

Water Quality Standards/Clean Water Act: U.S. Environmental Protection Agency Proposes Nutrient Impairment Classification for 7 Illinois River Watershed Waterbodies



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The United States Environmental Protection Agency (“EPA”) transmitted a letter to the Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) addressing the State’s 2020 State of Arkansas Clean Water Act § 303(d)/§ 305(b) Integrated Water Quality Monitoring and Assessment Report.

EPA states in this transmittal letter that it has taken the following actions:

- Approval of all waterbodies identified by Arkansas as impaired on its Section 303(d) List.
- Adding seven waterbody parameter pairs to the 2020 List in the Illinois Rivers Watershed that the federal agency states are not attaining the State’s narrative nutrient criteria.

Section 303(d) of the Clean Water Act requires that each state develop Water Quality Standards (“WQS”) for jurisdictional Waters of the United States within their border.

WQS serve a dual purpose.

They establish the water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual point source dischargers. The particular WQS deemed applicable to a waterbody can therefore be an important determinant of the effluent limits a discharging facility will need to attain.

A WQS consists of three parts:

- Designated uses for waterbody.
- The Water Quality Criteria (“WQC”) that are necessary to protect existing uses and to attain the beneficial uses designated by the state.
- Anti-degradation statement or policy to protect existing uses and high-quality water.

WQS may be expressed as either a numeric concentration level or a narrative standard.

States are given the primary authority to adopt uses consistent with Clean Water Act objectives and WQC sufficient to protect the chosen uses. However, EPA is required to ensure that a state WQS, along with any changes, meet the minimum requirements of the Clean Water Act.

Section 303 of the Clean Water Act also requires each state to identify those waters within its boundaries for which the technology-based effluent limits required by the Clean Water Act and defined by EPA are not stringent enough to attain the applicable WQS. Waters so designated are known as “Water Quality Limited Segments” or “Impaired Water”. Each state is required to submit this list (303(d) List) to EPA bi-annually (accompanied by a listing determination).

ADEQ is the state agency charged with assembling the 303(d) List. Arkansas Pollution Control and Ecology Rule No. 2 contains Arkansas WQS.

EPA initially states in its transmittal letter to ADEQ that it is approving all impairments identified by ADEQ on its Section 303(d) List.

EPA also states that it is:

...taking action to add 7 waterbody/parameter pairs to the 303(d) List. These 7 waterbody/parameter pairs are in the Illinois River Watershed and are not attaining the State’s Narrative Nutrient Criteria based on multiple lines of evidence consistent with the language in the Water Quality Standards (enclosure 1). The EPA will open a 30-day comment period seeking input regarding the addition of these waterbody/pollutant pairs to the Arkansas 2020 Section 303(d) List. After considering public comments and making appropriate revisions, the EPA will transfer the 2020 Listings to the State.

ADEQ has previously met with EPA and provided supplemental data and analysis to rebut the federal agency’s conclusions regarding the Illinois River Watershed waterbodies. The EPA action being taken has sometimes been described as an “over-listing”.

EPA’s action could have significant ramifications and therefore it is likely to be a subject of significant consideration/comments during the public comment period.

A copy of the document styled Review of Arkansas’ 2020 Section 303(d) Waterbody List can be downloaded [here](#).