

Nebraska's Water Quality: Down the Drain?

Clean Water Act and Total Maximum Daily Loads

Under the Clean Water Act (CWA), every state has an obligation to improve waters in *all* areas of the state. The CWA requires regular water quality testing, identification of impaired waters, and the implementation of efforts to improve water quality—and all within a timely basis. Nebraska, along with the other states, is required to report its progress in these regards to the US Environmental Protection Agency (EPA) every two years.

In section 303 of the CWA, states are required to set water quality standards for various uses of the waters within a state. In accordance with this requirement, Nebraska's Department of Environmental Quality (NDEQ) has set Standards for Water Quality, which outlines the threshold limits of certain pollutants that may affect a particular use. For example, at designated bathing beaches, a limit of 126/100mL of E. coli is set (based on 5 samples over a 30-day period the average is no more than 126 colonies of E. coli per 100mL of water). These kinds of limits are set for each pollutant that can affect a particular use of each body of water.

If a pollutant limit is exceeded for a period of time, the water is considered impaired and a Total Maximum Daily Load (TMDL) *must* be developed. The EPA defines TMDLs as “a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources.” States are required to set TMDLs for impaired bodies of water, and if not done adequately, the EPA will set TMDLs for them. In legal cases during last ten years, courts have found that slow adoption of TMDLs (for example in the State of Georgia and the District of Columbia) is in itself contrary to the requirements of the CWA.

Nebraska's Obligation

Presently, Nebraska is failing to meet its obligations under the Clean Water Act. According to the NDEQ's 2004 Surface Water Quality Integrated Report, there are at least 158 bodies of water (streams, lakes or reservoirs) classified as impaired (and included in the 303(d) list of impaired waters). Of these waters, 14 have had all of the necessary TMDLs implemented (less than 10%), leaving 144 impaired without designated action to improve their quality. Nebraska is failing to take sufficient action to clean up the waters of our state in a timely manner, nor has the EPA stepped in to affect change. Hundreds more waterbodies are likely impaired, but the NEDQ has not collected enough information to tell their condition. According to one statistic, at the rate Nebraska is cleaning its waters, it will take more than 300 years for the state to finish its TMDL program.

For this reason, the Great Plains Environmental Law Center, along with the Nebraska Wildlife Federation, Sierra Club, and the Izaak Walton League, is working to change Nebraska and the quality of water we use for agriculture, recreation, drinking water, and aesthetics—and that aquatic and non-aquatic ecosystems depend on.