



Missouri
Department of
Natural Resources

DRAFT BLUE RIVER-INDIAN CREEK TMDL
PUBLIC COMMENTS

Public Notice
June 6 – August 20, 2012

Blue River
WBID #s 0417, 0418, 0419, 0421

Indian Creek
WBID # 0420

Jackson County, Mo.

Missouri Department of Natural Resources
Water Protection Program
PO Box 176
Jefferson City, MO 65102-0176
800-361-4827 / 573-751-1300

EPA regulations require that total maximum daily loads (TMDLs) be subject to public review (40 CFR 130.7). The Missouri Department of Natural Resources placed the draft Blue River-Indian Creek bacteria TMDL on a 45-day public notice and comment period from July 6, 2012 to August 20, 2012. Comments were received from the following groups or individuals:

Kansas City Water Services Department
City of Independence
Kansas Department of Health and Environment
Mr. Bob Steiert



Water Services Department

Office of the Director

4800 E 63rd Street
Kansas City, Missouri 64130

(816) 513-0504
Fax: (816) 513-0185

August 20, 2012

Mr. John Hoke
Chief, Watershed Protection Section
Missouri Department of Natural Resources
PO Box 176
Jefferson City, Missouri 65102

Re: Public Comments and Request for Meetings Regarding Total Maximum Daily Load for Blue River and Indian Creek in Jackson County, Kansas City, Missouri

Dear Mr. Hoke,

This comment letter is offered into the administrative record during the public notice period associated with the Blue River and Indian Creek Total Maximum Daily Load (TMDL) study. With this letter, the Kansas City Water Services Department (WSD) requests the Missouri Department of Natural Resources (DNR) remove, revise or better support several technical items included in and otherwise modify the proposed TMDL.

WSD recognizes the significant technical challenges and complexities in developing accurate TMDLs in urban environments. Further, WSD appreciates the ongoing dedication by DNR professionals in protecting Missouri's water resources. The intent of this letter is to assist DNR's TMDL development process by providing additional information, analysis and insights associated with the Blue River and Indian Creek watershed system. WSD is concerned about potential ramifications and feasibility of the Blue River and Indian Creek TMDL as well as those that will be forthcoming. Due to the complexity of understanding water quality issues within urban streams, the TMDL calculation process, other businesses, other States (Kansas) and to residents, it was not possible to fully analyze and comment on the TMDL within the 45 day comment period. Additional time is needed to conduct a thorough and complete review and have constructive dialogue with DNR.

Comments of significant concern are summarized by WSD below.

Comment 1: Page 1, last paragraph, 3rd sentence.

The draft TMDL states "*The consent decree compels the city...to reduce the levels of pollutants in area streams contributed by urban stormwater.*" This statement is incorrect. The consent decree addresses CSOs, SSOs, and treatment plants. The consent decree does not include specific requirements for reductions from urban stormwater.

Comment 2: Page 4, population data.

Population comments on page 4 are based on the 2000 census. The 2010 census data is available and should be used.

Comment 3: Draft TMDL does not consider available data collected by KCMO WSD.

Page 13 of the draft TMDL presents the data sources that were used in the development of the TMDL. These sources do not include monitoring conducted by KCMO WSD. KCMO conducts routine sampling at multiple locations, including Blue River and Indian Creek. The sampling and analysis is conducted consistent with a Quality Assurance Project Plan that was originally developed as part of the Overflow Control Program and was submitted to the Missouri DNR for review and approval. The WSD monitoring data would substantially increase the number of samples in the TMDL dataset resulting in a better informed TMDL. In accordance with DNR's *MISSOURI'S PUBLIC PARTICIPATION PLAN FOR THE TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM*, DNR should have solicited this information from WSD in advance of the Draft TMDL issuance.

Comment 4: Page 25, third paragraph, second sentence.

The draft TMDL states "*Approximately 84 percent of the entire watershed, and 94 percent of the watershed in Missouri, falls under MS4 regulation.*" This statement is incorrect and should be corrected. Pursuant to 10 CSR § 20-6.200(1)(C)(16)(C), the area served by the combined sewer system is not a part of the MS4 permit. This, and any conclusion(s) this assertion supports, should be revised and WSD will gladly assist DNR in doing so.

Comment 5: Draft TMDL applies an overly conservative modeling approach

The approach taken by the draft TMDL of assigning a recreation season average-based water quality criterion as the direct basis of defining allowable daily loading limits for wet weather sources is extremely conservative, and should be revised. Such an assumption creates an arbitrary and unrealistically large margin of safety beyond what is necessary for legal compliance and to the detriment of citizens and ratepayers. The nature of the geometric mean criterion is such that days with concentrations well above the standards, coupled with other days slightly below the standard, can still result in compliance with the standard. Given the data available for these sites, we believe that wet weather loads could be an order of magnitude higher or more than the currently proposed allocations and still result in compliance with water quality standards.

It is important to note that the Anacostia "daily means daily" court decision cited in the TMDL does *not* require each individual day's loading to be consistent with a long-term average water quality standard, as long as overall compliance with the long-term average standard can be demonstrated. In fact, the revised Anacostia TMDLs developed in response to this court ruling had maximum allowable daily loads up to 40 times greater than would be obtained if they were defined as requiring compliance with the long-term standard every day of the year.

We propose that the following approach be considered for defining maximum allowable wet weather loads:

1. Define the average dry weather bacteria concentration expected in each stream, in the absence of illicit loading sources.

2. Define the historical average percentage of days during the recreational season that can be considered dry weather.
3. Using the conservative assumption that stream flow is comprised by 100% wet weather sources during wet weather periods, calculate the maximum allowable wet weather concentration. This could be accomplished by calculating the geometric mean of a time series of data comprised of x% of the days at the dry weather concentration, and (1-x)% of the days at a wet weather concentration. This calculation can be repeated with different values for the assumed wet weather concentration, until the wet weather concentration is determined that results in the seasonal geometric mean being consistent with the standard.

Comment 6: E. coli contributions from Kansas

The draft TMDL implies that contributions of *E. coli* from Kansas “are not considered to cause or contribute to the impairment, and in order to meet TMDL targets in Missouri it must be assumed that Missouri’s water quality standards are met at the state line” (page 45). However, the draft TMDL does not clearly state what this means in terms of assumed concentrations of *E. coli* at the state line. The draft TMDL should present what *E. coli* level is assumed at the state line in terms of a recreation season geometric mean as well as for the various flow intervals.

Comment 7: Margin of Safety

The TMDL includes both an explicit margin of safety of 10%, as well as an implicit margin of safety since the TMDL does not account for bacterial decay or die off. Including both components in the margin of safety is not needed and we request the 10% explicit margin of safety be removed from the TMDL.

Comment 8: Expectations of CSO, SSO and MS4 controls

WSD urges the DNR to postpone TMDL implementation to allow sanitary sewer improvement efforts to be completed. WSD, USEPA, and DNR spent several years determining the best approach to implementing combined and sanitary sewer improvements. This approach, approved by DNR on April 14, 2010, is embodied in the federal consent decree.

Alternatively, and in order to be certain of the expectations for level of control after the TMDL is issued final, it is recommended the TMDL include language clearly addressing level of control for CSOs, SSOs and stormwater in the MS4s. The TMDL should include language in Section 12, Implementation Plans, that confirms DNR’s position that consent decree implementation represents the appropriate level of control and state:

“The wasteload allocations established in the TMDL for CSOs and SSOs assume the overflow control plans developed and implemented as part of the consent decree will provide the level of reduction necessary to achieve the water quality standards.”

Similarly, for stormwater discharges the TMDL should replace the last two sentences of the second paragraph of Section 12, with the following language:

“The wasteload allocations established in the TMDL for MS4s assume the stormwater pollution protection plans developed as required by the NPDES permit will provide, to the maximum extent practicable, the level of reduction necessary to achieve the water quality standards.”

This is consistent with the 2002 EPA guidance for addressing stormwater in TMDLs (“Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs”; Robert Wayland and James Hanlon to Regional Water Division Directors, November 2002). EPA’s guidance notes:

The WLAs and LAs are to be expressed in numeric form in the TMDL. See 40 C.F.R. § 130.2(h) & (i). EPA expects TMDL authorities to make separate allocations to NPDES-regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs). EPA recognizes that these allocations might be fairly rudimentary because of data limitations and variability in the system.

NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs. See 40 C.F.R. § 122.44(d)(1)(vii)(B).

WQBELs for NPDES-regulated storm water discharges that implement WLAs in TMDLs may be expressed in the form of best management practices (BMPs) under specified circumstances. See 33 U.S.C. §1342(p)(3)(B)(iii); 40 C.F.R. §122.44(k)(2)&(3). If BMPs alone adequately implement the WLAs, then additional controls are not necessary.

EPA expects that most WQBELs for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances.

Additionally, in defining the scope of the stormwater permitting program, the Congress used the phrase “reduce the discharge of pollutants to the maximum extent practicable.” This is the MEP standard. It is incorporated into the regulations and the resulting permits issued by DNR. WSD believes that the CWA only imposes the MEP standard on MS4 permit holders and that the imposition of numeric effluent limitations in municipal stormwater permits is not desirable and likely not authorized. The imposition of effluent limits on MS4 permit holders is legally questionable and not in the best interests of Missouri citizens. The Association of Clean Water Administrators, for which Missouri is a member, has similarly advocated this very same position.

Based on the applicability of the MEP standard, WSD urges that if the MS4 requires revision as a result of this TMDL, such revisions should include appropriate and incremental BMPs, in lieu of effluent limits, to reduce the discharge of pollutants from the municipal storm sewer system to the maximum extent practicable.

Comment 9: Public Participation

Section 14 of the draft TMDL describes the public participation component of the development of this TMDL. The only public participation conducted was the 45-day comment period. With a TMDL of this importance and the extent of the efforts that have taken place and are on-going related to CSOs and MS4s, as well as interstate issues, the development of this TMDL should have included close coordination with the impacted stakeholders, most notably WSD.

WSD believes that the basic approach to developing the TMDL must be improved. WSD requests revision of the TMDL with meaningful stakeholder coordination to ensure that the most appropriate and legally compliant TMDL is established. This should include development of a phased TMDL, which would be consistent with USEPA’s new Integrated Municipal Stormwater and Wastewater Planning Approach Framework.

WSD requests an opportunity to discuss our comments with DNR and work cooperatively in finalizing the TMDL. We have substantial concerns with key components of the draft TMDL that we believe need to be addressed and will greatly improve the TMDL and its implementation. These concerns include the data used to support the TMDL, the technical approach applied in determining the allowable loadings, expectations of water quality at the state line, and the expectations for CSO, SSO, and MS4 controls in meeting the TMDL. DNR has not approached WSD thus far to discuss the development of this TMDL. This TMDL is a very important regulatory requirement that is directly related to WSD and our CSO, SSO and MS4 programs. We look forward to working with DNR to address our comments, finalize the TMDL, and implement our programs to restore and protect the Blue River and Indian Creek.

We trust that these comments are helpful in ensuring that an accurate TMDL is issued that will be both protective of the environment and reasonable for the ratepayer. We appreciate your working with us as we continually strive to protect Missouri's water resources in a sound fiscally responsible manner. Please contact Kurt Bordewick, at (816)513-7241, if you have any questions or require further information.

Sincerely,



Terry Leeds
Director, Water Services Department

kcb

Cc: Kurt Bordewick, Manager, Wastewater Treatment Division, WSD
Mark Young, Manager, Stormwater Division, WSD
Matthew Gigliotti, Kansas City, Missouri

Hoke, John

From: Dorris Bender <DBENDER@indepmo.org>
Sent: Monday, August 20, 2012 5:22 PM
To: Hoke, John
Cc: Dick Champion
Subject: Public Notice Comments on Draft Blue River-Indian Creek TMDL

John,

On behalf of the City of Independence Water Pollution Control Department (WPC), the following comments are offered into the administrative record during the public notice period associated with the Blue River-Indian Creek Total Maximum Daily Load (TMDL) proposal. WPC is concerned about the precedent set for future urban area bacteria TMDLs by the proposed Blue River-Indian Creek TMDL and several other draft bacteria TMDLs for urban water bodies. Given the complexity and potential cost of implementing bacteria TMDLs in urban areas, the Department should delay finalizing any bacteria TMDLs until additional public participation activities (e.g., public meetings, workshops, etc.) are completed.

We appreciate the Department's scheduling of a public meeting to discuss recent bacteria TMDLs in the St. Louis County area. Similar concerns apply to the proposed Blue River-Indian Creek TMDL.

The final TMDL must not include requirements that exceed the "maximum extent practicable" provisions for Municipal Separate Storm Sewer System (MS4) permits in the Clean Water Act and storm water regulations.

Thank you for the opportunity to provide comments. Please contact me at dbender@indepmo.org or (816) 325-7711 if you have any questions or would like to discuss these issues further.

Sincerely,

Dorris Bender
Environmental Compliance Manager
Water Pollution Control
City of Independence
P.O. Box 1019
Independence, MO 64051

Hoke, John

From: Tom Stiles <tstiles@kdheks.gov>
Sent: Monday, August 20, 2012 5:44 PM
To: Hoke, John
Subject: blue/indian ecb tmdl

John: don't really have much to comment on regarding the tmdl. I looked at the three big KS plants run by JoCo on Blue and Indian, they have a pretty good record of low ECB in their wastewater. I also overlaid the box and whisker plots of segment 17 with that of segments 20 and 21. Looks like during wet weather months, Kansas contributes some loading, but we drop off in late summer thru the fall and winter, while the ECB on 17 stays fairly constant, so I don't think Kansas is contributing much during the off (drier) season.

Good luck with this.

Tom

Thomas C. Stiles
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Hoke, John

From: Bob Steiert <clearcreekkc@sbcglobal.net>
Sent: Monday, August 20, 2012 12:26 AM
To: Hoke, John
Subject: Blue River-Indian Creek TMDL comments

Below are my 3 comments on the propose subject TMDL. You may reach me at the above email address.

Bob Steiert
5212 Pleasant
Kansas City, MO 64133
(816) 358-7615

A) Page 35 of the draft TMDL document for the Blue River and Indian Creek indicating load duration of the pollutant of concern shows that high flows have much greater bacterial impairments than at lower flows. Whole body contact in these streams should be prohibited during high flows due to the physical hazards in the streams as well as within and near the stream banks. For the State to permit swimming during these hazardous high flow times amounts to the State accepting legal liability for this kind of behavior by the regulated public. State water quality standards in this instance condones an attractive nuisance, should be subject to litigation when injury occurs, and regulation at high flows should not be used. The load allocation should be revised and prepared for lower flows where whole body contact is not hazardous due to the readily observable unsafe and dangerous physical conditions in the streams.

B) It is unreasonable to justify an allocation of nonpoint source loads in Missouri based on an assumption that flows from Kansas meet Missouri water quality standards at the state line (page 45). This allocation methodology does not appear to be the interpretation of 40 CFR 131.10(b). Monitoring results and modeling methods in the TMDL document should calculate actual impairments coming from Kansas for the load allocations required in Missouri.

C) Monitoring plans (page 46) should insist and specify collection of E coli data ONLY when flows are low. In this way, the data and subsequent analysis will reflect the flow regimes when whole body contact can be performed without extra ordinary life threatening hazards due to the conditions of the streamflow, channel and stream banks. Load allocations and all other analyses should be revised to consider only those data collected at lesser flows that will allow safe whole body contact.