

October 16, 2006

Mr. Martin Maner, Chief
Water Division
Arkansas Department of Environmental Quality
8001 National Drive
Little Rock, AR 72209

Dear Mr. Maner:

Thank you for submitting Arkansas' 2004 Section 303(d) list of water quality limited water bodies. The Environmental Protection Agency (EPA) has conducted a complete review of the submittal dated October 5, 2005, drafts submitted August 2004 and November 2004, and supporting documentation and supplemental information provided at EPA's request. Based on this review, EPA has determined that Arkansas' 2004 list of water quality limited segments (WQLSs) still requiring Total Maximum Daily Loads (TMDLs) partially meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Arkansas' water body listing and priority ranking decisions meet the listing requirements; however, Arkansas' decisions not to list several waters and pollutants identified in the enclosed table do not meet the listing requirements. Therefore, by this letter, EPA approves the State's decision to list two hundred seventy one (271) water body pollutant combinations identified in the State's listing submission and associated priority rankings and is deferring action on forty six (46) water body pollutant combinations identified in the State's listing submission and associated priority rankings. EPA disapproves the State's decision not to list five (5) water body pollutant combinations and defers action on eighty three (83) water body pollutant combinations in the attachment to this letter and discussed in more detail in the enclosed decision document. EPA is further identifying these five (5) additional water bodies and pollutants with appropriate priority rankings for inclusion on the 2004 Section 303(d) list. EPA will open a public comment period on the additions to the list and will, if necessary, revise the list of added waters and pollutants after we consider any comments received. The statutory and regulatory requirements, and a summary of EPA's review of Arkansas' compliance with each requirement, are described in the enclosed decision document.

However, please note that in EPA's initial review of the 2004 section 303(d) list, we identified eighty three (83) water body pollutant combinations that did not appear on the 2004 section 303(d) list that we contended should have been listed. Following many discussions between EPA and the State regarding these issues on the 2004 list, the State agreed to add some of these waters to the 2006 section 303(d) list while providing new data and/or information supporting its determination that the remaining waters were not impaired. Based on this agreement, EPA is deferring action on those eighty three (83) water body pollutant combinations identified as missing from the 2004 section 303(d) list until the State submits its final 2006 303(d) list. Because in all likelihood issues on remaining waters will be resolved in the short-term, this approach would be in the best interest of both the Arkansas Department of Environmental Quality (ADEQ) and EPA. EPA received the draft 2006 list on April 3, 2006.

Review of Arkansas' draft 2006 303(d) list indicates the State re-evaluated these waters resolving most of the outstanding issues with the 2004 list. In a letter dated July 27, 2006, ADEQ committed to resolve the remaining twenty three (23) outstanding issues by including nineteen (19) water body pollutant combinations on the final 2006 list and provided information in support of not listing the remaining four (4) water body pollutant combinations. Statutory and regulatory requirements, a summary of EPA's review of Arkansas' compliance with each requirement, and a summary of the waters upon which EPA is deferring action, are described in the enclosed decision document.

Furthermore, please note that in EPA's initial review of the 2004 section 303(d) list, we identified forty six (46) water body pollutant combinations that appeared on the 2004 section 303(d) list that we contended should not have been listed. EPA will take no action on these forty six (46) water body pollutant combinations to keep them out of the National TMDL Tracking System (NTTS) and from having to spend money on writing TMDLs until additional data and information is provided in support of a listing action. ADEQ committed to re-assessing these listings as appropriate in the 2006 303(d) list cycle. Review of Arkansas' draft 2006 303(d) submitted April 3, 2006 indicates the State re-assessed these waters and only reaches 006, 007 and 008 of Village Creek were listed on the 2006 303(d) draft list. New data indicate the waters that were not included on the draft 2006 303(d) list are still meeting water quality standards for the parameter indicated.

Please note that EPA issued guidance for integrating the development and submission of 2004 section 305(b) water quality reports and section 303(d) lists of impaired waters. See EPA's July 21, 2003, memorandum from Diane Regas to the States entitled "Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act". This guidance recommends that States develop an integrated report of the quality of their waters by placing all waters into one of five assessment categories. If a State follows this guidance, category 5 of the integrated report constitutes the State's section 303(d) list. In 2004, the State of Arkansas developed an integrated report consistent with this guidance. Therefore, today's action is limited to only those waters found in category 5 of the integrated report.

Arkansas' 303(d) submission includes 317 water body-pollutant combinations. The State listings are based on assessment methodologies and data and information described in the State submittal. EPA acknowledges and supports the State's approach of retaining on the list all previously listed waters until new data and information are available to support a change in their assessment. In addition to the list, the EPA regulations at 40 CFR §130.7 require that the State provide a priority ranking for each listing and a TMDL development schedule for the next two years. The State provided priority rankings for all listed waters as required by section 303(d) and its implementing regulations. Thirty three (33) water body pollutant combinations are targeted for TMDL development in the next two years. This is consistent with the targeting requirement of 40 CFR § 130.7 and the requirements under the consent decree in Sierra Club V. Whitman, case No. LR-C-99-114 (E.D. Ark) which requires twenty TMDLs.

EPA acknowledges that the public participation process sponsored by ADEQ included solicitations of public comments through newspaper advertisements, several public hearings, and preparation of a responsiveness summary explaining how the State considered public comment

in the final listing decisions. These actions meet the public participation requirements as required in 40 CFR §130.7.

Thank you for your efforts to develop the 2004 Section 303(d) water body list. We will continue to coordinate with you during the upcoming comment period. If you have questions on any of the above information, feel free to give me a call at (214) 665-7101 or call Jessica Franks at (214) 665-8335.

Sincerely,

Miguel I. Flores, Director
Water Quality Protection Division
Region 6

Enclosure

cc: Mary Leath, Deputy Director
Steve Drown, Water Quality Planning Branch