

RESPONSIVENESS SUMMARY

Stream Use Designation Revisions

Batch #4



**Prepared by the
Iowa Department of Natural Resources
April 6, 2015**

Introduction

This is a summary of comments received in response to proposed revisions to the Environmental Protection Commission's (EPC's) water quality standards (WQS). The proposed changes were published in the Notice of Intended Action **ARC 1877C** on February 18, 2015. Six public hearings were held across the state in six regional locations. No comments were submitted during these hearings. Two comments were received through e-mail. This document provides a discussion of the issues raised by the comments as well as recommendations. No changes are recommended based on the submitted comments.

Summary of Rules changes:

1. Revise and list approximately eight stream segments as Class A1 primary contact recreational use designated waters.
2. Revise and list approximately one stream segment as Class A1 primary contact recreational use and Class B(WW-1) warm water–Type 1 aquatic life use designated waters.
3. Revise and list approximately eight stream segments as Class A1 primary contact recreational use and Class B(WW-2) warm water–Type 2 aquatic life use designated waters.
4. Revise and list approximately two stream segments as Class A2 secondary contact recreational use designated waters.
5. Revise and list approximately 36 stream segments as Class A2 secondary contact recreational use and Class B(WW-2) warm water–Type 2 aquatic life use designated waters.
6. Revise and list approximately four stream segments as Class A2 secondary contact recreational use and Class B(WW-3) warm water–Type 3 aquatic life use designated waters.
7. Revise and list approximately five stream segments as Class A3 children's recreational use designated waters.
8. Revise and list approximately 16 stream segments as Class A3 children's recreational use and Class B(WW-2) warm water–Type 2 designated waters.
9. Revise and list approximately two streams to match the U.S. Geological Survey (USGS) title.
10. Revise and list approximately two streams that were adopted in previous EPC rule makings but which were omitted from the Surface Water Classification document.
11. Revise the legal descriptions of approximately 51 stream segments. These are not individually listed as designation changes, but the changes are shown in the Surface Water Classification document.

Recent rule making and 2006 legislative action have brought the Department's water quality rules closer to compliance with federal Clean Water Act requirements and U.S. Environmental Protection Agency (EPA) regulations, establishing new levels of protection for water quality. As an outcome of these efforts, all 26,000 miles of Iowa's perennial (flowing year-round) streams are initially protected at the highest levels for recreation and warm water aquatic life uses. These actions provide initial protection for many miles of perennial streams that were previously not designated for aquatic life and/or recreational uses.

Under the rules adopted in 2006, it is presumed that all perennial streams and rivers are attaining the highest level of recreation and aquatic life uses and should be protected for activities such as fishing and swimming. This concept of assigning all perennial streams the highest use designation, unless assessments show that the stream does not deserve that level of protection, is referred to as the “rebuttable presumption.”

Included in the federal regulations are the provisions that allow for scientific analysis of these “presumed” recreational and aquatic life uses. An integral part of implementing the rules adopted in 2006 is verifying that a stream is capable of supporting the presumed uses.

The concept of Use Assessment and Use Attainability Analysis (UA/UAA) is being applied by the Department as a step-by-step process to gather site-specific field data on stream features and uses. The Department then assesses available information to determine if the “presumed” recreational and aquatic life uses are appropriate. The Department elected to perform a UA/UAA on any newly-designated stream that receives a continuous discharge from a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Prior to issuing an NPDES permit for an affected facility, the Department will complete a UA/UAA for the receiving stream or stream network.

Six public hearings were held in six regional locations: Des Moines and Atlantic on March 10, 2015; Independence and Washington on March 17, 2015; and Clear Lake and Spencer on March 24, 2015. Written comments were received through March 27, 2015. A press release was issued to notify the public of these meetings and comment period. The hearings were lightly attended and no oral comments were received.

Two comments were received via e-mail. One of these was general in nature, and the other was specific to concerns over the recommended changes to the West Branch Floyd River. The issues raised in the comments received are summarized and addressed below.

General Comments

Issue: Attainability

Commenter #1:

“Considering Iowa’s dismal water quality state-wide, why do you even consider not designating all perennial streams and water as A1? I see on the Batch 4 UAA List that many of the Recommended Use Designations have been downgraded with less protection from pollution. The statement in the announcement of the public hearings noting “the changes in this proposed rule will help protect aquatic life and recreational uses”. How is designating more allowable pollution/less protection going to help aquatic life and recreational use? “

“Since all waters run downhill and therefore ultimately become one, i.e. Gulf of Mexico, how can allowing anything less than the maximum protection improve our dismal water quality? “

“In summary, I strongly object to the down-grading of Use Designation of streams in the Batch 4 UAA List and believe the responsible designation is for maximum protection (A1) for all perennial streams and waters, regardless of size or amount of recreational use.”

DNR Response:

Water Quality Standards are the goals for Iowa’s water bodies. We are working to determine the highest attainable goals for these waters given our current designated use structure.

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The secondary contact recreational use (Class A2) provides the department with a means of providing recreational use protection to waters where Primary Contact recreation use is not attainable. It is important to note that the department is working to answer the question, “Is Primary Contact Recreation (i.e. swimming) possible here?” The key component in these assessments is whether or not there is enough water present in rivers or streams in which recreational uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard.

The department used depth as a guideline to determine whether or not a water body could support Class A1 uses to better address the issues regarding recreational activities. The concept here is that many Class A1 type activities require the presence of a significant amount of water to support those activities. The implementation of these guidelines do a good job of addressing this issue as waters that possess enough flow or water present to support Class A1 typically are the waters deep enough for canoeing or swimming (e.g., the 1,300 miles verified as Class A1 in the original assessments). The EPA has approved this approach in other states.

This approach is rather conservative in that the department is able to protect rivers and streams where no known recreational use has ever taken place. The idea is that the activities are “possible” whether it is a Class A1 or Class A2 stream regardless of water quality. This is a reason why secondary contact is used in Iowa and many other states such as Kansas, Missouri, West Virginia, Kentucky, New Hampshire, Louisiana, Texas, New York, Idaho, and Ohio, to name a few. It provides protection to rivers and streams in which recreational uses may result in contact with the water that is either incidental or accidental where the probability of ingesting appreciable quantities of water is minimal. It establishes a reasonable and practical goal use for smaller, shallow water systems where probability of ingestion is minimal due to the lack of flow.

It should be noted that as a result of these Clean Water Act-mandated stream designation revisions, municipal and industrial regulated facilities (point sources, i.e. community or municipal wastewater treatment plants, industrial process plants like meat packers, or metal finishers) may face significant upgrades to the current wastewater treatment plants. These upgrade requirements can still be required regardless of whether the recreational usage is Class A1, A2, or A3. These upgrades could include disinfection and/or ammonia removal systems.

In reality, these stream use designation revisions actually upgrade stream protections by establishing implementable designated uses for Iowa's rivers and streams that have never received this level of protection before. As a result, water quality should significantly improve where these treatment plants are located. To say this is a downgrade in implementable protections is simply not true.

Issue: Protection of Aquatic Life

Commenter #1:

“Isn't consideration given to non-game aquatic life just as important as game animal aquatic life? Isn't aquatic habitat valuable in itself? “

DNR Response:

There are aquatic life use designations for streams that are capable of supporting game fish [B(WW-1)], and non-game fish (B(WW-2) and B(WW-3)]. All of the aquatic life use designations have water quality criteria that are protective of the aquatic life that is expected to live in streams that support that designated use, not just game fish species. In fact, many of the water quality criteria are the same for B(WW-1), B(WW-2), and B(WW-3) aquatic life use designations as the most sensitive species are assumed present in all three.

West Branch Floyd River

Issue: Recreational Use Designation

Commenter #2:

"It seems in Round 2 most of the West Branch of the Floyd was slated (to be) downgraded from A1 to A2, and now some more segments are being proposed to be demoted from A1 to A3?"

DNR Response:

The designated use changes proposed for West Branch Floyd River in Batch #4 are corrections made to reflect changes previous batches. Originally, all of West Branch Floyd River was recommended for A2 recreational use designation in Batch #2. During the review of the final rule, the environmental protection commission requested that three segments near the towns of Maurice, Sioux Center, and from County Road C16 to the town of Struble be designated A3 (children's recreation). These segments are currently listed as A1 in the surface water classification document, most likely due to error. These segments are now listed for reclassification from A1 to A3 to accurately reflect what was listed in the final Batch #2 preamble. No changes are being recommended based on new data collected on the West Branch Floyd River. It is also important to note that A1 and A3 have the same level of protection, and the same water quality criteria associated with them.

Issue: Aquatic Life Use Designation

Commenter #2:

"I've eaten catfish and bullhead out of the West Branch but catching a fish out of there isn't that easy between fish kills, those we know about and those that go unnoticed. How many fish do I have to eat to prove to the DNR that it needs HH status??? And frankly it is a lot easier for me to go to the Big Sioux, Rock, or Little Rock to have some better luck. "

"And folks including me have caught decent sized catfish in the Branch. In fact the last large fish kill from Sioux Preme Packing showed catfish. Would it be helpful if I presented some historical newspaper clippings of what fish used to be in the West Branch. I had a tip once from an old timer that they used to stock a ox bow of the Floyd with bullheads for a fishing tournament, and then after the kids got through, the adults would descend on it. "

DNR Response:

The Department is not proposing any changes to the aquatic life use classification for the West Branch Floyd River in Batch 4, so it is not possible to consider changes to the aquatic life use classification at this point of the process. However, there is always the opportunity to consider changes in future batches. The Department encourages the submittal of any information for future consideration of stream use designation recommendations. Please submit information to: Matthew Dvorak, Iowa Department of Natural Resources, 502 E. Ninth St., Des Moines, IA 50319-0034; or by e-mail to matthew.dvorak@dnr.iowa.gov.