



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

SEP 30 2010

Mr. Mike Linder  
Director  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
Lincoln, Nebraska 68509-8922

Dear Mr. Linder:

The United States Environmental Protection Agency (EPA) has completed its review of the revisions to Nebraska's water quality standards (WQS) under Nebraska's Code of State Regulations, Title 117 – Nebraska Surface Water Quality Standards (Chapters 1, 2, 4, 5, 6 and 7). The Nebraska Department of Environmental Quality (NDEQ) sent revisions to Nebraska's WQS to EPA for review, as required under the Code of Federal Regulations (CFR) at 40 CFR § 131.20, on April 15, 2010; EPA received this WQS package on April 21, 2010.

As part of the review process, the final draft revisions were made available for public review and comment starting August 28, 2008, and ending November 13, 2008. The availability of the revisions was announced in the public notice section of the Omaha World-Herald. The revisions were also made available through the NDEQ internet site and all NDEQ field offices.

The new or revised WQS were approved by the Nebraska Environmental Quality Council (EQC) on November 13, 2008, and the Office of the Attorney General certified the revised WQS on December 29, 2008. The revisions were then approved by the Governor and the Secretary of State on March 17, 2009.

Under Section 303(c) of the Clean Water Act (CWA), 33 U.S.C. § 1313(c), states are to hold public hearings for the purpose of reviewing applicable WQS no less than once every three years, and to submit any revised or new standards to EPA for review and approval. Federal regulations at 40 CFR §§ 131.20, 131.21, and 131.22 implement these requirements. Based on our review, Nebraska's public participation process is consistent with, and satisfies, the procedural requirements of 40 CFR § 131.20.

Under Section 303(c) of the CWA, EPA is required to review and approve or disapprove new or revised WQS adopted by the State. This review involves a determination of whether:

- the state has adopted water uses consistent with the requirements of the CWA;
- the state has adopted criteria that protect the designated water uses;
- the state has followed its legal procedures for revising or adopting standards;

- the state standards that do not include the uses specified in section 101(a)(2) of the CWA are based upon appropriate technical and scientific data and analyses; and,
- the state submission meets the requirements included in 40 CFR § 131.6.

As Director of the Water, Wetlands and Pesticides Division, I am charged with the responsibility of reviewing and approving or disapproving new or revised state WQS under section 303(c) of the CWA. With this letter, EPA is approving certain new or revised WQS submitted by NDEQ, or deferring action on other new or revised WQS submitted by NDEQ. EPA is not taking action on certain new or revised provisions included in NDEQ's submission that are not WQS. The enclosure to this letter provides a more detailed description of EPA's rationale for approving or deferring certain new or revised WQS and for not taking action on provisions that are not new or revised WQS.

**SECTION I: ITEMS EPA IS APPROVING**

- |                        |   |
|------------------------|---|
| A. Chapter 2-004:      | Identification of the level of protection for lakes not identified in Chapter 6.  |
| B. Chapter 4-002.02:   | Adoption of a new narrative toxic substances criterion to support the primary contact recreation (PCR).   |
| C. Chapter 4-003.01C1: | New 304(a) Adoption of criteria for diazinon and nonylphenol.   |
| D. Chapter 6-005:      | Revisions to combine listings for Alexandria Lakes Nos. 1 & 2 into one listing.   |
| E. Chapter 6-005:      | Revisions to rename Fremont Lakes 18E (LP1-L0220) and 18W (LP1-L0230) as Fremont Lakes 18 (LP1-L0220) and 17 (LP1-L0230).   |
| F. Chapter 6-005:      | Revisions to combine listing for Fremont Lakes 20E (LP1-L0250) and 20W (LP1-L0260) into one listing as Fremont Lakes 20 (LP1-L0250).                                  |
| G. Chapter 6-005:      | Identification of new classified lakes with use designations including Recreation, Warmwater Class A Aquatic Life, Agricultural Class A Water Supply, and Aesthetics. |
| H. Chapter 7-004.01C1: | Adoption of 304(a) criteria for diazinon and nonylphenol.   |

## **SECTION II: ITEMS UPON WHICH EPA IS DEFERRING ACTION**

- A. Chapters 003.02B6: Revisions allowing site-specific numeric chloride criteria based on natural background values for Antelope Creek.
- B. Chapter 5-004: Revision from Agricultural Water Supply Use Class A to Agricultural Water Supply Use Class B for Antelope Creek (LP2-20900).
- C. Chapter 6-005: Application of nutrient classifications for lakes and reservoirs.


## **SECTION III: ITEMS UPON WHICH EPA IS TAKING NO ACTION**

- A. Chapter 1-042: Correction of a typographical error in the definition for natural background, the phrase “shall mean” is written twice.
- B. Chapter 2-014: Addition of a new provision stating the application of statistical procedures to water quality data is acceptable for the assessment of water quality.
- C. Chapter 5-004: Substitution of 52 new river basin and sub-basin maps replacing the previous hand drafted maps.
- D. Chapter 5-004: Removal of an extra “0” from the Long Pine Creek (NI3-12300) segment number.
- E. Chapter 5-004: Revision of comments for five stream segments regarding State Endangered Species.
- F. Chapter 6-005: Revision of legal descriptions for lakes or impounded waters.
- G. Chapter 6-005: Removal of classified lakes or impounded waters based on aerial photographs and information from communities and Natural Resources Districts that these waters no longer exist.

EPA initiated consultation with the United States Fish and Wildlife Service (USFWS) under section 7(a)(2) of the Endangered Species Act in November 2008. Section 7(a)(2) requires that federal agencies, in consultation with the USFWS, insure that their actions are not likely to jeopardize the existence of federally listed species or result in the adverse modification of designated critical habitat of such species. As of today, this consultation has not been completed. By approving the standards “subject to” the results of consultation under section 7(a)(2) of the Endangered Species Act, EPA retains the discretion to revise its approval decisions if the consultation identifies deficiencies in the water quality standards.

EPA commends the state's commitment to protecting its waters by establishing water quality standards and adopting numeric criteria that significantly increase environmental protection to aquatic life in waters in the state. We look forward to continuing to work with NDEQ to update its water quality standards through the triennial review process. If you have any questions regarding this matter, please contact John DeLashmit, Chief, Water Quality Management Branch, at (913) 551-7821 or by email at [delashmit.john@epa.gov](mailto:delashmit.john@epa.gov). The staff contact regarding this letter is Keith Hayden, and he may be reached at (913) 551-7828.

Sincerely,

  
for William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

Enclosure

cc: Ms. Amy Newman  
EPA Headquarters

Mr. Pat Rice  
NDEQ

Ms. Marty Link  
NDEQ

Mr. John Bender  
NDEQ

Mr. John Cochnar  
USFWS

## ENCLOSURE

### **EPA REGION VII ACTION ON TITLE 117: 2008 NEBRASKA SURFACE WATER QUALITY STANDARDS**

Under Section 303(c) of the Clean Water Act (CWA), 33 U.S.C. § 1313(c), states are to hold public hearings for the purpose of reviewing applicable water quality standards (WQS) no less than once every three years, and to submit any revised or new standards to EPA for review and approval. The Code of Federal Regulations (CFR) at 40 CFR §§ 131.20, 131.21, and 131.22 implement these requirements.

The Nebraska Environmental Quality Council (EQC) adopted Nebraska's 2008 WQS revisions on November 13, 2008. As part of the review process, the final draft revisions were made available for public review and comment starting August 28, 2008, and ending November 13, 2008. The 2008 Nebraska WQS revisions were made available for public review and comment through an announcement in the public notice section of the Omaha World-Herald and through the Nebraska Department of Environmental Quality (NDEQ) Web site and at all NDEQ field offices. The Assistant Attorney General certified the revised WQS on December 29, 2008; the revisions were then approved by the Governor and the Nebraska Secretary of State on March 17, 2009. NDEQ submitted the adopted WQS, by letter, to the Environmental Protection Agency (EPA) on April 15, 2010. EPA received the WQS submittal on April 21, 2010, and based on our review, EPA finds that Nebraska's public participation process is consistent with, and satisfies, the procedural requirements of the at 40 CFR § 131.20.

Under Section 303(c) of the CWA, EPA is required to review and to approve or disapprove new or revised water quality standards adopted by the State. This review involves a determination of whether:

- the State has adopted water uses consistent with the requirements of the CWA;
- the State has adopted criteria that protect the designated water uses;
- the State has followed its legal procedures for revising or adopting standards;
- the State standards that do not include the uses specified in Section 101(a)(2) of the CWA are based upon appropriate technical and scientific data and analyses; and
- the State submission meets the requirements included in 40 CFR § 131.6.

EPA initiated consultation with the United States Fish and Wildlife Service (USFWS) under Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2), in November 2008. ESA Section 7(a)(2) requires that federal agencies, in consultation with the USFWS, insure that their actions are not likely to jeopardize the existence of federally listed species or result in the adverse modification of designated critical habitat of such species. As of today, this consultation has not been completed. By approving the standards "subject to" the results of consultation under Section 7(a)(2) of the ESA, EPA retains the discretion to revise its approval decisions if the consultation identifies deficiencies in the water quality standards.

## **SECTION I: ITEMS EPA IS APPROVING**

- A. Chapter 2-004: Identification of the level of protection for lakes not identified in Chapter 6.
- B. Chapter 4-002.02: Adoption of a new narrative toxic substances criterion to support the primary contact recreation (PCR).
- C. Chapter 4-003.01C1: New 304(a) Adoption of criteria for diazinon and nonylphenol.
- D. Chapter 6-005: Revisions to combine listings for Alexandria Lakes Nos. 1 & 2 into one listing.
- E. Chapter 6-005: Revisions to rename Fremont Lakes 18E (LP1-L0220) and 18W (LP1-L0230) as Fremont Lakes 18 (LP1-L0220) and 17 (LP1-L0230).
- F. Chapter 6-005: Revisions to combine listing for Fremont Lakes 20E (LP1-L0250) and 20W (LP1-L0260) into one listing as Fremont Lakes 20 (LP1-L0250).
- G. Chapter 6-005: Identification of new classified lakes with use designations including Recreation, Warmwater Class A Aquatic Life, Agricultural Class A Water Supply, and Aesthetics.
- H. Chapter 7-004.01C1: Adoption of 304(a) criteria for diazinon and nonylphenol.

## **SECTION II: ITEMS UPON WHICH EPA IS DEFERRING ACTION**

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- F. Chapter 6-005: Revision of legal descriptions for lakes or impounded waters.
- G. Chapter 6-005: Removal of classified lakes or impounded waters based on aerial photographs and information from communities and Natural Resources Districts that these waters no longer exist.

### **SECTION I: ITEMS EPA IS APPROVING**

EPA finds the following new or revised changes to Nebraska’s water quality standards to be consistent with Section 303(c) of the CWA and EPA’s implementing regulations at 40 CFR § 131.6. Unless otherwise noted, the *italicized* words in the sections below represent language contained in Nebraska WQS, Title 117; underlined words represent additions to Title 117 in 2008; and ~~strike through~~ words represent deletions from Title 117 in 2008.

EPA is hereby approving the following Nebraska provisions which are new or revised since the date of Nebraska’s last water quality standards submission on August 21, 2006. More information regarding EPA’s approval is discussed below in this enclosure.

#### **A. Chapter 2-004: Application of Standards.**

*The application of standards for lakes and impounded waters shall be in accordance with Chapters 3, 4, and 6. Lakes and impounded waters not identified in Chapter 6 shall be protected for the assigned beneficial uses of the stream segments (Chapter 5) on which they are located. Water quality criteria associated with such beneficial uses shall be applicable to these lakes and impounded waters. Lakes not identified in Chapter 6 that are not located on stream segments shall be protected in accordance with 009 of this chapter.*

This revision to Chapter 2-004 was previously included in the 2005 WQS triennial review package submitted by NDEQ to EPA by letter dated August 17, 2006. However, EPA did not act on this revision in its decision letter of September 20, 2009, due to uncertainty about the additional language's affect on unclassified lakes. EPA's September 2009 decision letter stated that it would take action on the revisions to Chapter 2-004 and several other provisions of the 2005 WQS in subsequent action. EPA has now completed its review of the language within the context of the State's WQS.

The new language in this provision clarifies that lakes that are neither specifically classified in Chapter 009 of the Nebraska WQS nor located on stream segments would be assigned general criteria, i.e., narrative and numeric water quality criteria associated with aesthetics, and acute toxicity for the protection of aquatic life. This provision provides clarity regarding the application of the Nebraska's WQS to existing unclassified lakes and impoundments. This revision is consistent with the CWA and EPA's implementing regulations at 40 CFR § 131.11, and is hereby approved by EPA.

**B. Chapter 4-002.02: Standards for Water Quality.**

*These waters shall be free from toxic substances, alone or in combination with other substances, in concentrations that result in adverse health impacts to humans participating in primary contact recreation.*

This is a new narrative criterion to support the primary contact recreation (PCR) use. NDEQ has stated in its Explanatory Statement submitted to the EQC for the Nebraska 2008 WQS submittal that it added this criterion to address concerns regarding toxic substances, primarily algal toxins, that cause health impacts for humans who recreate in the water. EPA currently has no numeric criteria recommendations for algal toxins. As explained in Nebraska's 2008 Integrated Report Sampling and Assessment Methodology, NDEQ currently uses the World Health Organization's (WHO's) recommended threshold for a moderate probability of adverse health effects to microcystins value of 20 parts per billion (ppb) in conjunction with a 10% exceedance threshold, as a numeric translator to assess the beneficial use for recreation. According to the NDEQ website, NDEQ plans to use the 20 ppb screening value to issue health alerts to the recreating public. While State health alerts may be based on a single grab sample, CWA § 303(d) listing decisions will continue to be based on a 10% exceedance threshold. This revision to the Nebraska WQS, which provides additional authority for the State to protect recreational use waters from toxic substances, is consistent with the CWA and EPA's implementing regulations at 40 CFR § 131.11(b)(2), which call for the establishment of narrative criteria to supplement numeric criteria, and is therefore approved.

**C. Chapter 4-003.01C1: Standards for Water Quality.**

<u>POLLUTANTS</u>	<u>CRITERIA (ug/L)</u>		<u>CAS No.*</u>
	<u>Acute</u>	<u>Chronic</u>	
<u>Diazinon</u>	<u>0.17<sup>c</sup></u>	<u>0.17<sup>d</sup></u>	<u>333415</u>
<u>Nonylphenol</u>	<u>0.28<sup>c</sup></u>	<u>6.6<sup>d</sup></u>	<u>84852153</u>

Acute and chronic diazinon and nonylphenol criteria have been adopted for the protection of aquatic life. The criteria for diazinon and nonylphenol are based on the most sensitive species' response to toxicity tests. The most sensitive species is *Ceriodaphnia dubia* for both the acute and chronic diazinon criteria. *Hyalella azteca* is the most sensitive species for acute nonylphenol criteria and *Americamysis bahia* for the chronic nonylphenol criteria. These new numeric criteria for the protection of aquatic life are consistent with the nationally recommended water quality criteria EPA published pursuant to Section 304(a) of the CWA and with EPA's implementing regulations at 40 CFR §131.11, and are hereby approved.

**D. Chapter 6-005: Lakes and Impounded Waters.**

*Alexandria Lake Nos. 1 & 2 (LB2-L0010)*  
~~*Alexandria Lake No. 2 (LB2-L0020)*~~

NDEQ combined the entry for Alexandria Lakes No. 1 (LB2-L0020) with the entry for Alexandria Lake No. 2 (LB2-L0010), thus creating Alexandria Lakes Nos. 1 & 2. The combined lakes entry is listed as LB2-L0010 and LB2-L0020 was removed. In-lake modifications made at Alexandria State Recreation Area (SRA) removed the dike between the two lakes, which resulted in one contiguous lake. The "1 & 2" designation is being retained because the Nebraska Game and Parks Commission still recognizes the individual basins in their maps. The combined listing of the lakes retains all previously approved designated uses, including 101(a) goal uses. These revisions to Chapter 6 provide further clarity and accuracy and are consistent with 40 CFR § 131.6, and are hereby approved by EPA.

**E. Chapter 6-005: Lakes and Impounded Waters.**

NDEQ renamed Fremont Lakes 18E (LP1-L0220) and 18W (LP1-L0230), as Fremont Lakes 18 (LP1-L0220) and 17 (LP1-L0230), in order to correspond with lake identifications on Nebraska Game and Parks Commission maps. The renamed lakes retain all previously approved designated uses, including 101(a) goal uses. These revisions to Chapter 6 provide further clarity and accuracy and are consistent with 40 CFR § 131.6, and are hereby approved by EPA.

**F. Chapter 6-005: Lakes and Impounded Waters.**

NDEQ combined the entries of Fremont Lakes 20E (LP1-L0250) and 20W (LP1-L0260), into one listing under Fremont Lakes 20 (LP1-L0250), in order to correspond with lake identifications on Nebraska Game and Parks Commission maps. The renamed lakes retain all previously approved designated uses, including 101(a) goal uses. These revisions to Chapter 6 provide further clarity and accuracy and are consistent with 40 CFR § 131.6, and are hereby approved by EPA.

**G. Chapter 6-005: Lakes and Impounded Waters.**

- Horseshoe Bend Lake (Tilden) (EL4-L0025)*
- Lone Star Reservoir (Little Sandy Site 61) (LB1-L0050)*
- Davis Creeks Reservoir (LO2-L0015)*
- Willow Lake B.C. (WMA) (LO2-L0055)*
- Fremont Lake No. 3A (LP1-L0315)*
- Homestead Lake (LP1-L0355)*
- Regional Center Pond (LP2-L0065)*
- Silver Creek City Pond (MPI-L0015)*
- Halleck Park Lake (Papillion) (MT1-L0023)*
- Big Indian Pond (WMA) (RE1-L0005)*
- Oxford City Lake (RE2-L0020)*
- Curtis City Pond (RE3-L0030)*
- Big Springs Community Lake (SP1-L0095)*
- Cherry Creek Diversion Pond (Ft. Robinson State Park) (WH1-L0105)*

Nebraska has added the above identified fourteen lakes and impoundments to its list of classified lakes and impoundments in Chapter 6 of Title 117 and adopted new designated uses for these waters. NDEQ identified these new lakes from review of the Nebraska Game and Parks Commission land atlas. The classification of these lakes and the adoption of following designated uses: 1) Recreation, 2) Warmwater Class A Aquatic Life, 3) Agricultural Class A Water Supply and 4) Aesthetics are consistent with Sections 101(a) and 303(c)(2) of the CWA and EPA's implementing regulations at 40 CFR §§ 131.6 and 131.10, and are hereby approved.

NDEQ also adopted a designated use classification for nutrients for each of the fourteen above listed waters. EPA is deferring action on nutrient designated uses adopted by the State for these lakes, as discussed in Section II.A of this document.

**H. Chapter 7-004.01: Water Quality Standards for Wetlands.**

<u>POLLUTANTS</u>	<u>CRITERIA (ug/L)</u>		
	<u>Acute</u>	<u>Chronic</u>	<u>CAS No.*</u>
<u>Diazinon</u>	<u>0.17<sup>c</sup></u>	<u>0.17<sup>d</sup></u>	<u>333415</u>
<u>Nonylphenol</u>	<u>0.28<sup>c</sup></u>	<u>6.6<sup>d</sup></u>	<u>84852153</u>

Acute and chronic diazinon and nonylphenol criteria have been adopted for the protection of aquatic life in wetlands. The criteria for diazinon and nonylphenol are based on the most sensitive species response to toxicity tests. The most sensitive species is *Ceriodaphnia dubia* for both the acute and chronic diazinon criteria. *Hyalella azteca* is the most sensitive species for acute nonylphenol criteria and *Americamysis bahia* for the chronic nonylphenol criteria. These new numeric criteria for the protection of aquatic life in wetlands are consistent with the nationally recommended water quality criteria EPA published pursuant to Section 304(a) of the CWA and with EPA's implementing regulations at 40 CFR §131.11, and are hereby approved.

## **SECTION II: ITEMS UPON WHICH EPA IS DEFERRING ACTION**

### **A. Chapter 003.02B6: Standards for Water Quality.**

In 2003 EPA reserved action on revisions to Nebraska 2002 WQS, Title 117, Chapters 4-003.02B5b, 4-003.02B6 and 4-003.02B6a which identify stream segments and assign site-specific criteria to them based on natural background concentrations of chloride. The provisions indicated that because the segments listed have high natural background concentrations of chloride, and because aquatic life in those segments have adapted to those conditions, the criteria for chlorides would be based on natural background values. The 2002 WQS also included a revision in Chapter 4-003.01G, General Criteria for Aquatic Life, that provided an exception from application of the general use numeric water quality criteria for chloride where site-specific criteria were specified in Chapters 4-003.02B5b and 4-003.02B6a. EPA's decision document for the Nebraska 2002 WQS, dated August 8, 2003, indicated that action on these provisions was being deferred pending receipt of sufficient information from Nebraska to support these provisions. The Nebraska 2008 WQS adds one additional stream segment, Antelope Creek (segment LP2-20900), to the list of identified streams in Title 117, Chapter 4-003.02B6.

NDEQ is preparing a procedure for identification of natural background conditions for these waters and derivation of criteria for protection of these waters. EPA has requested additional information from NDEQ regarding these procedures. EPA looks forward to receiving a submittal from NDEQ, for review and approval pursuant to Section 303(c) of the CWA, with supporting information regarding the natural background chlorides levels, species populations for which protection is sought, and clearly identified numeric site-specific water quality criteria for protection of these unique aquatic life species. At this time, however, EPA continues to defer action on the provisions of Chapter 4-003.02B4b, 003.02B6 and 003.02B6a submitted as part of the Nebraska 2002 WQS, and also defers action on the addition of Antelope Creek (LP2-20900) to Chapter 4-003.02B6.

### **B. Chapter 5-004: Stream Classifications by Basin.**

The Agricultural Water Supply Class A use for Antelope Creek (LP2-20900) has been revised to Agricultural Water Supply Class B. NDEQ provided data demonstrating that there are and have been elevated conductivity levels in Antelope Creek. NDEQ has indicated that these elevated conductivity levels are caused by the geologic formation that supplies base flows to Antelope Creek rather than any human-induced pollution activity. EPA has reviewed the data, which is consistent with other information available regarding the high level of conductivity in waters within the region of Antelope Creek, but does not yet possess enough information to ascertain that the sole cause of the elevated levels is natural. At this time, EPA is deferring action on this revision to Chapter 5-004 pending additional coordination with NDEQ regarding the State's assessment that the elevated conductivity levels are the result of natural background and not human-induced pollution.

**C. Chapter 6-005: Lakes and Impounded Waters.**

NDEQ's adoption of use designations and application of numeric nutrient criteria for 14 new lakes and reservoirs included application of nutrient criteria identified in Chapter 4, Section 003.05. In Section I.G. of this action, EPA approved the use designations and resulting application of criteria for these waters, except for the application of nutrient criteria. In its September 2009 action on the Nebraska 2005 WQS, EPA deferred action on the State's nutrient criteria for lakes and impoundments in Title 117, Chapter 4-003.05 because the State, in consultation with EPA, was in the process of revising these criteria in accordance with the October 2008 Nebraska Nutrient Criteria Development Plan. EPA's 2009 action on the Nebraska 2005 WQS also deferred action on the application of those nutrient criteria to lakes and impoundments identified in Chapter 4, Section 003.05.

For the reasons stated above and as further described in EPA's September 2009 action regarding the Nebraska 2005 WQS, EPA is deferring action on the application of nutrient criteria to the 14 newly adopted and approved lakes and reservoirs in Title 117, Chapter 6-005, with the expectation that numeric criteria for the protection of aquatic life uses for lakes and reservoirs will be revised and adopted according to the timelines contained in the October 2008 Nutrient Criteria Development Plan. Because the nutrient criteria for lakes and impounded waters included in Title 117, Chapter 4-003.05 have not been approved by EPA, they may not be used for CWA purposes pursuant to 40 CFR § 131.21.

**SECTION III: ITEMS UPON WHICH EPA IS TAKING NO ACTION**

**A. Chapter 1-042: Definition of Terms.**

"Natural Background" shall mean ~~shall mean~~ quantifiable measurements of water quality existing in the absence of water pollution.

In the definition for natural background, the phrase "shall mean" was written twice. This is a typographical error which has been corrected. Correction of this typographical error is an administrative action which requires no action by EPA pursuant to Section 303(c) of the CWA.

**B. Chapter 2-014: Application of Standards.**

Because the frequency and extent of monitoring programs can only approximate whether surface waters meet or exceed water quality criteria that are based on averages over a specified time period in Chapters 4 and 7; assessment of compliance with these criteria may utilize scientifically accepted statistical procedures.

This new provision provides clarity as to how NDEQ will use best professional judgment when developing water quality assessment procedures to determine compliance with time-averaged water quality criteria under Chapters 4 (Standards for Water Quality) and 7 (Water Quality Standards for Wetlands) of the Title 117 State's regulations. This provision is a

procedure related to the State’s assessment of water quality under Section 303(d) of the CWA, and is not a WQS requiring EPA review pursuant to Section 303(c) of the CWA. EPA will review the assessment methodology and procedures derived under this provision in the context of reviewing the State’s Integrated Report.

**C. Chapter 5-004: Stream Classification by Basin.**

NDEQ created new river basin and sub-basin maps from NDEQ’s Geographic Information System (GIS) for all of the 13 river basins identified in Chapter 5-004. The 52 new maps will replace the older, hand-drafted maps that currently exist in Chapter 5. This is an administrative action, in which there have been no changes made to the stream segments, classifications or designated uses, and therefore no action by EPA pursuant to Section 303(c) of the CWA is required. EPA applauds the State for updating these maps to provide clarity to the public and other entities.

**D. Chapter 5-004: Stream Classification by Basin.**

Chapter 5-004: NDEQ removed an extra “0” from the segment number of Long Pine Creek (NI3-12300). Correction of this typographical error is an administrative action which requires no action by EPA pursuant to Section 303(c) of the CWA.

**E. Chapter 5-004: Stream Classification by Basin – Endangered Species.**

Table 1. Revised comments regarding Nebraska threatened and endangered species.

<b>Stream Segment Name</b>	<b>Stream Segment Number</b>	<b>Added or Removed</b>
Holt Creek	NI3-10250	Added Endangered
Holt Creek	NI3-10260	Added Endangered
Long Pine Creek	NI3-12300	Removed Threatened
Minnechaduza Creek	NI3-22000	Added Endangered
Gordon Creek	NI3-22300	Added Endangered

NDEQ added Endangered Species notations for the Blacknose shiner to the comments column for classified stream segments within Subbasin 3 of the Niobrara River Basin, and removed the Threatened Species notation for the Blacknose shiner on one classified stream segment within Subbasin 3 of the Niobrara River, both as indicated in Table 1, above. These revisions are not WQS requiring EPA action pursuant to Section 303(c) of the CWA.

**F. Chapter 6-005: Lakes and Impounded Waters.**

Table 2. Lakes or impounded waters with a revised legal description.

<b>Lake Name &amp; Segment Number</b>	<b>Old Legal Description</b>	<b>New Legal Description</b>
Twin Oaks Lake No. 7 (NE2-L0070)	43-4N-11E	<u>12</u> -4N-11E
Wilson Creek Lake 2X (NE2-L0040)	33-9N-12E	<u>34</u> -9N-12E
Keller Park Lake No. 1 (NI3-L0020)	9-31N-21W	<u>10</u> -31N-21W

Keller Park Lake No. 2 (NI3-L0030)	9-31N-21W	<u>10</u> -31N-21W
Williams Pond (NI3-L0080)	23-30N-23W	<u>22</u> -30N-23W
Medicine Lake (NI3-L0360)	27-32N-35W	<u>28</u> -32N-35W
Grabel Pond No. 1 (WH1-L0140)	16-31N-52W	<u>21</u> -31N-52W
Grabel Pond No. 2 (WH1-L0150)	16-31N-52W	<u>21</u> -31N-52W
Round Top Pond (WH1-L0220)	20-33N-53W	<u>17</u> -33N-53W
Lundy Pond (WH2-L0010)	20-32N-56W	<u>8</u> -32N- <u>55</u> W

NDEQ has revised and corrected the legal description for the ten lakes listed above based on new mapping technology. EPA applauds these revisions to the legal descriptions of these lakes or impounded waters because they are corrections to geographic location. The newer mapping is based on current USGS 1:24,000 scale topographic maps. All use designations remain the same. These revisions are not WQS requiring EPA action pursuant to Section 303(c) of the CWA; the provisions, as corrected, remain approved by EPA.

**G. Chapter 6-005: Lakes and Impounded Waters.**

- Fullerton City Lake (LO1-L0150)*
- Kinter's Ford Lake (NE2-L0050)*
- Niobrara State Park Lagoon (NI2-L0040)*
- Maxwell Pond (Alliance) (NI4-L0070)*
- Hansen Memorial Reserve Lake (RE3-L0030)*
- Bennett Reservoir (SP2-L0020)*

Nebraska has removed the six lakes or impounded waters listed above from Chapter 6 of Title 117. The State's removal of these waters is based on historic and current aerial photographs, and information obtained from Nebraska's Natural Resource Districts, communities, and NDEQ field sampling staff indicating that the water bodies no longer exist. NDEQ provided EPA with a description of why each water body was removed. This information was also included in the information made available for public review and comment during the State's public comment process. These changes to the Nebraska WQS correct information included in the tables of classified waters in Title 117, Chapter 6, Lakes and Impounded Waters.

Niobrara State Park Lagoon and Bennett Reservoir were known to exist at the time they were originally identified in the Nebraska WQS. Aerial and satellite photography show that Niobrara State Park Lagoon has naturally diminished over time and been absorbed and/or abandoned by meandering of the Niobrara River. Therefore, there is no lake or impoundment feature at or near the location previously identified at the Niobrara State Park Lagoon. Bennett Reservoir, a feature created by Bennett Dam on Lodgepole Creek, was eliminated in about 1982 when the dam was intentionally removed. While Lodgepole Creek still remains, there is no longer a lake or impoundment feature.

Kinter's Ford Lake and Hansen Memorial Reserve Lake were originally identified by the Nebraska Game and Parks Commission in a table included in the Statewide Comprehensive Outdoor Recreation Plan for Wildlife Management Areas, circa late '70s or early '80s. NDEQ

recently sent staff into the field as part of the state-wide water quality monitoring effort. NDEQ's staff were not able to find the water features, nor were these water bodies identifiable on historic or current aerial or satellite photographs.

Fullerton City Lake and Maxwell Pond were added to the State's list of classified lakes for reasons that are currently unknown. NDEQ recently sent staff into the field as part of the state-wide water quality monitoring effort. NDEQ's staff were not able to find the water features, nor were these water bodies identifiable on historic or current aerial or satellite photographs.