

Enclosure to letter from Miguel I. Flores, EPA Region 6, to Jon L. Craig, Oklahoma Department of Environmental Quality

Purpose

The purpose of this document is to describe the rationale for EPA's approval of the Oklahoma 2008 section 303(d) list of water quality limited segments still requiring Total Maximum Daily Loads (TMDLs). The following sections identify those key elements to be included in the list submission based on the Clean Water Act (CWA) and EPA's implementing regulations found at 40 CFR section 130.7. EPA reviewed the methodology used by the State in developing the section 303(d) list and the State's description of the data and information considered. EPA's review of Oklahoma's section 303(d) list is based on whether the State reasonably considered all existing and readily available water quality-related data and information, and reasonably identified waters that should be listed.

Key Dates

1. State transmittal letter for the final Oklahoma 2008 Water Quality Assessment Integrated Report: September 16, 2008
Receipt by EPA: September 19, 2008
2. Submittal of Integrated Report geographic information system (GIS) data layers, and assessment database (ADB) in standard extensible markup language format (via ODEQ e-mail message attachment sent by Joe Long): September 16, 2008

Statutory and Regulatory Background

Identification of Water Quality Limited Segments for Inclusion on the Section 303(d) List

Section 303(d)(1) of the Act and 40 CFR section 130.7(b) direct each state to identify those waters within its jurisdiction for which effluent limitations required by section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses of such waters. Section 303(d)(2) of the Act and 40 CFR section 130.7(d) require the states to submit their section 303(d) lists to EPA for approval. The section 303(d) listing requirements apply to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of section 303(d).

EPA regulations provide that states do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by state or

local authority, and (3) other pollution control requirements required by state, local, or federal authority. See 40 CFR 130.7(b)(1).

Consideration of Existing and Readily Available Water Quality-Related Data and Information

In developing section 303(d) lists, the states are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the state's most recent section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate non-attainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions, in response to active solicitation by the state for information about research they may be conducting or reporting; and (4) waters identified as impaired or threatened in any section 319 nonpoint assessment submitted to EPA. See 40 CFR 130.7(b)(5). In addition, states are required to consider any other existing and readily available data and information. See "Guidance for Water Quality-Based Decisions: The TMDL [Total Maximum Daily Load] Process," EPA Office of Water, 1991, Appendix C ("EPA's 1991 Guidance"). While the states are required to evaluate all existing and readily available water quality-related data and information, the states may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring the states to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR 130.7(b)(6) require the states to include, as part of their submissions to EPA, documentation to support decisions to rely or not rely on particular data and information for decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; (3) a rationale for any decision to not use any existing and readily available data and information; and (4) any other reasonable information requested by the Region.

Priority Ranking

EPA regulations also codify and interpret the requirement in section 303(d)(1)(A) of the Act that the states establish a priority ranking for the listed waters. The regulations at 40 CFR 130.7(b)(4) require the states to prioritize waters on their section 303(d) lists for TMDL development, and also to identify those water quality limited segments (WQLSs) targeted for TMDL development in the next two years. 40 CFR section 130.7(b)(4) also requires the state to identify the pollutants causing or expected to cause violations of applicable water quality standards. In prioritizing and targeting waters, the states must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See section 303(d)(1)(A). The states may consider other factors relevant to prioritizing waters for TMDL development, including immediate

programmatic needs, vulnerability of particular waters as aquatic habitats; recreational, economic, and aesthetic importance of particular waters; degree of public interest and support; and the state or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA's 1991 Guidance.

Analysis of Oklahoma's Submission

Consideration of Existing and Readily Available Water Quality-Related Data and Information.

EPA has reviewed the State of Oklahoma's 2008 submission and concluded that the State developed the section 303(d) list in compliance with section 303(d) of the Act and 40 CFR 130.7. EPA analyzed the documentation provided by Oklahoma in support of listing decisions to determine whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters to be listed. EPA's decision to approve Oklahoma's listing decisions is based on EPA's review of the data and information submitted concerning individual waters and the State's evaluations of those waters.

Oklahoma combined the 2008 section 305(b) report and section 303(d) list into a single report following EPA guidance entitled "Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions". See also 40 CFR section 130.7(d)(1). A single water quality assessment methodology was followed for both the 305(b) report and the 303(d) list. Oklahoma's Integrated Report included five categories as established in EPA's guidance, including Category 5 which constitutes the 2008 section 303(d) list. Category 5 is the only portion of Oklahoma's Integrated Report on which EPA is taking action today.

EPA reviewed Oklahoma's assessment and listing methodology, described in Oklahoma Administrative Code 785:46, Implementation of Oklahoma's Water Quality Standards Use Support Assessment Protocols, as part of the review of the listing submission. However, CWA section 303(d) and 40 CFR section 130.7 do not require EPA to take action on a state's listing methodology. Therefore, EPA's approval of the State's listing decisions should not be construed as concurrence with or approval of the listing methodology.

Oklahoma's 2008 Integrated Report includes water quality data, assessment results and information collected and compiled by multiple state agencies, in addition to federal and local agencies and volunteer water monitoring groups. The report includes information that indicates that standards attainment decisions were made based on assessment of water quality-related data.

Oklahoma's 2008 section 303(d) list now includes 743 waterbody segments and 1,758 segment-pollutant combinations. The 2008 list reflects a net increase in numbers of segments when compared to the 2006 list, attributable to Oklahoma's ongoing efforts to

expand their water quality monitoring programs and apply new assessment methods, leading to documentation of previously unidentified water quality problems.

Three hundred thirty-nine segments that were listed in 2006 were removed from the 2008 list, for reasons that were consistent with EPA guidance. The general reasons for removing waters from the list were included in the ADB submission, and additional details were provided in the final Integrated Report. The following are the general reasons cited for removal of waterbodies from the section 303(d) list:

- TMDLs were completed for pollutants included on previous section 303(d) lists.
- Recent data collected from a 303(d) listed segment indicated that a listed pollutant is no longer a potential cause of water quality impairment.
- Changes in the applicable water quality standards and/or assessment methods resulted in changes in the standards attainment status of previously listed segments.
- The state review identified flaws in original listings, attributable to errors associated with segment identifiers, or assessments that were based on numeric criteria that were not part of the applicable standards.
- New segment boundaries changed the identification of a segment-pollutant combination, and/or the geographic area affected by a section 303(d) listing.

EPA concludes that the State properly assembled and considered all existing and readily available data and information, including all of the existing and readily available data and information relating to the categories of waters specified in 40 CFR 130.7(b)(5). EPA also concludes that the State's decisions to list the waters identified in its listing submission are consistent with federal listing requirements.

Public Participation

EPA has determined that the State of Oklahoma took reasonable steps to solicit all existing and readily available water quality-related data and information from members of the public and government agencies via public participation when preparing Oklahoma's 2008 Integrated Report, consistent with 40 CFR section 130.7(b)(5)(iii).

The public participation process included solicitations for input from the public via direct mailings in September 2007, as described in the Integrated Report. Several interagency meetings were held to review the assessment methodology and draft list, including priority ranking and scheduling for 303(d) listed waters. The draft list was also sent to EPA and made available for public review.

Oklahoma's 2008 Integrated Report includes a responsiveness summary that explains how the State considered public comments in the final listing decisions. The

public review helped to identify errors associated with five pollutant listings that were subsequently corrected by the State, prior to the final submittal to EPA. Other listing issues were also identified during the public review that were subsequently considered by the State; however, no changes were made to the section 303(d) list. The State addressed these comments by (1) providing additional information to clarify the State's position, (2) agreeing to consider new data and information during development of the 2010 list, and (3) forwarding the information to other Oklahoma agencies for appropriate follow-up actions. The State's responses to public comments appeared to be reasonable and consistent with existing EPA guidance.

Priority Ranking and Targeting

EPA also reviewed the State's priority ranking of listed waters for TMDL development and concludes that the State properly took into account the severity of pollution and the uses of listed waters. The State documented the use of a comprehensive methodology in the Integrated Report for prioritizing waters for TMDL development. The level of priority for each waterbody is expressed in the report by the targeted date for development. As such, the State identified 126 segments targeted for TMDL development between 2008 and 2010. EPA concludes that the State's priority ranking and targeting commitments are consistent with federal requirements.

Administrative Record Supporting This Action

In support of this decision to approve the State's listing decisions, EPA carefully reviewed the materials submitted by the State with its 303(d) listing decision. The administrative record supporting EPA's decision is comprised of the materials submitted by the State, copies of section 303(d), associated federal regulations, and EPA guidance concerning preparation of section 303(d) lists, as well as this decision letter (see Appendix). EPA has determined that the materials provided by the State with its submission provide sufficient documentation to support our analysis and findings that the State listing decisions meet the requirements of the CWA and 40 CFR 130.7. We are aware that the State compiled and considered additional materials (e.g., raw data and water quality analysis reports) as part of its list development process that were not included in the submission. EPA did not consider these additional materials as part of its review of the listing submission. Neither the CWA nor 40 CFR 130.7 require the State to submit to EPA all data and information assembled as a result of its 303(d) list development process, and it is unnecessary for EPA to review all of the background materials in order to determine that the State complied with the applicable federal listing requirements.

Consideration of Waters within Indian Country

EPA's approval of Oklahoma's section 303(d) list extends to all water bodies on the list with the exception of those waters that are within Indian Country, as defined in 18 U.S.C. Section 1151. EPA is taking no action to approve or disapprove the State's list

with respect to those waters at this time. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under Section 303(d) for those waters.

Statewide Schedule for TMDL Development

The Integrated Report also included ODEQ's long-term schedule for TMDL development for all waters on the 2008 list. EPA acknowledges and appreciates receipt of this schedule.

Appendix: List of administrative records used in review of the Oklahoma 2008 §303(d) List

1. Water Quality in Oklahoma: 2008 Integrated Report Prepared Pursuant to Section 303(d) and Section 305(b) of the Clean Water Act, Oklahoma Department of Environmental Quality.
2. Assessment Database (ADB) files and geographic information system (GIS) data layers, supporting the State of Oklahoma 2008 Integrated Report, submitted by the Oklahoma Department of Environmental Quality on September 16, 2008
3. Title 785. Oklahoma Water Resources Board -- Chapter 45. Oklahoma's Water Quality Standards, April 23, 2008.
<http://www.owrb.ok.gov/quality/standards/standards.php>
4. Title 785. Oklahoma Water Resources Board -- Chapter 46. Implementation of Oklahoma's Water Quality Standards Board, April 23, 2008.
5. EPA, October 12, 2006 memorandum from Diane Regas, Director, Assessment and Watershed Protection Division, Office of Water, EPA headquarters to Regions 1–10 Water Division Directors; Robert Maxwell, Director, Office of Environmental Measurement and Evaluation Region 1, Barbara Finazzo, Director, Division of Environmental Science and Assessment Region 2, Gale Hutton, Director, Environmental Services Division, Region 7 and Bill Riley, Director, Office of Environmental Assessment, Region 10 regarding “*Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*”, http://www.epa.gov/owow/tmdl/2008_ir_memorandum.html
6. EPA, 2005, *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act*, EPA Office of Water, July 29, 2005.
7. EPA, 2003, *Guidance for 2004 Assessment, listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act* EPA: TMDL-01-03 U.S. Environmental Protection Agency, Office of Water, Washington, DC.
8. EPA 2002, *Consolidated Assessment and Listing Methodology*, EPA Office of Water, July 2002.
9. EPA 2000, April 28, 2000 memorandum from Robert H. Wayland, III, Director, Office of Wetlands, Oceans, and Watershed, office of Water, EPA Headquarters regarding “EPA Review of 200 Section 303(d) Lists.”
10. EPA 2001b, November 19, 2001 memorandum from EPA Office of Water regarding *2002 Integrated Water Quality monitoring and Assessment Report Guidance*.

11. EPA 1997a, May 23, 1997 memorandum from Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division, Office of Water, EPA headquarters to FACA Workgroup Section 303(d) Listing Criteria re: Nonpoint Sources and Section 303(d) Listing Requirements.
12. EPA 1997a, August 27, 1997 memorandum from Robert H. Wayland III, Director, Office Wetlands, oceans, and Watershed, Office of Water, EPA Headquarters, to Water Division Directors, Regions I-X, and Directors, Great Water Body program, and Water Quality Branch chiefs, Regions I-X, regarding “National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions.”
13. EPA 1997b, September, 1997 Guidance from Office of Water, Headquarters, UA EPA regarding *Guidelines for preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Supplement*, EPA-841-B-97-002B.
14. EPA 1996, August 9, 1996 memorandum from Robert Perciasepe, Assistant Administrator regarding EPA Action on 1996 lists, “Priority Rankings and TMDL Targeting Plans Submitted by States Under Section 303(d) of the CWA.”
15. EPA 1993, November 26, 1993 memorandum from Geoffrey Grubbs, Director, Assessment and Watershed Protection Division, Office of Water, EPA headquarters, to Water Quality Branch Chiefs, Regions I-X, and TMDL coordinators, Regions I-X, regarding “Guidance for 1994 Section 303(d) Lists.”
16. EPA 1992a, July 24, 1992 Federal Register Notice, *40 CFR Parts 122, 123, 130*, revision of regulation, 57 Fed. Reg. 33040.
17. EPA 1992b, August 13, 1992 memorandum from Geoffrey Grubbs, Director, Assessment and Watershed Protection Division, office of Water, EPA Headquarters, to EPA Water Quality Branch Chief’s, Regions I-X and TMDL Coordinators, Regions I-X, regarding “Supplemental Guidance on Section 303(d) Implementation.”
18. EOA 1992c, October 30, 1992 memorandum from Geoffrey Grubbs, Director, Assessment and Watershed Protection Division, Office of Water, EPA Headquarters, to Water Quality Branch Chiefs, Regions I-X, regarding “Approval of 303(d) Lists, Promulgation Schedules/Procedures, Public Participation.”
19. EPA 1991, April 1991. *Guidance for Water Quality Based Decisions: The TMDL Process*, App. C. EPA 440/4-91-001 U.S. Environmental protection Agency, Office of Water, Washington, DC.
20. EPA 1985, January 11, 1985 Federal Register Notice, *40 CFR Parts 35 and 130*, Water Quality Planning and Management: Final Rule, 50 Fed. Reg. 1774

21. EPA 1978, December 28, 1978 Federal Register Notice, Total Maximum Daily Loads Under Clean Water Act, finalizing EPA's identification of pollutants suitable for TMDL calculations, 43 Fed. Reg. 60662.