



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101
FEB 3 2009

Mr. Michael Linder, Director
Nebraska Department of Environmental Quality
P. O. Box 98922
Lincoln, Nebraska 68509-8922

Re: U. S. Environmental Protection Agency (EPA) Review of the Nebraska Section 303(d)
List of Impaired Waters Contained in the Nebraska 2006 and 2008 Surface Water
Quality Integrated Reports.

Dear Mr. Linder:

Thank you for your submittal of Nebraska's Year 2006 and 2008 Surface Water Quality Integrated Reports (IR). The state's IR submissions follow the format of the EPA *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (EPA 2006 IRG). The guidance utilizes five assessment categories to provide a comprehensive description of the water quality status and beneficial use attainment of all waters within a state. This report format is intended to satisfy the reporting requirements of Sections 305(b) and 314, and for the purposes of this decision letter, the listing requirements of Section 303(d) of the Clean Water Act (CWA). The five categories are:

- Category 1: All designated uses are met;
- Category 2: Some of the designated uses are met, but there is insufficient data to determine if remaining designated uses are met;
- Category 3: Insufficient data to determine whether any designated uses are met;
- Category 4: Water is impaired or threatened, but a Total Maximum Daily Load (TMDL) is not needed (includes subcategories);
- Category 5: Water is impaired or threatened and a TMDL is needed (the 303(d) list).

While EPA reviews the placement of waters in all five (5) IR categories, the agency makes a formal determination on your CWA Section 303(d) list (Category 5 list of water quality limited segments) of waters still requiring the development of a TMDL. At the time when EPA received Nebraska's 2008 IR (received on April 28, 2008), we had not yet completed our process of reviewing and acting on the 2006 IR that had been received from Nebraska on May 9, 2006. Subsequent submissions of supporting documentation and supplemental information and data for both lists were also provided by the state at EPA's request. An outstanding issue between our two agencies is the nutrient criteria used by the Nebraska Department of Environmental Quality (NDEQ) for delisting lakes and reservoirs from both the 2006 and 2008 303(d) lists. NDEQ and EPA have mutually agreed upon a revised nutrient criteria development plan (October 2008),

which defines the timelines and milestones for developing/revising the lakes and reservoir nutrient criteria previously adopted by the state, but which have not been approved by EPA. As a result, EPA is deferring final action with respect to the state's decision to not list certain lakes and reservoirs on the combined 2006/2008 list; these specific waters are identified in the enclosure to this letter in Section D.

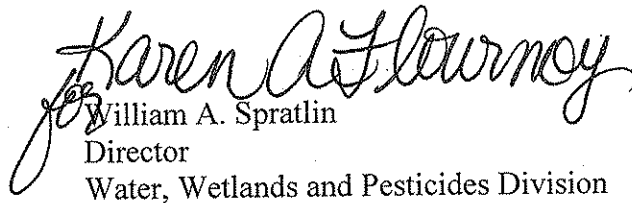
In order to incorporate several changes to the 2008 IR as a result of further information and data, and to accommodate EPA's review, the state submitted a final modified Nebraska 2008 IR to EPA. EPA received the final modified IR on November 20, 2008. Because Nebraska has submitted its 2006 and 2008 IRs, and now a final modification to the 2008 IR, a separate notification by EPA to approve or disapprove each of the 303(d) list/Category 5 submissions is unnecessary. Therefore, EPA's formal action today encompasses both the 2006 and the modified final 2008 303(d) lists/Category 5 submissions.

EPA has conducted a complete review of Nebraska's combined 2006/2008 303(d) list, supporting documentation, and information. Based on this review EPA has determined that Nebraska's 303(d) list/Category 5 submissions of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of Section 303(d) of the CWA and EPA's implementing regulations. Therefore, today EPA is deferring final action on certain lakes and reservoirs where nutrients had been identified in the 2004 and 2006 303(d) lists as impairing aquatic life until the state submits its 2010 303(d) list, and approving the remainder of Nebraska's 2006/2008 CWA Section 303(d) list. EPA approves the water body/pollutant pairs that Nebraska included on its 2008 303(d) list (including the waters carried over from its 2006 303(d) list). The statutory and regulatory background of the CWA Section 303(d) list and EPA's rationale for approving certain delistings is also included as an enclosure to this letter.

I congratulate you and your staff for the completion of the list development and submission process, and thank you for the very impressive collaborative nature with which your staff worked with EPA to resolve issues related to the IR. This process requires a significant amount of staff resources and involves a complex evaluation and assessment of water quality data. We look forward to working with NDEQ on the development of the 2010 section 303(d) list.

If you would like to further discuss EPA's action, please contact me at 913-551-7401, or John DeLashmit, Chief of the Water Quality Management Branch at 913-551-7821.

Sincerely,


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Enclosure

cc: Marty Link, NDEQ
Pat O'Brien, NDEQ
John Goodin, EPA OWOW