

November 8, 2007

Ms. Andrea Fredenburg
Division of Water
14 Reilly Road
Frankfort, KY 40601

Dear Ms. Fredenburg

I submit these comments on behalf of the Kentucky Waterways Alliance regarding the Proposed Draft Total Maximum Daily Load for Pathogens, Cane Creek Watershed, Kentucky River Basin, Kentucky. The Kentucky Waterways Alliance, Inc. (KWA) is a statewide nonprofit organization dedicated to protecting and restoring our waterways. The Kentucky Waterways Alliance represents over 500 members and affiliate organizations united to insure high quality water resources in Kentucky for diverse recreational activities such as swimming, boating, and fishing as well as reliable drinking water supplies.

The intent of the Clean Water Act (CWA) regarding total maximum daily loads (TMDL) as described in the subject document is rather extensive and thorough. KWA's overall observation is that the availability of data by which DOW could comply is neither extensive nor thorough. The data presented in the report can be sliced and diced many ways, but the following conclusions remain the same any way that we analyze them:

1. DOW has failed to meet the letter, much less the spirit, of the TMDL requirements of the CWA. By its own admission, it lacks adequate data to determine how polluted the streams of this watershed are, much less pollutant sources. Indeed, DOW would have to do significantly more study, monitoring, field reconnaissance, etc, to comply with those TMDL requirements.
2. Still, the limited available data showed that three of the streams in the Cane Creek watershed were unsuitable for primary contact recreation due to excessive pathogen counts. And, while the report concludes that the most likely sources of pathogenic pollution is livestock, DOW lacks adequate jurisdiction and resources to challenge farmers to employ the simple Best Management Practices (BMPs) long known to be effective and relatively inexpensive.

3. That there are no permitted point sources of pathogenic pollution in this watershed, yet it's nonetheless unsuitable for primary contact recreation, illustrates the inadequacy of Kentucky's approach to TMDL reduction. The only logical sources to whom it realistically and fairly assigns responsibility—livestock and failing on-site wastewater systems—are largely beyond its jurisdictional reach. Presumably, straight-shot pipes could also be implicated, but no agency has done field work to identify them.
4. That the report concludes that using the continuing planning process (CPP) required by the CWA to remedy the above failures to meet CWA requirements might be reasonable, but for the following concerns:
 - a. That the mandated CPP has not heretofore led to a clearer definition of the problem, its sources and potential correction options could justifiably lead KWA to wonder why the CPP would do so in the future. What has changed?
 - b. The report does not specify which agency will take the lead to ensure that an effective CPP will be created, whom will participate or when planning will begin or be completed. Which agency will implement and enforce the recommendations of the CPP? Will inter-agency MOA/MOU be required? Again, what will change to ensure that the status quo isn't maintained?
5. KWA believes that public health will not be protected per the demands of the CWA through voluntary programs alone. In short, Kentucky cannot achieve water quality suitable for swimming unless it effectively regulates on-site systems and feedlots. Stepped up regulation and enforcement are clearly in order and overdue.
6. KWA understands that DOW ability to regulate is constrained by the regulations and funding provided it by the Governor's Office and General Assembly. However, this report should disabuse legislators of the myth that it can protect both public health and every politically-powerful constituency. This report should pointedly emphasize that complying with the CWA requires that the legislature provide DOW with the following requisite resources:
 - a. Adequate staff and monitoring equipment to accurately determine the true water quality and the sources of pathogenic pollution.

- b. Regulatory authority and adequate enforcement staff to follow-through on the results of improved monitoring and existing regulations.
- c. Better dissemination of information on the repair, maintenance and replacement of existing on-site systems, including alternate designs for sites with problematic soils and geology.
- d. Regulatory authority for precluding new construction in locations inaccessible to sewers and unsuitable for on-site systems.

Thank you for considering our comments.

Respectfully Submitted,

Jason Flickner
Water Resources Program Director

CC: James D. Giattina, Region 4, USEPA