



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

JAN 25 2013

Ms. Sara Parker Pauley, Director  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

Dear Ms. Pauley:

On December 11, 2012, the U.S. Environmental Protection Agency received the Missouri Department of Natural Resources' submission of new and revised water quality standards under a cover letter dated December 10, 2012. The new and revised WQS were approved by the Missouri Clean Water Commission on March 9, 2012, were published in the Code of State Regulations on May 31, 2012, and became effective under state law on June 30, 2012. The submission package included a certification letter from the Missouri Attorney General's Office, dated November 16, 2012. Today, the EPA is partially approving and partially disapproving the compliance schedule authorizing provisions in the WQS submission. The EPA will continue to review other components of the submission and will act on these components at a later date.

## BACKGROUND

On December 1, 2011, the MDNR proposed a number of changes in the state's WQS (36 moreg 2521). A public hearing on the proposed changes was held in Jefferson City on January 4, 2012, and written comments on the proposed changes were accepted by the MDNR through January 18, 2012. The Commission adopted six new or revised WQS provisions on March 9, 2012, but the final rule, published on May 31, 2012, included only five new or revised provisions. These included (1) sulfate and chloride criteria in Table A, (2) phenol criteria in Table A, (3) site-specific dissolved oxygen criteria for Main Ditch and Pike Creek in Table K, (4) stream use designation changes for whole body contact recreation and secondary contact recreation in Table H and (5) an amended compliance schedule authorizing provision at 10 CSR 20-7.031(10).

Under Section 303(c) of the Clean Water Act (33 U.S.C. § 1313(c)) and Title 40, parts 131.20, 131.21 and 131.22 of the Code of Federal Regulations, states must review their WQS at least every three years and submit any new or revised WQS to the EPA for review and approval. Federal regulations at 40 CFR § 131.13 allow water quality standards to include "policies generally affecting their application and implementation, such as mixing zones, low flows and variances." The Administrator has acknowledged that authorizing provisions for compliance schedules, such as those under review today, fall within the



category of implementation policies and procedures subject to federal review under 40 CFR § 131.13 (*In re Star-Kist Caribe, Inc.*, 3 E.A.D. 172, 182-183, n. 16 (Adm'r 1990), *modification denied*, 4 E.A.D. 33 (EAB 1992); *In re City of Ames*, 6 E.A.D. 374 (EAB 1996)).

## 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 and revised WQS under Section 303(c) of the CWA. With this letter, the EPA is partially approving and partially disapproving the revised compliance schedule authorizing provision found in the Missouri WQS at 10 CSR 20-7.031(10). The EPA's rationale for these actions is presented below.

### 1) 10 CSR 20-7.031(10) Compliance with Water Quality Based Limitations

Missouri's previous compliance schedule authorizing provision was adopted by the Commission on September 7, 2005, published as part of a final rule on November 30, 2005, and partially approved and partially disapproved by the EPA on February 20, 2007. Missouri's December 11, 2012, WQS submission contained the following, amended provision at 10 CSR 20-7.031(10) (underlined text represents language added to, and strike-through text represent language deleted from, the earlier provision):

*Compliance with Water Quality Based Limitations. Compliance with new or revised National Pollutant Discharge Elimination System (NPDES) or Missouri operating permit limitations based on criteria in this rule shall be achieved with all deliberate speed ~~no later than three (3) years from the date of issuance of the permit except where provided for otherwise in 10 CSR 20-7.015(9)(H).~~ and in accordance with federal regulation at 40 CFR Part 122.47, "Schedules of Compliance," May 15, 2000, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, which is hereby incorporated by reference and does not include any later amendments or additions. The department shall maintain a copy of the referenced document and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction.*

The revised rule removes the three-year limitation on compliance schedules and replaces it with language referencing the federal compliance schedule regulation at 40 CFR § 122.47. The removal of the three-year limitation casts uncertainty on the meaning of the phrase "with all deliberate speed." The Clean Water Act at Section 502(17) defines a schedule of compliance as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard." This definition contemplates that there will be an enforceable series of actions by the permittee that will result in compliance with a final water quality-based effluent limitation in a National Pollutant Discharge Elimination System permit. Federal regulations regarding compliance schedules at 40 CFR § 122.47(a)(1) require that such effluent limitations be attained "as soon as possible."

In the EPA's January 18, 2012, written comments to MDNR on the proposed revisions to this provision, the EPA requested the MDNR confirm that all compliance schedules will be issued only "when appropriate" and "as soon as possible" according to 40 CFR 122.47. In its written response to the EPA's comments published in the Code of State Regulations on May 31, 2012, MDNR stated:

*"Details and durations of compliance schedules will be site-specific and engineered to ensure water quality standards are achieved as soon as possible."*

As explained above, the removal of the three-year limitation casts uncertainty on the meaning of the phrase "with all deliberate speed," the phrase also has the potential to cause confusion if interpreted in any other manner than "as soon as possible." Given these considerations, the EPA is disapproving the language "with all deliberate speed and" but approving the remaining language at 10 CSR 20-7.031(10) such that the approved elements in the rule read:

*Compliance with Water Quality Based Limitations. Compliance with new or revised National Pollutant Discharge Elimination System (NPDES) or Missouri operating permit limitations based on criteria in this rule shall be achieved in accordance with federal regulation at 40 CFR Part 122.47, "Schedules of Compliance," May 15, 2000, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, which is hereby incorporated by reference and does not include any later amendments or additions. The department shall maintain a copy of the referenced document and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction.*

Under Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536, federal agencies, in consultation with the U.S. Fish and Wildlife Service, must insure that their actions are not likely to jeopardize the continued existence of federally-listed threatened or endangered species or to result in the destruction or adverse modification of designated critical habitats. Today's actions on the Missouri WQS are subject to the consultation requirements of Section 7 of the ESA and should be regarded as interim actions pending completion of the consultation process.

The EPA appreciates Missouri's continuing efforts to protect and restore water quality and its overall commitment to the triennial WQS review and revision process. We look forward to working with the MDNR, the Commission and interested stakeholders on future WQS revisions. Should you have any questions or comments regarding today's actions, please contact John DeLashmit, Chief, Water Quality Management Branch, at (913) 551-7821.

Sincerely,



Karen A. Flournoy

Director

Water, Wetlands and Pesticides Division

cc: John Madras, MDNR; Corey Buffo, EPA HQ

