



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

FEB 20 2007

Mr. Doyle Childers, Director
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Dear Mr. Childers:

The United States Environmental Protection Agency (EPA) has completed its review of the revisions to Missouri's Water Quality Standards under Missouri's Code of State Regulations (CSR), Division 20, Chapter 7. The Missouri Department of Natural Resources (MDNR) sent the revisions package to EPA for review, as required under federal regulations at 40 CFR §131.20, in a letter dated February 15, 2006. The new or revised water quality standards (WQS) were approved by the Missouri Clean Water Commission (MCWC) on September 7, 2005, published in the Code of State Regulations on November 30, 2005, and formally submitted to EPA with the Attorney General certification on March 28, 2006.

Under section 303(c) of the Clean Water Act (CWA), 33 U.S.C. § 1313(c), states are to review their WQS at least every three years and submit any revised or new WQS to EPA for review and approval. Federal regulations at 40 CFR §§ 131.20, 131.21, and 131.22 implement these requirements. The March 28, 2006, submission addressed by this letter encompasses a set of revisions of WQS conducted by MDNR and adopted by MCWC on September 7, 2005. As part of the review process, MDNR held three stakeholder meetings in January and February of 2005. On May 2, 2005, the proposed rules were published in the Missouri Register, which marked the beginning of the public comment period that ended on August 31, 2005. The MCWC held a public hearing on July 6, 2005, to receive public input and comment on the proposed WQS revisions. Based on our review, Missouri's public participation process is consistent with and satisfies the procedural requirements of 40 CFR § 131.20.

Missouri's previous review and revision of its WQS regulations at 10 CSR 20-7.031 was completed and adopted by MCWC in three separate actions. Missouri had two separate submissions, dated April 14, 1994, and December 9, 1996. The first submission included revisions that were adopted by the MCWC on December 16, 1993. The second submission included revisions that were adopted by MCWC on March 13, 1996, and June 25, 1996. EPA reviewed these two submissions and partially approved them on September 8, 2000.

TODAY'S DECISION

As Director of the Water, Wetlands, and Pesticides Division, I am charged with the responsibility of reviewing and approving or disapproving new or revised state WQS under section 303(c) of the CWA. With this letter, EPA is approving or disapproving the new or

revised WQS submitted by MDNR that were not addressed in EPA's April 28, 2006, and October 31, 2006, approval letters and enclosures. EPA is not taking action on certain provisions included in MDNR's submission that are not new or revised WQS. The provisions addressed in today's decision are listed below. The enclosure to this letter provides a more detailed description of EPA's rationale for approving or disapproving the new or revised WQS and for not taking action on provisions that are not new or revised WQS.

Section I – Items EPA is Approving

- A. 10 CSR 20-7.031 (1) Definitions (C) Beneficial or Designated Uses
- B. 10 CSR 20-7.031 (1) Definitions (G) Early Life Stages of Fish
- C. 10 CSR 20-7.031 (1) Definitions (G) Existing Use
- D. 10 CSR 20-7.031 (1) Definitions (O) Low-flow Conditions
- E. 10 CSR 20-7.031 (1) Definitions (T) Reference Lakes or Reservoirs
- F. 10 CSR 20-7.031 (1) Definitions (W) Use Attainability Analysis (UAA)
- G. 10 CSR 20-7.031 (1) Definitions (X) Water Effect Ratio
- H. 10 CSR 20-7.031 (1) Definitions (AA) Waters of the State
- I. 10 CSR 20-7.031 (4) Specific Criteria
- J. 10 CSR 20-7.031 (4)(A) 5. A., B., C., D., E., and F. Development of Specific Criteria for Wetlands
- K. 10 CSR 20-7.031 (4)(B)1. Toxic Substances*
- L. 10 CSR 20-7.031 (4)(B)6. Chromium III and Silver Criteria
- M. 10 CSR 20-7.031 (4)(B)7. Total Ammonia Nitrogen
- N. 10 CSR 20-7.031 (4)(L)1. Sulfate plus Chloride Limit Revision
- O. 10 CSR 20-7.031 (10) Rule reference to the Missouri Effluent Regulations at 10 CSR 20-7.015 (9)(H)*
- P. 10 CSR 20-7.015 (9) General Conditions (I) Temporary Suspension of Accountability for Bacteria Standards during Wet Weather*
- Q. 10 CSR 20-7.031 Table C – Waters Designated for Cold-Water Fishery*
- R. 10 CSR 20-7.031 Table D – Outstanding National Resource Waters*
- S. 10 CSR 20-7.031 Table E – Outstanding State Resource Waters*
- T. 10 CSR 20-7.031 Table G – Lake Classifications and Use Designations*
- U. 10 CSR 20-7.031 Table H – Stream Classifications and Use Designations*
- V. 10 CSR 20-7.031 Table I – Biocriteria Reference Location*

Section II – Item EPA is Partially Approving/Disapproving

- A. 10 CSR 20-7.015 (9)(H) Implementation Schedule for Protection of Whole Body Contact and Secondary Contact Recreation

As portions of Missouri's Effluent Regulations authorizing compliance schedules solely for the purpose of conducting an evaluation or a use attainability analysis are inconsistent with CWA and EPA regulations, EPA is disapproving these portions, as discussed in the Enclosure, and they are not in effect for CWA purposes. 40 CFR § 131.21(c). EPA is partially disapproving the provision because it does not provide for compliance schedules in a manner consistent with the definition of compliance schedule in CWA. Under the definition in CWA, a compliance schedule is an enforceable sequence of actions or operations leading to compliance

* Items on which EPA did not initiate consultation with the U.S. Fish and Wildlife Service.

with an effluent limitation. This definition contemplates that there will be an enforceable series of actions by the permittee that will result in compliance with a water quality-based effluent limitation (WQBEL) in a National Pollutant Discharge Elimination System (NPDES) permit based on the currently applicable WQS. CWA definition does not contemplate that a compliance schedule may be used to justify excluding from a permit a WQBEL based on the currently applicable standards solely to provide time to conduct an evaluation or use attainability analysis (UAA) that may result in changing the standards. However, there is nothing that prevents a discharger from providing information for the state to conduct a use attainability analysis during the time period allowed under a properly justified compliance schedule. In other words, actions related to developing a use attainability analysis or other study remain an option available to dischargers, but are taken in addition to the actions necessary to achieve compliance with WQBELs based on the existing standard.

Under EPA regulations at 40 CFR §§ 131.21 and 131.22, if EPA disapproves a state's WQS submission, it must specify any changes needed to meet the applicable requirements of CWA and EPA regulations, and if the state does not adopt the needed changes, EPA shall propose and promulgate a standard including the changes. The Enclosure to this document provides recommended changes to make the compliance schedule provision consistent with CWA and federal regulations. Further, the state may also choose not to revise and re-submit a compliance schedule authorizing provision because adopting such a provision is discretionary with the states. 40 CFR § 131.13. *In the Matter of Star-Kist Caribe, Inc.* 3 E.A.D. 172, 182-183, n.16 (1990). Because the state's standards do not need a compliance schedule-authorizing provision to be consistent with CWA, it is not necessary for EPA to promulgate an alternative compliance schedule authorizing provision in place of the disapproved provision. As a practical matter, Missouri's regulations contain a compliance schedule-authorizing provision (10 CSR 20-7.031 (10)), which is currently in effect for CWA purposes.

Section III – Items on which EPA is Taking No Action

- A. 10 CSR 20-7.031 (2) Antidegradation (D)
- B. 10 CSR 20-7.031 Table A – Groundwater Criteria for Boron
- C. Nonsubstantive Changes to 10 CSR 20-7.031
- D. Nonsubstantive Changes to Tables A and B – Criteria for Designated Uses
- E. Nonsubstantive Changes to Table E – Outstanding State Resource Waters
- F. Nonsubstantive Changes to Table G – Lake Classifications and Use Designations
- G. Nonsubstantive Changes to Table H – Classified Streams
- H. Typographical Errors for Future Correction

Today's action on Missouri's new or revised WQS is, with nine exceptions, subject to the consultation requirement of section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536. Section 7(a)(2) requires that federal agencies, in consultation with the United States Fish and Wildlife Service (FWS), ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened or endangered species or result in the destruction or adverse modification of designated critical habitat of such species. Regarding today's action, EPA has initiated consultation under section 7(a)(2) of ESA with FWS on all but nine provisions, finding that its approval action is "not likely to adversely affect" the threatened, endangered, and/or candidate species in Missouri. The nine provisions on which EPA has not initiated

consultation are noted by an asterisk (*) under the heading "Section I – Items EPA is Approving". EPA hereby approves the remaining thirteen new or revised WQS, subject to the outcome of the section 7 ESA consultation.

We encourage Missouri to continue to update its water quality standards through the triennial review process. If you have any questions regarding this matter, please contact John DeLashmit, Chief, Water Quality Management Branch, at (913)551-7821 or delashmit.john@epa.gov.

Sincerely,



William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Enclosures: Enclosure
Biological Evaluation

cc: Ed Galbraith
MDNR

Rob Morrison
MDNR

Phil Schroeder
MDNR

Charlie Scott
U.S. Fish and Wildlife Service

Andy Roberts
U.S. Fish and Wildlife Service

Amy Newman
EPA Headquarters