4R – to represent lakes and reservoirs that exceed an impairment threshold, but where a TMDL is not needed.

According to NDEQ, this category would only be used for nutrient assessments in new or renovated lakes and reservoirs. The department stated that newly filled reservoirs usually go through a period of trophic instability, and that erroneous water quality assessments are likely to occur during this period. As such, lakes or reservoirs would only be placed in this category for eight years following the fill or re-fill process. Afterwards, monitoring data would be collected and the reservoir or lake would be appropriately placed into other more conventional categories. The state has already suggested that Wagon Train Lake, Summit Lake and Valentine Mill Pond be included in the 4R category.

The state also reported that in the next two years, TMDLs would be completed for the rest of the water bodies in Elkhorn, Missouri Tributaries, Middle Platte, North Platte and South Platte River basins. Therefore, EPA did not take any action on these schedules, since federal regulations do not require EPA approval of priority rankings or TMDL schedules.

Missouri

EPA considered and incorporated a number of comments from local citizens and organizations in finalizing its previous decisions on Missouri's list, including the approval of the state's decision to list 99 waters and the delisting of 183 waters.

"The impaired waters identified on Missouri's list will help to reduce sources of water pollution in the state," EPA Region 7 administrator John B. Askew said.

"EPA encourages [the **Missouri Department of Natural Resources** (MDNR)] to continue its diligent work in assessing the water quality of Missouri's lakes and streams."

For more information on EPA's impaired water bodies lists in Region 7, visit:
<http://epa.gov/region7/water/tmdl.htm>

Upon prior review, EPA determined that Missouri's 2006 list did not include certain required waters and pollutants and the agency informed MDNR of its decision to partially approve its 2006 listing. At the same time, EPA identified additional water quality limited segments that still required TMDLs. EPA issued a public notice in September 2008 to seek comments on its proposed decisions to add certain waters and pollutants to Missouri's list to make it more complete.

In its proposed decision, EPA added the segments for several waters listed as impaired. Several commenters disagreed with EPA's decision relating to specific water body and pollutant pairs.

EPA cited MDNR's Final Guidelines for Water Body Classification as justification for its decision, specifying that "for all candidate streams, the portion of the evaluated segment ... should be representative of the entire segment with respect to stream morphometry, substrate and geology." According to EPA, this suggests that the state's classified waters are intended to be considered as segments that display similar characteristics.

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