



KENTUCKY WATERWAYS ALLIANCE

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July 3, 2006

Ms. Andrea Fredenburg
Division of Water
Frankfort Office Park
14 Reilly Road
Frankfort, Kentucky 40601

RE: Fecal Coliform Total Maximum Daily Load (TMDL)
Bayou de Chien, Central Creek and Cooley Creek

Dear Ms. Fredenburg,

I submit these comments on behalf of the Kentucky Waterways Alliance regarding the proposed Fecal Coliform Total Maximum Daily Load (TMDL) for Bayou de Chien, Central Creek, and Cooley Creek. The Kentucky Waterways Alliance, Inc. (KWA) is a statewide nonprofit organization dedicated to protecting and restoring our waterways. The Kentucky Waterways Alliance represents over 400 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.

In general, Kentucky Waterways Alliance supports the Division of Water's efforts to address the causes of impairment to Kentucky's 303(d) listed streams through the TMDL process. We recognize the arduous task of isolating effluent sources and fulfilling EPA's TMDL requirements for a successful submission. However, in order for the TMDL process to be effective, all potential sources of effluent and runoff pollutants must be identified so they can be addressed by appropriate management practices that assure water quality standards can be attained.

The TMDL's Summary Sheet No. 4 does not identify Threatened or Endangered Species in Bayou de Chien, Central Creek, and Cooley Creek. In fact, Bayou de Chien is a known habitat of relict darter populations. These relict darter are a federally protected species under the Endangered Species Act of 1973.

In order to assess the effectiveness of the TMDL in the Cooley Creek watershed, Pilgrim's Pride (KY0093874) poultry slaughtering and processing facility should be required to report dates and times to correlate with all samples taken. As noted, at present it is impossible to ascertain if violations at the permitted facility resulted in in-stream violations of water quality standards. To achieve water quality standards in Cooley Creek, Pilgrim's Pride must discharge effluent at concentrations meeting or below permit limits. If calculations reveal the necessity for Pilgrim's Pride to operate below current permitted discharge effluent limitations; then KPDES KY0093874 should be recalled and lower limits issued, or at a minimum, phased in over a reasonable period of time.

In order to assess the effectiveness of the TMDL in the Central Creek watershed, the Carlisle County Regional Sewer Treatment Plant (KY0102156) should be required to conduct tests of their collection lines that cross Central Creek. As noted, the collection lines cross Central Creek at numerous locations and leaking pipes could contribute to the impairment, especially during wet weather events. The Carlisle County Sewer Treatment Plant should be required to identify any leaking sewer lines and should be required to repair these lines as quickly as possible.

The Kentucky Waterways Alliance opposes the statement in section 6.2.2 Agricultural Sources, Animals, “Confined Animal Feeding Operations (CAFO’s) are not known to operate in the impaired watershed”. An indication that CAFO’s operate in the impaired watershed is found in Table 8, Livestock Inventory (source: NASS, 2002). While Hickman County lost 15 hog farms between 1997 and 2002, its swine inventory rose by over 5000 units. Hickman County also managed to increase its poultry units between 1997 and 2002 by nearly 3.5 million while adding only 6 additional farms. In addition, a previous CAFO KPDES permit application for the Keith Kimbell farm identified that farm as also housing a CAFO broiler chicken operation. Concurrently, Graves County and Carlisle County added nearly 15 million poultry units each with the addition of only 13 farms in Graves County and 14 farms in Carlisle County. These statistics reveal the trend in the agriculture industry to confine and expand unit production into larger facilities with greater effluence production and concentration. The recent definition of these facilities as “no-discharge” does not accurately describe the nature of their activities or the effects of their effluence on the waters of Bayou de Chien, Central Creek, and Cooley Creek in the Commonwealth of Kentucky.

In April 2006, several KNDOP applications were released for public notice for hog farms in the watershed of Bayou de Chien. The Adams Hog Farm (KNDOP Permit No. 07021001) is in the Bayou de Chien watershed. The JP Amberg Hog Farm (KNDOP Permit No. 07020001) is in the Mudd Creek watershed, a tributary of Bayou de Chien. The Matt & Jim Moss Hog Farm (KNDOP Permit No. 07020002) is in the Mudd Creek watershed, a tributary of Bayou de Chien. The Hancock & Smith Hog Farm (KNDOP Permit No. 07024008) is in the Cane Creek watershed, a tributary of Bayou de Chien. The Mike Hancock Hog Farm (KNDOP Permit No. 07023107) is in the Cane Creek watershed, a tributary of Bayou de Chien. These facilities and future KNDOP facilities and their land application processes will significantly contribute to fecal coliform loading far beyond deer populations and should be addressed and included in the Load Allocations calculations of the TMDL for Bayou de Chien, Central Creek, and Cooley Creek.

As KWA and other organizations indicated in a letter addressed to the EPPC Cabinet Secretary in September 2005 and copied to the Kentucky Division of Water (KDOW), CAFOs are **designed** to discharge under certain circumstances from their production areas. Any facility designed to retain the 25-year, 24-hour storm standard will discharge during greater rain events and should be permitted by the Division of Water. A facility that does not have a permit cannot avail itself of the exemptions in the effluent guidelines. *See, e.g.*, 40 C.F.R. § 412.31(a) (dairy cows and cattle), § 412.45(a) (swine, veal, poultry).

CAFO land application areas are also confirmed sites of likely or actual discharges, and as a result, CAFOs that land apply waste should be permitted by the KDOW. The Second Circuit has definitively ruled that all land application areas are point sources and all discharges from land application areas require NPDES permits, unless they are exempt as “agricultural storm water.” *Waterkeeper* at 508-09, 40 C.F.R. § 122.23(e). Given the court’s acceptance of EPA’s definition of “agricultural storm water,” it is clear that dry weather discharges, discharges from tile drains, and discharges due to excessive manure application are not covered by this exemption.

Section 8.3.2 of the proposed TMDL recognizes the “second mode (of transport for nonpoint source bacteria loading into the stream) involves coliform loadings resulting from accumulation on land surfaces transported to streams during storm events”. Table 9 Farm Statistics, cited in the proposed TMDL reveals in 2002 over 20,000 acres of cropland were treated with manure in the 3 counties where Bayou de Chien, Central Creek, and Cooley Creek are located. Despite the lack of a requirement for CAFO facilities to obtain a KPDES permit, the effects of their effluence should be calculated in the Load Allocations for the proposed TMDL.

Region 10 TMDL Review Guidelines (January 2002) offers guidance on defining acceptable Load Allocations.

EPA regulations require that a TMDL include LA’s, which identify the portion of the loading capacity allocated to existing and future nonpoint sources and to natural background [40 CFR §130.2(g)]. Load allocations may range from reasonable accurate estimates to gross allotments [40 CFR §130.2(g)]. Where it is possible to separate natural background from nonpoint sources, load allocations should be described separately for background and for nonpoint sources

If the TMDL concludes that there are no nonpoint sources and/or natural background, or the TMDL recommends a zero load allocation, The LA must be expressed as zero.

The Kentucky Waterways Alliance believes that while the proposed TMDL is effective at attributing the point sources of fecal coliform effluence in Bayou de Chien, Central Creek, and Cooley Creek and establishing Waste Load Allocations for these permitted facilities; the proposed TMDL’s failure to recognize the overwhelmingly significant source of fecal coliform from CAFO operations in the watersheds will render the application ineffective at improving water quality sufficiently to remove Bayou de Chien, Central Creek, and Cooley Creek from Kentucky’s 303(d) list for fecal coliform impairment. In addition, Kentucky Waterways Alliance objects to any new loading, in particular any new KPDES permit issuances in the impaired watershed until such time as Bayou de Chien, Central Creek, and Cooley Creek support all designated and existing uses.

Thank you for considering my comments.

Sincerely,

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CC: LaJuana S. Wilcher, Secretary, Environmental and Public Protection Cabinet
US EPA, Region 4