

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 29 2009

OFFICE OF  
WATER

Mark N. Templeton, Director  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

Dear Mr. Templeton:

This letter constitutes EPA's determination under Clean Water Act (CWA) section 303(c)(4)(B) as to whether new or revised water quality standards are needed to satisfy the requirements of the CWA for a 28.6-mile segment of the Mississippi River around St. Louis that flows from North Riverfront Park to the confluence with the Meramec River. This determination addresses whether this water body segment should be designated for whole body contact recreation. Today's determination fulfills EPA's remaining obligation under a December 2004 settlement agreement with the Missouri Coalition for the Environment (MCE).

EPA hereby determines that new or revised standards (i.e., standards supporting whole body contact recreation) are necessary to meet the requirements of the CWA for the 28.6-mile segment of the Mississippi River from North Riverfront Park (river mile 189.2) to the confluence with the Meramec River (river mile 160.6). New or revised standards are necessary because the majority of this 28.6-mile segment has shoreline features that include public parks, boat ramps, bike trails and some sandy areas with gentle sloping banks and the available information does not demonstrate that water quality necessary to support a whole body contact recreation use is not attainable in this segment. Moreover, EPA's regulations at 40 CFR § 131.10(b) provide that a State "shall ensure that its water quality standards provide for attainment and maintenance of the water quality standards of downstream waters." EPA determined, in December 2008, that the segment of the Mississippi River downstream from this 28.6-mile segment needs new or revised water quality standards for whole body contact recreation. Missouri has finalized rulemaking to revise its water quality standards in accordance with that determination.<sup>1</sup> In addition, the Illinois side of the Mississippi River (across the river from this 28.6-mile segment) is designated as primary contact recreation (same as whole body contact).<sup>2</sup> To support adoption of a secondary contact recreation designated use and associated criteria, MDNR would need to demonstrate how such standards on the 28.6-mile segment will "provide for attainment and maintenance of the water quality standards of downstream waters" which would include both the

<sup>1</sup> Missouri 2009. Rules of Department of Natural Resources, Division 20 – Clean Water Commission, Chapter 7-Water Quality. <http://www.sos.mo.gov/adrules/csr/current/10csr/10c20-7H-1.pdf>

<sup>2</sup> Illinois, 2009. "Title 35: Environmental Protection Subtitle C: Water Pollution Chapter I: Pollution Control Board Part 302 Water Quality Standards". [http://www.epa.gov/waterscience/standards/wqslibrary/il/il\\_5\\_c302.pdf](http://www.epa.gov/waterscience/standards/wqslibrary/il/il_5_c302.pdf)

Mississippi River downstream from the 28.6-mile segment in the State of Missouri and the downstream boundary waters in the State of Illinois. There has been no such showing.

Although EPA is making this determination today, the State of Missouri is not precluded in the future from providing EPA with a demonstration, consistent with 40 CFR § 131.10(g), including any additional and relevant data and information, why whole body contact recreation is not attainable on the 28.6-mile segment and why a use that does not protect for whole body contact recreation would comply with the applicable requirements of the CWA and federal regulations. If the State of Missouri makes such a demonstration through a Use Attainability Analysis (UAA), EPA will review any information provided in accordance with the CWA and federal regulations in deciding whether future action is needed by either EPA or the State of Missouri.

### Statutory and Regulatory Background

Section 303 of the CWA requires States and authorized Tribes (hereafter, collectively referred to as “States”) to adopt water quality standards for waters of the United States within their respective jurisdictions. Section 303(c) and EPA’s implementing regulations at 40 CFR Part 131 require, among other provisions, that State water quality standards include the designated use or uses to be made of the waters and the criteria necessary to protect those uses. States are required to submit new or revised water quality standards to EPA for review and approval or disapproval (CWA section 303(c)(2)(A)). CWA section 303(c)(4)(B) authorizes the Administrator to determine, even in the absence of a State submission, that a new or revised standard is needed to meet the requirements of the CWA. The authority to make a determination under CWA section 303(c)(4)(B) is discretionary and resides exclusively with the Administrator, unless the authority is explicitly delegated by the Administrator. In this case, by memorandum dated December 4, 2008, the Administrator of EPA delegated this decision to the Assistant Administrator for Water.

Section 101(a)(2) of the CWA states the national interim goal of achieving by July 1, 1983 “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water” (hereafter collectively referred to as “the section 101(a)(2) uses”) **wherever attainable**. CWA section 303(c)(2)(A) requires water quality standards to “protect the public health and welfare, enhance the quality of water, and serve the purposes” of the CWA. EPA’s regulations at 40 CFR Part 131 interpret and implement these provisions through a requirement that water quality standards protect section 101(a)(2) uses (i.e., protection and propagation of fish, shellfish, and wildlife and ... recreation in and on the water) unless those uses have been shown to be unattainable. Unless the State demonstrates that a section 101(a)(2) use is not attainable on a certain water body, the water body must be designated for those 101(a)(2) uses. This approach was upheld in Idaho Mining Association v. Browner, 90 F.Supp. 2d 1078, 1092 (D. Id. 2000). Thus, where a State believes that a use specified in section 101(a)(2) is not attainable, that State must conduct a use attainability analysis (see 40 CFR § 131.10(j)) in order to demonstrate that such section 101(a)(2) use is not attainable.

The “use” of a water body is the most fundamental articulation of its role in the aquatic and human environments and the water quality protections established by the CWA follow from

the water body's designated use. If a use lower than a CWA section 101(a) goal use is designated based on inadequate information or incomplete analysis, water quality-based protections that might have made it possible for the water to achieve the goals articulated by Congress in CWA section 101(a) may not be put in place. EPA seeks, through the implementation of section 303(c) of the Act, to ensure that any State's decision to forgo protection of a water body's potential to support CWA section 101(a) goal uses results from an appropriately structured scientific analysis of which uses are attainable.

Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under CWA sections 301(b) and 306 are imposed on point source dischargers and (2) when cost-effective and reasonable best management practices are imposed on nonpoint sources (40 CFR § 131.10(d)). EPA's regulations at 40 CFR § 131.10(g) list the grounds upon which a State may demonstrate that a use is not attainable.

A UAA is defined at 40 CFR § 131.3(g) as a "structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors." In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment. Guidance on water body surveys and assessment techniques is contained in EPA's Technical Support Manual, Volumes I-III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses (Volumes I-II, November 1983; Volume III, November 1984). Additional guidance is provided in EPA's Water Quality Standards Handbook: Second Edition (EPA-823-B-94-005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in EPA's Interim Economic Guidance for Water Quality Standards: Workbook (EPA-823-B-95-002, March 1995).

Finally, EPA's implementing regulations also require that when designating uses and adopting criteria, a State "shall ensure that its water quality standards provide for attainment and maintenance of the water quality standards of downstream waters." 40 CFR § 131.10(b).

#### History of Missouri's Water Quality Standards Subject to this Determination

On September 8, 2000, EPA acted on Missouri's revised water quality standards adopted in 1994 and 1996. In that action EPA approved the majority of the new or revised water quality standards submitted by the Missouri Department of Natural Resources (MDNR) and disapproved certain new or revised water quality standards. At that time EPA Region 7 also identified concerns with some of the State's existing water quality standards, and identified items for attention in the State's next triennial review of its existing water quality standards. EPA Region 7 raised certain issues, including Missouri's failure to address the "recreation in and on the water" aspect of the section 101(a)(2) goals of the CWA for certain water bodies. EPA Region 7 wrote the following in its September 8, 2000 letter:

Since 1984, EPA has expressed its concern with MDNR's approach to classifying surface waters for whole body contact. As captured in a document titled, "A Whole Body Contact Recreation Use Attainability Analysis" (1984), MDNR's philosophy since 1967 has been to withhold the designation of surface waters for

whole body contact unless “requested by the public.” Although focusing on smaller streams, this philosophy apparently extends to all waters, including large rivers. The lower portion of the Mississippi River in Missouri and the entire Missouri River are not designated for whole body contact. Without the necessary use attainability analysis, the State’s failure to meet the requirements of section 101(a)(2) of the CWA and its implementing federal regulations has and continues to be a significant deficiency within Missouri’s water quality standards program.

EPA indicated that if the State did not either revise its water quality standards in accordance with the statutory and regulatory requirements or demonstrate by a thorough analysis of use attainability that whole body contact recreation is not attainable, EPA Region 7 intended to request that the Administrator make a determination pursuant to the Administrator’s authority contained in CWA section 303(c)(4)(B).

Following EPA’s September 2000 letter, Missouri did not revise its water quality standards to address the items that EPA disapproved nor did Missouri address the other items noted in EPA’s letter. However, EPA Region 7 also did not formally request that the Administrator use the authority contained in CWA section 303(c)(4)(B) to make a determination for waters lacking whole body contact recreation or for any of the other issues where the Region intended to make such a recommendation. Following this inaction by the State and EPA, Plaintiff Missouri Coalition for the Environment (MCE) filed a complaint on October 7, 2003 against EPA under the CWA’s citizen-suit provision, CWA section 505(a)(2). The complaint referred to the September 8, 2000 letter, and alleged that EPA’s “disapproval” had triggered a “nondiscretionary duty,” a duty with a firm deadline that EPA had failed to meet, under CWA section 303(c)(4), for EPA to “promptly prepare and publish proposed regulations” for the State of Missouri.

In December 2004, EPA and MCE entered into a joint consent decree and settlement agreement to resolve the litigation. The terms of the consent decree have been satisfied and the consent decree is not at issue in this determination. This determination addresses the last remaining item in the settlement agreement. Under the terms of the settlement agreement, EPA was to determine, pursuant to CWA section 303(c)(4)(B), whether new or revised water quality standards are necessary to meet the requirements of the CWA unless MDNR submitted to EPA new or revised water quality standards that met the requirements of EPA’s regulations for those items by the dates specified in the settlement agreement. The settlement agreement specifies that any such determination will address the issue identified in the settlement agreement, as well as the concerns raised in EPA’s September 8, 2000 letter, and that it “will be made by the Administrator or the Administrator’s duly authorized delegate with fully and lawfully delegated authority to make such determinations.” Moreover, the settlement agreement provides that any determination must: (1) be in writing and set forth the factual and legal basis for the determination, and (2) state that the signatory has the authority to make the determination(s) therein.

On March 28, 2006, MDNR submitted new or revised water quality standards, satisfying EPA’s obligations under the terms of the settlement agreement for all but one item that had an April 30, 2006 deadline. MDNR submitted new or revised water quality standards partially

addressing the one remaining item, identified as “Whole Body Contact Use,” on March 28, 2006; that is, MDNR adopted water quality standards resulting in a whole body contact recreation use for approximately 3,600 classified water body segments, including over 500 miles of the Missouri River, and 400 classified lakes, but did not adopt whole body contact recreation uses for the remaining 142 classified water body segments covered by the settlement agreement. EPA approved the State’s designation of approximately 4,000 waters for whole body contact recreation by letter dated April 28, 2006 from Betty Berry, Region 7’s Acting Director of the Water, Wetlands, and Pesticides Division, to Doyle Childers, Director of MDNR.

With regard to the 142 waters for which MDNR did not adopt whole body contact recreation uses, EPA made a determination on October 31, 2006 for 141 of the 142 waters. At that time, EPA determined that new or revised standards were needed for 99 of the 141 waters, but that new or revised standards were not needed for the other 42 of the 141 waters.

The remaining water body that was not part of EPA’s October 31, 2006 determination was the 190.5-mile segment of the Mississippi River, beginning just upstream of the metropolitan St. Louis area and flowing to the confluence with the Ohio River. MDNR had previously designated this 190.5-mile segment of the Mississippi River (described in the Missouri water quality standards, 10 CSR § 20-7, Table H, as: “Mississippi R., Class P, Miles 195.5<sup>3</sup>, From Ohio River to Dam #27, Counties Mississippi, St. Louis City”) for “Boating and Canoeing.” In their March 28, 2006 submission, MDNR revised the “Boating and Canoeing” designated use to “Secondary Contact Recreation” and included an expanded definition for this recreational use sub-category. While EPA approved the new definition for the designated use in 2006, EPA has never approved the secondary contact recreation use designation for this 190.5-mile segment of the Mississippi River.

On December 12, 2008, EPA made a determination that new or revised standards (i.e., standards supporting whole body contact recreation) are needed for 161.9 miles of the 190.5-mile segment. The portions of the Mississippi River that are subject to that determination are a 1.3-mile segment upstream from St. Louis that flows from Dam 27 to North Riverfront Park and a 160.6-mile segment<sup>4</sup> downstream from St. Louis that flows from the confluence with the Meramec River to the confluence with the Ohio River. In its determination, EPA discussed the fact that the State of Missouri did not provide sufficient information demonstrating why whole body contact recreation was not attainable. In addition, EPA considered public comments and other information indicating whole body contact recreation was occurring on these portions of the Mississippi River. Therefore, the remaining portion of the Mississippi River that is the subject of today’s determination is the 28.6-mile segment around St. Louis that runs from North Riverfront Park to the confluence with the Meramec River.

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<sup>3</sup> EPA notes that there is an error in the Missouri WQS (Table H). The length of the segment of the Mississippi River from the Ohio River to Dam #27 is actually about 190.5 miles, not 195.5 miles. EPA’s December 2008 determination incorrectly referred to the segment as 195.5 miles. USACE. 2001. Upper Mississippi River Navigation Charts, Map Numbers 95 (River mile 188 to 195) and 96 (River Mile 180 to 187). United States Army Corps of Engineers, Upper Mississippi River, Mississippi Valley Division, <http://www2.mvr.usace.army.mil/NIC2/mrcharts.cfm?index=4>, Accessed October 22, 2009.

<sup>4</sup> The December 12, 2008 determination incorrectly refers to this segment as being 164.7 miles long.

## Discussion

In 2005, the St. Louis Metropolitan Sewer District (MSD) submitted a UAA to MDNR attempting to address the attainability of recreational uses on the 28.6-mile segment. In its UAA, MSD concluded that whole body contact recreation was not attainable on the 28.6-mile segment due to hydrologic modifications and the substantial and widespread economic and social impact that would result from a requirement that the segment meet water quality standards that would allow for whole body contact recreation. With respect to hydrologic modifications, MSD concluded that river channelization to allow barge traffic within the segment produces high channel velocities making it unsafe for swimming. Such hydrologic modifications also enable barge traffic, which MSD concluded presents safety concerns for whole body contact recreation uses. To support this conclusion, MSD included in the UAA mean channel velocity data (1980-2005) from the USGS Mississippi River St. Louis gage (river mile 180) and average Mississippi River vessel passages in St. Louis from 1995-1999. With respect to substantial and widespread economic and social impact preventing the use attainment, MSD did not provide any financial documentation supporting its position that adoption of whole body contact recreational uses will cause widespread social and economic impact therefore justifying less protective standards. Rather, MSD asserted that CSO controls within the MSD system would result in substantial and widespread economic and social impact and that this use attainability factor would be further evaluated during the development of MSD's CSO Long Term Control Plan (LTCP).<sup>5</sup>

MDNR did not find MSD's UAA to sufficiently demonstrate that a whole body contact recreation use cannot be attained and proposed to the Missouri Clean Water Commission that the 28.6-mile segment (in addition to the rest of the 190.5-mile segment) be designated whole body contact recreation. The Missouri Clean Water Commission rejected MDNR's proposal and instead directed MDNR to designate the entire 190.5-mile segment of the Mississippi River for secondary contact recreation. MDNR subsequently adopted the secondary contact recreation use designation and formally submitted it and MSD's UAA to EPA for review on March 28, 2006.

As discussed above, on December 12, 2008, EPA made a determination that new and revised standards (i.e., standards supporting whole body contact recreation) are needed for 161.9 miles of the 190.5-mile segment of the Mississippi River. With regard to the 28.6-mile segment, EPA has carefully reviewed MDNR's submission and justification for adoption of a secondary contact recreation designated use. Based on its review, EPA has concluded that the information contained in the UAA did not sufficiently demonstrate that whole body contact recreation is not an attainable use. MSD's UAA states that the hydrologic modifications likely result in conditions that are unsafe for whole body contact recreation due to limited access, barge traffic and fast currents. However, MSD's UAA only contains general information on velocity and barge traffic and does not specifically tie the information to near shore recreation where whole body contact recreation may in fact be safe. Furthermore, attainment of water quality supportive of a whole body contact recreation use is not precluded just because a State does not wish to encourage swimming in certain water segments because of physical attributes. While a State may not wish to encourage swimming in a particular water body that it deems unsafe for swimming, a State must still make a sufficient demonstration including information to support

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<sup>5</sup> Mississippi River Whole Body Contact Recreation Use Attainability Analysis, Prepared by MEC Water Resources for MSD, July 2005.

that it is not feasible to attain water quality commensurate with primary contact recreation protection.<sup>6</sup> MSD's UAA did not provide such a demonstration.

In evaluating MDNR's submission, EPA also collected information regarding the characteristics, features and activities occurring in this 28.6-mile segment of the river to help inform the decision regarding the attainability of a whole body contact recreation use. The type of information EPA collected included shoreline features, land use, access to the river, recreational uses currently occurring, near-shore water velocity, and barge activity and associated structures. As discussed below, the data and information that EPA collected shows that the majority of the 28.6-mile segment (20.5 miles of the 28.6 miles) has many features that create conditions suitable for swimming and other kinds of recreation, such as public parks (including North Riverfront Park, Jefferson National Expansion Memorial Park, Jefferson Barracks Park, Cliff Cave Park and Bee Tree Park), boat ramps and bike trails adjacent to the shoreline, sandy areas with gentle sloping banks, and areas of sandbars in the water. The information collected by EPA indicates that the upper and lower portions of this 28.6-mile segment are currently used for recreational activities, including swimming, wading, canoeing, kayaking, waterskiing, and jet-skiing.

Near-shore velocity measurements in the upper and lower portions of the 28.6-mile segment (from river mile 189.2 to river mile 179.3) during high flow are under 3 feet/second, which is considered a safe (albeit maximum safe) velocity for swimming and wading<sup>7</sup>. There are some barge structures on the shoreline and barges mostly pass through the middle of the river in these areas, but the barge traffic is not dense.

Like the upper portion of the 28.6-mile segment, the lower portion of the segment (from river mile 171.2 to river mile 160.6) has similar features that create conditions suitable for swimming and other kinds of recreation and contains even more public parks adjacent to the river as well as additional undeveloped shoreline. For both the upper and lower segment, shoreline features invite recreational activity and there are documented whole body contact recreation activities occurring on the water. EPA's regulations at 40 CFR § 131.10(g) list the grounds upon which a State may demonstrate that a use is not attainable. The information before the Agency does not demonstrate that attaining water quality to support a whole body contact recreation use is not feasible because of one of the six factors listed in 40 CFR § 131.10(g). Therefore, new or revised standards (i.e., standards supporting whole body contact recreation use) are needed to meet the requirements of the CWA.

The middle portion of the 28.6-mile segment has some similar characteristics to the upper and lower portions, such as occasional documented recreational activities, and a bike path that runs along much of the shoreline near the river edge, but the area is primarily industrial with bulk heading, mooring and fleeting areas, and a variety of industrial activities along the shoreline. Some have argued that because of these latter features and characteristics, perhaps this portion of the 28.6-mile segment of the Mississippi River should be designated for something other than whole body contact recreation. However, for the reasons discussed above, EPA has concluded

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<sup>6</sup> See Water Quality Standards for Puerto Rico, (69 FR 3514, 3519 (January 26, 2004)).

<sup>7</sup> Hyra, R. 1978. Methods for Assessing Instream Flows for Recreation. Cooperative Instream Flow Service Group, Fort Collins, CO.

that the information contained in MSD's UAA did not sufficiently demonstrate that whole body contact recreation is not, in fact, an attainable use.

Finally, EPA's regulations at 40 CFR § 131.10(b) require that "in designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters." Missouri's criteria to protect its whole body contact recreation use are more stringent than those associated with secondary contact recreation. Missouri's secondary contact recreation criteria are nine times (9x) higher than the existing WBCR-A criteria (1134 cfu/100ml vs. 126 cfu/100ml), and over five and one-half times (5.5x) the State's proposed criteria for WBCR-B (206 cfu/100ml).<sup>8</sup> To support adoption of a secondary contact recreation designated use and associated criteria, MDNR would need to demonstrate how such standards on the 28.6-mile segment will "provide for attainment and maintenance of the water quality standards of downstream waters" which would include both the Mississippi River downstream from the 28.6-mile segment in the State of Missouri and the downstream boundary waters in the State of Illinois. There has been no such showing.

### Determination

For all of the reasons discussed above, EPA hereby determines that new or revised standards are necessary to meet the requirements of the CWA for the 28.6-mile segment of the Mississippi River, from North Riverfront Park (river mile 189.2) to the confluence with the Meramec River (river mile 160.6). Importantly, the majority of this 28.6-mile segment has shoreline features that include public parks, boat ramps, bike trails and some sandy areas with gentle sloping banks and the available information does not demonstrate that water quality necessary to support whole body contact recreation uses is not attainable in this segment. Moreover, EPA's regulations at 40 CFR § 131.10(b) provide that a State "shall ensure that its water quality standards provide for attainment and maintenance of the water quality standards of downstream waters." EPA determined, in December 2008, that the segment of the Mississippi River downstream from this 28.6-mile segment needs new or revised water quality standards for whole body contact recreation. Missouri has finalized rulemaking to revise its water quality standards in accordance with that determination.<sup>9</sup> In addition, the Illinois side of the Mississippi River (across the river from this 28.6-mile segment) is designated as primary contact recreation (same as whole body contact).<sup>10</sup> To support adoption of a secondary contact recreation designated use and associated criteria, MDNR would need to demonstrate how such standards on the 28.6-mile segment will "provide for attainment and maintenance of the water quality standards of downstream waters" which would include both the Mississippi River downstream from the 28.6-mile segment in the State of Missouri and the downstream boundary waters in the State of Illinois. There has been no such showing.

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<sup>8</sup> Missouri's current e.coli criteria include 126/100mL (WBCR A) and 1134/100mL (SCR). MDNR is also in the process of adopting 206/100mL for WBCR B waters.

<sup>9</sup> Missouri 2009. Rules of Department of Natural Resources, Division 20 – Clean Water Commission, Chapter 7-Water Quality. <http://www.sos.mo.gov/adrules/csr/current/10csr/10c20-7H-I.pdf>.

<sup>10</sup> Illinois, 2009. "Title 35: Environmental Protection Subtitle C: Water Pollution Chapter I: Pollution Control Board Part 302 Water Quality Standards". [http://www.epa.gov/waterscience/standards/wqslibrary/il/il\\_5\\_c302.pdf](http://www.epa.gov/waterscience/standards/wqslibrary/il/il_5_c302.pdf).

Although EPA is making this determination today, the State of Missouri is not precluded in the future from providing EPA with a demonstration, consistent with 40 CFR § 131.10(g), including any additional and relevant data and information, why whole body contact recreation is not attainable on the 28.6-mile segment and why a use that does not protect for whole body contact recreation would comply with the applicable requirements of the CWA and federal regulations. If the State of Missouri makes such a demonstration through a UAA, EPA will review any information provided in accordance with the CWA and federal regulations in deciding whether future action is needed by either EPA or the State of Missouri.

EPA makes this determination pursuant to its authority contained in CWA section 303(c)(4)(B). EPA's authority to make such a determination is discretionary. In this case, EPA chose at the time of entering into the settlement agreement to exercise this discretion in committing to make such a determination if MDNR did not submit new or revised water quality standards that meet the requirements of 40 CFR §§ 131.6(a), (f), and 131.10, by April 30, 2006 (deadline for the determination has been extended to October 30, 2009 through subsequent negotiations with MCE). For the purposes of today's determination, the Administrator has delegated this authority to me, Peter S. Silva, EPA's Assistant Administrator for Water. Thus, pursuant to the settlement agreement, I am a duly authorized delegate with fully and lawfully delegated authority to make this determination.

Where EPA concludes that new or revised water quality standards are needed, CWA section 303(c)(4) requires EPA to "promptly prepare and publish proposed regulations setting forth a revised or new water quality standard." EPA's strong preference is for States to adopt their own water quality standards regulations. To that end, EPA strongly encourages the State of Missouri to expeditiously revise its own water quality standards, taking into account any available data. If, in the course of preparing its own regulation, the State identifies or collects additional data or information that supports a decision that whole body contact recreation is not appropriate for all or part of the 28.6-mile segment subject to today's determination and a designation other than whole body contact recreation would comply with the CWA and federal regulations, the State may present that information and conclusion to EPA. In that circumstance, EPA will review such information for consistency with the requirements of 40 CFR § 131.10 and notify the State of the results of the Agency's review. If MDNR submits information warranting EPA's approval of secondary contact recreation for the 28.6-mile segment (or portions of the 28.6-mile segment) addressed in today's determination, then, consistent with the federal requirements, the obligation for EPA to prepare proposed replacement federal regulations will no longer exist. Similarly, if the State adopts whole body contact recreation for the water body segment addressed in today's determination, and submits such new or revised water quality standards to EPA for review and approval, Missouri will have revised its regulations to be consistent with the federal requirements, and the obligation for EPA to prepare proposed replacement federal regulations will no longer exist.

EPA recognizes and applauds the substantial effort that MDNR underwent over the last several years to adopt water quality standards resulting in recreation uses that are consistent with the CWA and EPA's implementing regulations for approximately 3,600 classified stream

segments and 400 classified lakes. EPA looks forward to collaborating on this and other efforts to adopt appropriate use designations for the waters of the State of Missouri in the future.

Sincerely,



Peter S. Silva  
Assistant Administrator

cc: Leanne Mosby, MDNR  
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