

Clean Water Act Section 303(d): Availability of List Decision

ACTION: Notice of Availability and Opportunity to Comment

SUMMARY: This notice announces the availability of, and opportunity to comment on, an EPA decision reconsidering its decision to approve the omission of microcystin toxins listings for three segments of the Klamath River in California and identifying microcystin toxins as an additional cause of impairment for a segment of the Klamath River pursuant to Clean Water Act section 303(d)(2). Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

DATES: Comments must be submitted to EPA on or before April 28, 2008.

INFORMATION CONTACT: Comments should be sent in writing to Peter Kozelka, TMDL Coordinator, Water Division (WTR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972-3448, facsimile (415) 947-3537, email kozelka.peter@epa.gov. Materials relating to EPA's reconsideration and determination can be viewed at EPA Region 9's web site www.epa.gov/region9/water/tmdl/303d.html or obtained by writing or calling Mr. Kozelka at the above address. Documentation relating to EPA's action is available for public inspection at the above address.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, California submitted to EPA its listing decisions under Section 303(d)(2) on November 24, 2006. On November 30, 2006, EPA approved California's list of impaired waters, except Walnut Creek Toxicity. On March 8, 2007, EPA disapproved California's decisions not to list 36 water quality limited segments and associated pollutants, and additional pollutants for 34 water bodies already listed by the State. On June 28, 2007, EPA issued its final decision regarding the additional waters and pollutants for inclusion on the 2006 Section 303(d) list. Among other things, the June 28 decision approved the 2006 Section 303(d) list without adding any Klamath River segments as impaired due to microcystin toxins.

California's 2006 Section 303(d) List already identifies each segment of the Klamath River within California as impaired due to Nutrients, Organic Enrichment/Low Dissolved Oxygen, and Temperature. EPA has reconsidered its prior approval of the omission of microcystin toxins listings for three Klamath River segments, and on March 13, 2008, determined to add a listing for microcystin toxins for one of these three segments, "Klamath River HU, Middle HA, Oregon to Iron Gate". EPA's reconsideration of its decisions related to microcystin toxins and the Klamath River, and its determination to add a listing for microcystin toxins for one of the river's segments, do not affect EPA's determinations regarding any other portion of California's Section 303(d) List. Neither EPA's approval of the State's listings for the Klamath River listings, nor EPA's determination to add the listing for microcystin toxins, extends to any water bodies located within Indian country, as defined in 18 U.S.C. 1151.

EPA is providing the public the opportunity to review EPA's reconsideration of the listings for the Klamath River related to microcystin toxins, and its determination to add a listing for microcystin toxins for one segment of the river. EPA may revise its decision if warranted in response to comments received. EPA is soliciting comment only with respect to the reconsideration of listings related to microcystin toxins for three Klamath River segments and EPA's determination to add the listing.

Dated: March 20, 2008

/signed/

Alexis Strauss
Director, Water Division
EPA Region IX