

Responsiveness Summary to Comments Concerning Arkansas 2008 303(d) Listing

Comment: A comment was received questioning the turbidity listing for Lake SWEPCO. The commenter stated that, “The sample size and collection time period are not sufficient...”, and “Since all four data points were collected in August, the data is not temporally representative and does not present an accurate picture of the water quality of the reservoir.”

Response: ADEQ (Arkansas Department of Environmental Quality) acknowledges the comment. However, ADEQ must follow the assessment methodology that was mutually agreed upon by EPA and the ADEQ. In addition, ADEQ must follow current water quality standards as outlined in Regulation No. 2 when evaluating water quality data for Lake SWEPCO. The current lake water quality data used to evaluate Lake SWEPCO indicates impairment. ADEQ is considering site-specific criteria for future implementation that will better protect individual lakes and their designated uses.

Comment: A commenter requested that all streams listed as impaired that are tributary to Beaver Lake, as well as the lake itself, be identified as a “High” priority on the list and remain in Category 5a.

Response: Beaver Lake is listed as a high priority on the 2006 303(d) list. Many of the water quality standards exceedances in the listed tributaries are either small in magnitude or infrequent in occurrence; therefore, these streams will remain listed as a “Low” priority by the State

Comment: A commenter requested that the current assessment methodology, the draft 305(B) Report, and the water quality data be available to assist in the review of the list of impaired waterbodies.

Response: ADEQ acknowledges the comment and agrees that the assessment methodology and the on-line water quality database should be available during the public comment period. Unfortunately, due to extraneous circumstances, this was not possible this year. The Draft 305(B) Report cannot be completed until after the public comment period on the List of Impaired Waterbodies, therefore, the report cannot be made available until after the list has been reviewed.

Comment: Several comments were received stating that it is difficult to determine what portion of the stream is listed because there are no reference maps with the 303(d) list.

Response: ADEQ agrees and plans to include maps depicting the planning segments and the major streams with future 303(d) lists publications.

Comment: A comment was received stating that the cause for impairment on Big Creek, Saline River drainage, should be listed as organic enrichment based on historical listings and data.

Response: ADEQ agrees with this comment and will change the listing to organic enrichment.

Comment: A comment regarding the beryllium listing in Big Creek was received stating the all the water quality data from the monitoring site fully meets the current beryllium water quality standard of 4.0 ug/L.

Response: The water quality standard for beryllium in Regulation No. 2 during the assessment period was 0.076 ug/L. The beryllium data collected during the 2006 assessment period does not meet that standard.

Comment: Comments were received stating that the water quality data for Bayou De Loutre is currently meeting the standards adopted by the Arkansas Pollution Control and Ecology Commission on June 22, 2007. In addition, all of the data and supporting documentation developed for that process also indicate no impairments.

Response: The changes to the water quality standards referred to in the comment have not yet been approved by EPA. The 2008 assessment was based on the 2004 Regulation No. 2. ADEQ is aware of these changes, and is aware of the data and supporting documentation used to develop the proposed water quality standards revisions. This data and the supporting documentation will be evaluated during the preparation of the 2010 List of Impaired Waterbodies.

Comment: One commenter listed several reasons as to why the ELCC tributary, Flat Creek and Salt Creek should not be listed. These included: 1) the data used for the assessment was too old; 2) current NPDES requirements and effluent data should be considered; 3) aquatic life surveys completed in 2006 should be considered; and 4) Regulation No. 2 revisions adopted by the Arkansas Pollution Control and Ecology Commission in July 2007 should be considered.

Response: 1) The period of record for the 2008 assessment cycle was October 1, 2002 to September 30, 2007. All data used to make the assessments fell within the period of record. 2) The current NPDES requirements and effluent data were evaluated; 3) The mentioned aquatic life surveys occurred outside of the period of record for this assessment cycle; and 4) The revisions to Regulation No. 2 occurred after the period of record for this assessment period.

Comment: A comment was received stating that ADEQ had new information submitted to them as part of a 3rd party rule-making which would enable the delisting of Big Cornie Bayou, Little Cornie Bayou, and Walker Branch. The comment also mentioned that because the sample site on Big Cornie Bayou was upstream of the confluence of Little Cornie Bayou, that it is inappropriate to list Little Cornie Bayou as impaired. The listing of these waters is not supported by the current water quality regulations [2007] and therefore should be removed. The 303d list does not provide any documentation of the dissolved minerals concentrations used to determine designated use support or non-support.

Response: The period of record for the 2008 assessment cycle was October 1, 2002 to September 30, 2007. All data used to make the assessments fell within the period of record. 2) The current 2007 Regulation No. 2 was not adopted by the Commission until after the period of record and has not yet been approved by EPA; thus the assessments for the 2008 listing cycle were made based on the 2004 Regulation No. 2. It is established in the assessment methodology

that agriculture and industrial water supply designated uses will be evaluated based on minerals criteria. The 303(d) list does not document the procedures for determining use attainment for identifying probably sources, or includes the data used to develop the list.

Comment: A comment was received that there was not proper justification given for the removal of the phosphorus listing from Spring Creek, two segments on Osage Creek, and Muddy Fork of the Illinois River from the 2006 list as they were listed on the EPA approved 2004 list.

Response: The data developed from these waterbodies during the period of record for the 2004 and 2006 listing cycles all indicated that these waterbodies are meeting applicable state water quality standards as approved by EPA Region 6 and are attaining assessment methodology procedures as mutually agreed to between EPA Region 6 and ADEQ. Therefore, these streams were not listed by ADEQ on either list, but were added to the list by EPA Region 6 personnel.

Comment: A comment was received stating that Arkansas did not utilize all the data they received in developing the list of impaired waterbodies.

Response: ADEQ acknowledges the comment, however all pertinent data were evaluated and utilized during the development of the 2008 List of Impaired Waterbodies. In addition, the commenter did not provide any evidence to support the claim that all data was not utilized. ADEQ would like to take this opportunity to express appreciation to all of the watershed groups, state and federal agencies, and other entities that provided data for the evaluation process.

Comment: A comment was received stating that WHI0026 is actually monitoring Big Creek Ditch and not Bayou DeView.

Response: ADEQ has always considered WHI0026 to be on Bayou DeView and has used this station to assess the headwaters of Bayou DeView, whether they are called Big Creek Ditch, Johnson Ditch, Lost Creek Ditch, or something else. However, with the upgraded mapping tools now available, it is apparent that the upper portion of Bayou DeView is actually Big Creek Ditch. ADEQ appreciates the data delivered to the Department with the comments and has used this data to update the appropriate sections of Regulation No. 2 (See Arkansas Pollution Control and Ecology Commission Rulemaking Docket No. 07-003-R).

Comment: The City of Siloam Springs submitted a comment stating, in sum, that “[T]he City requests Sager Creek HUC 11110103 be removed from the 2006 and 2008 lists because ADEQ does not have authority to designate a waterbody as impaired based upon the level of a parameter for which Arkansas does not have water quality criterion.”

Response: ADEQ acknowledges the comment but, respectfully, disagrees. 40 CFR 130.7(b)(4) states, “For the purposes of listing waters under 130.7(b), the term ‘water quality standard applicable to such waters’ and ‘applicable water quality standards’ refer to those water quality standards established under section 303 of the Act, including numeric criteria, narrative criteria, *waterbody uses*, and antidegradation requirements.” (emphasis added) Under Regulation No. 2, the water quality standards for Arkansas, Sager Creek has the designated use of domestic water supply. The Environmental Protection Agency has established Maximum Concentration Levels

(MCLs) for certain pollutants in drinking water supplies, as part of the Federal Drinking Water Standards. To meet the designated use of domestic water supply, the waterbody must meet the applicable MCLs. During the assessment period, Sager Creek did not meet the MCL for nitrates and was listed as impaired for not meeting the designated use of domestic water supply.

Comment: One commenter requested that any assessment decision that would transfer control from local authority to Federal authority be reconsidered and not be listed as impaired.

Response: ADEQ acknowledges the comment. Waterbodies are listed as impaired based on the procedures set forth in the Clean Water Act and applicable federal regulations, pursuant to the delegation of authority to the State by the Environmental Protection Agency, specifically 40 CFR 130.7.

Comment: One commenter opposed the listing of the Kings River because the listing would result in “Federal Intrusion” in the watershed. They also stated that ADEQ must be cautious when listing waterbodies needing data verification and should not base listing decisions when testing procedures seem to be faulty.

Response: ADEQ acknowledges the comment. Waterbodies are listed as impaired based on the procedures set forth in the Clean Water Act and applicable federal regulations, pursuant to the delegation of authority to the State by the Environmental Protection Agency, specifically 40 CFR 130.7. ADEQ follows an assessment methodology that was mutually agreed upon by EPA and the Department, according to applicable statutes and regulations, and is based upon scientifically defensible data and assessment procedures.