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# Water Quality Standards/Clean Water Act: Arkansas Department of Energy and Environment Response to U.S. Environmental Protection Agency Proposed Nutrient Impairment Classification for Seven Illinois River Watershed Bodies

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The Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) submitted August 26th comments addressing the United States Environmental Protection Agency’s (“EPA”) partial disapproval of Arkansas’ 2020 Clean Water Act 303(d) list of impaired waters (“303(d) List”). See FRL-11994-01-R6 (“Disapproval Letter”).

DEQ submitted 2020 the 303(d) List to EPA in 2022.

By way of introduction, DEQ’s August 26th comments note in part:

...EPA’s Partial Disapproval purports to add to Arkansas’ 2020 303(d) List. Specifically, EPA claims “seven water body/parameter pairs are in the Illinois River Watershed and are not attaining the State’s narrative nutrient criteria.” Record of Decision (“ROD”), p. 7. On June 20, 2024, EPA published this action in the Federal Register initiating a public comment period on its decision. Arkansas Energy and Environment and DEQ provide this comment in response to EPA’s action to overlist these “seven waterbody/parameter pairs” in the Illinois River Watershed.

DEQ sets forth two categories of objections:

- EPA’s Disapproval Letter fails to comply with components of the Clean Water Act that established the “state-led” cooperative federalism framework.
- EPA’s Disapproval Letter improperly relies on numeric nutrient criteria approved for use in Oklahoma, rather than the narrative nutrient criteria approved for use in Arkansas.

Section 303 of the Clean Water Act requires that each state develop water quality standards (“WQS”) for jurisdictional Waters of the United States within their borders.

WQS consists of three parts:

- Designated use of the waterbody.

- The water quality criteria (“WQC”) that are necessary to protect existing uses to attain the beneficial uses designated by the state; and,
- An anti-degradation statement or policy to protect uses and high-quality water.

WQC are ambient water quality conditions deemed protective for the use established for a waterbody. They represent a judgement at what levels, concentrations, or conditions can support a desired use for a waterbody.

The 303(d) List constitutes the list of waterbodies in the state not meeting the relevant WQS.

DEQ’s August 26th comments objecting to EPA’s addition of the waterbody/parameter pairs in the Illinois River Watershed include the following:

- EPA’s asserted an improper basis for its decision to add waters to the Arkansas 2020 Section 303(d) list.
- EPA’s description of its process.
- EPA’s Analysis.
- DEQ’s technical analysis found EPA’s Record of Decision lacking.
- The McGoodwin, Williams, and Yates Study (MWY) found no violation of Arkansas’ narrative standard.
- The measured total phosphorus concentrations from the MWY study did not correlate to nuisance levels of algae.
- EPA failed to link aquatic life community structure to nutrients.
- DEQ’s assessment of Spring Creek refutes EPA’s assumptions about nutrient concentrations.
- EPA’s Record of Decision fails to provide an adequate scientific analysis.
- EPA’s review of Arkansas’ 303(d) list did not comply with the Clean Water Act.
- EPA’s action violates the state-led cooperative federalism framework in the Clean Water Act.
- EPA’s decision to add waters to the Arkansas 2020 Section 303(d) list is not based on Arkansas’ narrative standard.
- The Clean Water Act requires EPA to review Arkansas’ 303(d) list based on the applicable water quality standard.
- The Clean Water Act requires EPA take specific actions before EPA can act to replace Arkansas’ narrative standard.
- EPA’s partial disapproval attempts to impose a unilateral change to Arkansas’ valid and approved water quality standard without providing a meaningful opportunity for public involvement.
- EPA’s Record of Decision does not support EPA’s assertion that Arkansas did not use certain water quality information or address public input.
- EPA’s partial disapproval looks suspiciously like a flanking maneuver to attack the two federal lawsuits that DEQ filed against EPA.
- Conclusion.

DEQ requests that EPA reverse or withdraw its Partial Disapproval of the Arkansas 303(d) List.

A copy of the August 26th comments can be downloaded [here](#).