



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
11201 RENNER BOULEVARD
LENEXA, KS 66219

DEC 14 2018

OFFICE OF
THE REGIONAL ADMINISTRATOR

Ms. Carol Comer
Director
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Dear Ms. Comer:

The Missouri Department of Natural Resources sent a water quality standards package to the U.S. Environmental Protection Agency for review, as required under federal regulations at 40 CFR §131.20, in a letter dated April 13, 2018, which included 10 CSR 20-7.031(5)(N) and other provisions. The EPA has completed its review of Missouri's new or revised water quality standards at 10 CSR 20-7.031(5)(N). The EPA will continue to review the other components of the April 13, 2018 submittal, and will act on those remaining components at a later date.

Section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), directs states to adopt water quality standards for their navigable waters. The April 13, 2018 submission partially addressed by this letter, encompasses a set of revisions of WQS proposed by MDNR and adopted by the Missouri Clean Water Commission on January 4, 2018. The proposed rules were published in the Missouri Register on October 16, 2017, which marked the beginning of the public comment period that ended on November 28, 2017. The MCWC held a public hearing on November 21, 2017, to receive public input and comment on the proposed WQS revisions. The new or revised WQS were published in the Code of State Regulations on March 31, 2018. Based on our review, Missouri's public participation process is consistent with and satisfies the procedural requirements of 40 C.F.R. § 131.20.

Section 303(c)(2)(A) and the EPA's implementing regulations at 40 C.F.R. Part 131 require, among other things, that state WQS include the designated use or uses to be made of the waters and criteria that protect those uses. Water quality criteria "are elements of state water quality standards, expressed as constituent concentrations, levels or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use." 40 C.F.R. § 131.3(b). States have a primary role in adopting water quality standards. The EPA has an oversight role. In this role, the EPA must determine whether the state's WQS are consistent with the Act's requirements. CWA Section 303(c)(3). The EPA's review is based on "the requirements of Act as described in 40 C.F.R. §§ 131.5 and 131.6." 40 C.F.R. §131.21(b).



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For water quality criteria, the EPA's review involves a determination of whether the state's adopted criteria are consistent with 40 C.F.R. §§ 131.11 and 131.5(a)(2). 40 C.F.R. § 131.11(a)(1) provides that states shall "adopt those water quality criteria that protect the designated use" and that such criteria "must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use." When adopting criteria, a state must "take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters." 40 C.F.R. § 131.10(b).

The EPA's regulations provide that the state must submit for review the new or revised water quality criteria, methods used, and analyses conducted to support such criteria, and a certification that such criteria were duly adopted pursuant to state law. 40 C.F.R. § 131.6(b), (c), and (e). MDNR provided such certification from the Attorney General of Missouri dated March 27, 2018.

TODAY'S DECISION

As regional administrator, I have the authority to review and approve or disapprove new or revised state WQS under section 303(c) of the CWA. With this letter, the EPA is approving the new or revised WQS submitted by MDNR specified below that address EPA's 2011 disapproval of numeric nutrient criteria at 10 CSR 20-7.031(4)(N), except for 4(N)3, Table M, which EPA's 2011 disapproval mistakenly identified as 10 CSR 20-7.031(3)(N). The EPA is not taking action on the 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 the EPA's rationale for approving the new or revised WQS.

Items EPA is Approving

- 10 CSR 20-7.031(5)(N) (including Tables L and M)
- Renaming of Table M to Table N as a Nonsubstantive Change

Items EPA is Taking No Action

- 10 CSR 20-7.031(5)(N)(4) (EPA has determined that this provision is not a WQS as described in the enclosure to this letter)
- 10 CSR 20-7.031(5)(N)(1)(C)(II)
- Specific reference to Table N within 10 CSR 20-7.031(N)(3)

The EPA initiated consultation with the U.S. Fish and Wildlife Service under Section 7(a)(2) of the ESA, 16 U.S.C. §1536, regarding the effects of the EPA approving a change to Missouri's WQS for numeric nutrient criteria on November 21, 2017. The EPA sent a letter to Karen Herrington, Field Supervisor, Missouri Ecological Field Services Office on October 1, 2018, to continue informal consultation with FWS with a specific focus on the EPA's proposed action on Missouri's WQS for numeric nutrient criteria for lakes and reservoirs. The EPA requested verification of the current species list on October 23, 2018. The EPA completed and submitted to FWS a Biological Evaluation on November 5, 2018, conveying the EPA's evaluation that the proposed approval of Missouri's new numeric nutrient criteria for Missouri's lakes and reservoirs is not likely to adversely affect listed

species and designated critical habitat. On November 26, 2018, FWS confirmed it had reviewed the EPA's BE and based on the analysis of effects to listed species and critical habitat provided in the BE, FWS concurred with the EPA's determination of not likely to adversely affect pursuant to the ESA. This concluded ESA consultation.

If you have any questions regarding this matter, please contact me, at (913) 551-7006 or gulliford.jim@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "James B. Gulliford". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

James B. Gulliford

Enclosures

