

EPA ORGANIZATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

ISSUE SUMMARY:

On January 21, 2022, and February 10, 2022, respectively, EPA objected to water discharge permits issued by the Arkansas Department of Environmental Quality (ADEQ) to two facilities in the Illinois River Watershed (IRW) -- the Northwest Arkansas Conservation Authority (NACA) and the City of Springdale. EPA's objection to the permits was based on ADEQ's failure to include water quality-based effluent limits (WQBELs) for total phosphorus (TP) sufficient to meet applicable water quality standards in the downstream State of Oklahoma who has a total phosphorus criterion 0.037 mg/L.

In response, on April 21, 2022, ADEQ filed concurrent lawsuits in the U.S. Eastern District of Arkansas (alleging that EPA's objections to the NACA and Springdale permits were unlawful) and the U.S. Court of Appeals for the Eighth Circuit (alleging that EPA's objections unlawfully promulgated effluent limitations for TP without going through the notice and comment procedures required under the Administrative Procedures Act).

In late 2023, following a series of settlement discussions revolving around settlement of both lawsuits based on the development of a watershed-based approach for determining appropriate WQBELs for TP to be included in DEQ's NPDES permits for the IRW, DOJ, as counsel for EPA, forwarded a draft proposed settlement agreement to attorneys for DEQ.

EPA has developed a water quality model for the Illinois River with input and coordination from both Oklahoma and Arkansas.

KEY POINTS:

- 40 CFR 122.44(d) requires NPDES permits to include requirements necessary to achieve water quality standards under Section 303 of the Clean Water Act, including state narrative criteria for water quality. NPDES permits issued in upstream states must include limits sufficient to meet water quality standards in downstream states.
- ADEQ has not demonstrated that the proposed 0.35 mg/L (NACA) or the 0.50 mg/L (all other major dischargers) TP limits are protective of Arkansas' narrative nutrient WQS or the 0.037 mg/L numeric TP criterion for the downstream state of Oklahoma.
- The impacts to the Illinois River and its tributaries due to excess phosphorus, both in Arkansas and Oklahoma, are long standing.
- To date, no Total Maximum Daily Loads (TMDLs) have been developed for the Illinois River Watershed. EPA has used the.
- Environmental organizations, such as Save the Illinois River (STIR), and the public have expressed concerns about water quality and slow action in the Illinois River Watershed.
- The Illinois River Watershed holds significant cultural and natural resource importance to the Cherokee Nation, whose reservation is downstream. By not ensuring the protection of the watershed's designated uses, the potential is increased for negative impacts to the Tribal Nation, as well as other communities with environmental justice concerns.
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ONGOING/UPCOMING REVIEWS FOR FY2025:

- Stair step down TP concentrations from 0.3 mg/l with a 25% reduction in nonpoint source loads. This would be incorporated into NPDES permits.
- If point sources working in concert with nonpoint source reduction (25% reduction) cannot be demonstrated, then point sources would be subject to 0.1 mg/l as an effluent concentration in the NPDES permit.

KEY EXTERNAL STAKEHOLDERS:

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| <input type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States | <input checked="" type="checkbox"/> Tribes | <input type="checkbox"/> Media | <input type="checkbox"/> Other Federal Agency |
| <input type="checkbox"/> NGO | <input checked="" type="checkbox"/> Local Governments | <input checked="" type="checkbox"/> Public | | | |

MOVING FORWARD:

- EPA, through DOJ, will continue negotiations with Arkansas DEQ in hopes of settling the current lawsuits and allowing Arkansas DEQ to move forward with the issuance of permits for dischargers in the Illinois River Watershed.