

Nutrient Criteria/Clean Water Act: Ozark Waters Article Notes Missouri Clean Water Commission Adoption



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The January edition of the Ozarks Water Watch publication *Ozark Waters* references the recent adoption by the Missouri Clean Water Commission (“Commission”) of Clean Water Act nutrient criteria for Missouri lakes and streams.

The article’s author, Ozarks Water Watch Executive Director David Casaletto, discusses the Commission’s January 4th meeting and adoption of these criteria.

Section 303(c) of the Clean Water Act requires that the states specify one or more uses for all waterbodies within their jurisdiction. A use classification can either be an existing use or a higher quality use that has not been attained (i.e., a designated use). Water quality criteria are ambient water quality conditions that are deemed protective of the uses established for a waterbody. States are required to adopt water quality criteria protective of the designated uses.

The designated use and the corresponding criteria for a particular waterbody can have consequences for those facilities or activities whose discharges will enter it. Some uses may have corresponding water quality criteria or standards that require the imposition of effluent limits on point source discharges more stringent than those imposed by applicable Clean Water Act categorical standards. Consequently, the criteria prescribed for a designated use can be a key determinant of the assimilative capacity available in a waterbody.

Mr. Casaletto’s article provides some background on the Commission’s historical efforts to develop nutrient criteria for Missouri waterbodies. This discussion includes a reference to Missouri’s 2009 submission of numeric criteria for total nitrogen, total phosphorus, and chlorophyll to the United States Environmental Protection Agency (“EPA”) for review and approval. EPA subsequently determined that Missouri failed to demonstrate the criteria would protect the state’s designated uses and therefore disapproved of most of the proposed standards in 2011.

The article also references 2016 litigation by the Missouri Coalition for the Environment in which EPA was sued for failure to perform its duty under the Clean Water Act regarding the Missouri criteria. A Consent Decree was entered into that committed EPA to address Missouri nutrient criteria by certain dates. EPA subsequently proposed federal nutrient criteria for Missouri on January 8th.

The Federal Register notice of EPA’s proposal (as discussed in the article) provides two primary alternatives for Missouri nutrient criteria, which include:

- Nutrient protection values and eutrophication impact factors in a combined criterion approach

- A similar combined criterion approach that would mirror the State of Missouri's October 17th proposal for lake nutrient water quality standards

EPA states in the January 8th Federal notice that it will not proceed with final rulemaking (or withdraw its final rule, if applicable) to address its 2011 disapproval if Missouri adopts and submits criteria to address the agency's prior disapproval and they meet Clean Water Act requirements.

Mr. Casaletto notes that the second alternative proposed by EPA "is exactly the same as Missouri's now approved standards." Further, he references discussion at the Commission meeting which predicted EPA's first alternative would cause 113 Missouri lakes to be listed as impaired, potentially costing permitting facilities \$1.7 billion. As to EPA alternative 2, it is estimated that 34 lakes would be listed as impaired with an estimated cost to permitted facilities of \$83 million.

Links provided in Mr. Casaletto's article can be found below.

[Federal Register: Water Quality Standards for the State of Missouri's Lakes and Reservoirs](#)

[CWC Meeting Packet: Proposed Revisions to Water Quality Standards 10 CSR 20-7.031 \(Including public comments\)](#)

[EPA Website: Water Quality Standards Regulations: Missouri](#)