



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY RECEIVED
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 04 2004

REPLY TO THE ATTENTION OF:

30 SEP 2004

WW-16J

Sheryl A. Corrigan, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, Minnesota 55155-4194

Re: Approval of South Branch Yellow Medicine River TMDL

Dear Ms. Corrigan:

The United States Environmental Protection Agency (U.S. EPA) has reviewed the final South Branch Yellow Medicine River TMDL for Fecal Coliform Bacteria Impairment, located along the south branch of the river's five main branches, particularly the downstream portion of the south branch, in Minnesota, and all supporting documentation and information. Based on this review, U.S. EPA has determined that the South Branch Yellow Medicine River TMDL meets the requirements of Section 303(d) of the Clean Water Act and U.S. EPA's implementing regulations at 40 CFR Part 130. By this Order, U.S. EPA approves the South Branch Yellow Medicine River TMDL (HUC#07020004-503) for fecal coliform bacteria. The statutory and regulatory requirements, and U.S. EPA's review of Minnesota's compliance with each requirement, are described in the enclosed decision document.

We appreciate the work involved in developing a TMDL and the cooperation we received from your staff. If you have any questions, please contact Wendy Melgin, Deputy Branch Chief of the Watersheds & Wetlands Branch, at 312-886-7745.

Sincerely yours,

Jo Lynn Traub
Director, Water Division

Enclosure

cc: Muriel Reinhold, MPCA
David L. Johnson, MPCA

TMDL: South Branch Yellow Medicine River, Minnesota

Approval Date: 30 SEP 2004

DECISION DOCUMENT FOR THE APPROVAL OF THE SOUTH BRANCH YELLOW MEDICINE RIVER TMDL

Section 303(d) of the Clean Water Act (CWA) and EPA's implementing regulations at 40 C.F.R. Part 130 describe the statutory and regulatory requirements for approvable TMDLs. Additional information is generally necessary for EPA to determine if a submitted TMDL fulfills the legal requirements for approval under Section 303(d) and EPA regulations, and should be included in the submittal package. Use of the verb "must" below denotes information that is required to be submitted because it relates to elements of the TMDL required by the CWA and by regulation. Use of the term "should" below denotes information that is generally necessary for EPA to determine if a submitted TMDL is approvable. These TMDL review guidelines are not themselves regulations. They are an attempt to summarize and provide guidance regarding currently effective statutory and regulatory requirements relating to TMDLs. Any differences between these guidelines and EPA's TMDL regulations should be resolved in favor of the regulations themselves.

1. Identification of Waterbody, Pollutant of Concern, Pollutant Sources, and Priority Ranking

The TMDL submittal should identify the waterbody as it appears on the State's/Tribe's 303(d) list. The waterbody should be identified/georeferenced using the National Hydrography Dataset (NHD), and the TMDL should clearly identify the pollutant for which the TMDL is being established. In addition, the TMDL should identify the priority ranking of the waterbody and specify the link between the pollutant of concern and the water quality standard (see section 2 below).

The TMDL submittal should include an identification of the point and nonpoint sources of the pollutant of concern, including location of the source(s) and the quantity of the loading, e.g., lbs/per day. The TMDL should provide the identification numbers of the NPDES permits within the waterbody. Where it is possible to separate natural background from nonpoint sources, the TMDL should include a description of the natural background. This information is necessary for EPA's review of the load and wasteload allocations, which are required by regulation.

The TMDL submittal should also contain a description of any important assumptions made in developing the TMDL, such as:

- (1) the spatial extent of the watershed in which the impaired waterbody is located;
- (2) the assumed distribution of land use in the watershed (e.g., urban, forested, agriculture);
- (3) population characteristics, wildlife resources, and other relevant information affecting the characterization of the pollutant of concern and its allocation to sources;

(4) present and future growth trends, if taken into consideration in preparing the TMDL (e.g., the TMDL could include the design capacity of a wastewater treatment facility); and (5) an explanation and analytical basis for expressing the TMDL through *surrogate measures*, if applicable. *Surrogate measures* are parameters such as percent fines and turbidity for sediment impairments; chlorophyll *a* and phosphorus loadings for excess algae; length of riparian buffer; or number of acres of best management practices.

Comment:

The South Branch Yellow Medicine Watershed (HUC#07020004-503) is a subwatershed of the Yellow Medicine River, and the portion of the South Branch Yellow Medicine River (SBYMR) that is the focus of this Total Maximum Daily Load (TMDL) is located along the south branch of the river's five main branches, particularly the downstream portion of the south branch. The SBYMR was placed on Minnesota's 2004 303(d) list as impaired by excessive fecal coliform bacteria, resulting in the non-attainment of its designated use for swimming (primary body contact) (Page 1 of the TMDL Report).

The Minnesota Pollution Control Agency (MPCA) determined that the SBYMR is approximately 79,731 acres, dominated by agricultural cropping and animal production (Page 1 of the TMDL Report). The load that is established for this TMDL Report will address the fecal coliform impairment. MPCA has determined that reductions in current fecal coliform loads are needed to attain Water Quality Standards (WQS) (Page 1 of the TMDL Report). MPCA believes that Best Management Practices (BMPs) will address excessive fecal coliform levels that impair the SBYMR (Section 10 of the TMDL Report). In the event that fecal coliform levels do not respond to the implementation of BMPs, the TMDL strategy may be amended as new information of the watershed is developed, to better account for contributing sources of the impairment. For this TMDL, implementation of BMPs will indirectly address other impairments since implementation efforts described in the TMDL report will result in reductions of sediment (turbidity) (Sections 9 and 10 of the TMDL Report).

The primary nonpoint source contributor of fecal coliform loads identified by MPCA in the SBYMR arise from application of manure on croplands (Page 40 of the TMDL Report). Additional sources to the SBYMR include overgrazed pasture, feedlots and stockpiles, domestic animals, wildlife, septic systems, and municipal sources. MPCA identified one permitted NPDES discharger to the SBYMR, the Minneota facility (NPDES#MNG580033) (Page 23 of the TMDL Report). MPCA determined that the discharge from the Minneota facility is within permit limits, and no reductions in fecal coliform are needed from this source¹ (Page 23

¹Page 23 of the MPCA's 2004 report titled "South Branch Yellow Medicine River Fecal Coliform Total Maximum Daily Load Report" (TMDL Report) states that the Minneota facility discharged three times in 2001, with the highest fecal coliform concentration recorded at 90 organisms/100 ml. The largest acute discharge would be 1.48×10^{10} organisms/day, or 0.2% of the fecal coliform load during wet conditions, and 7% of the fecal coliform load during dry conditions. MPCA has determined that this source is negligible when compared to other loading sources.

of the TMDL Report).

EPA finds the State's approach acceptable and it meets the requirements of this section.

2. Description of the Applicable Water Quality Standards and Numeric Water Quality Target

The TMDL submittal must include a description of the applicable State/Tribal water quality standard, including the designated use(s) of the waterbody, the applicable numeric or narrative water quality criterion, and the antidegradation policy. (40 C.F.R. §130.7(c)(1)). EPA needs this information to review the loading capacity determination, and load and wasteload allocations, which are required by regulation.

The TMDL submittal must identify a numeric water quality target(s) – a quantitative value used to measure whether or not the applicable water quality standard is attained. Generally, the pollutant of concern and the numeric water quality target are, respectively, the chemical causing the impairment and the numeric criteria for that chemical (e.g., chromium) contained in the water quality standard. The TMDL expresses the relationship between any necessary reduction of the pollutant of concern and the attainment of the numeric water quality target. Occasionally, the pollutant of concern is different from the pollutant that is the subject of the numeric water quality target (e.g., when the pollutant of concern is phosphorus and the numeric water quality target is expressed as Dissolved Oxygen (DO) criteria). In such cases, the TMDL submittal should explain the linkage between the pollutant of concern and the chosen numeric water quality target.

Comments:

Minn. R. Ch 7050.0200 establishes that all waters of Minnesota are assigned classes based on their suitability for the following beneficial uses (Page 10 of the TMDL Report):

Class 1	Domestic Consumption
Class 2	Aquatic life and recreation
Class 3	Industrial consumption
Class 4	Agriculture and wildlife
Class 5	Aesthetic enjoyment and navigation
Class 6	Other uses
Class 7	Limited resource value

Based on the above classification system, the impaired reach of the SBYMR has been classified as a 2B, 3B, 4A, 4B, 5, and 6 water. A description of this classification system is found in the Minnesota Rules, Chapter 7050.

In addition, Minn. R. Ch 7050.0430 establishes the SBYMR as an "Unlisted Water which is classified as 2B, 3B, 4A, 4B, 5, and 6 water." For this TMDL, Class 2B standards apply because it is the most restrictive (Page 10 of the TMDL Report). Class 2B waters support indigenous fish

and associated aquatic communities, and recreational use. The fecal coliform bacteria WQS for Class 2B waters is found under Minn. R. Ch. 7050.0222 subp. 4 and 5 and states that fecal coliform shall not exceed 200 organism per 100 milliliters as a geometric mean of not less than five samples in any calendar month, nor shall more than ten percent of all samples taken during any calendar month individually exceed 2000 organisms per 100 milliliters. This standard applies from April 1 to October 31 (Page 10 of the TMDL Report).

MPCA believes that when fecal coliform bacteria levels are reduced to the level established in this TMDL (200 organisms/100 ml) for the SBYMR, then the acute standard violation of 2,000 bacteria per 100 milliliters will be inhibited (Page 11 of the TMDL Report). The acute standard violation is found in Minn. R. Ch. 7050.0222. Furthermore, MPCA believes that exceedance of the acute WQS for fecal coliform bacteria may indicate exceedance of the chronic WQS, and, if the chronic WQS is exceeded, it is likely that the acute WQS has been violated (Page 11 of the TMDL Report). Therefore, MPCA's efforts will be directed towards attainment of both chronic and acute WQSs for fecal coliform bacteria in the SBYMR.

According to MPCA, fecal coliform bacteria is associated with the intestines of warm-blooded animals and fecal matter (Page 19 of the TMDL Report). MPCA also determined that fecal coliform is used as an indicator for the presence of pathogenic organisms, including Escherichia Coli (E. coli). In addition, excessive fecal coliform bacteria levels pose a public health threat (Page 19 of the TMDL Report). Therefore, the designated recreational use standard is applicable for the SBYMR fecal coliform TMDL. The chronic WQS of 200 organisms/100 ml, and the acute WQS of 2,000 bacteria/100 ml for fecal coliform protects the recreational use of the SBYMR.

EPA finds the State's approach acceptable and it meets the requirements of this section.

3. Loading Capacity - Linking Water Quality and Pollutant Sources

A TMDL must identify the loading capacity of a waterbody for the applicable pollutant. EPA regulations define loading capacity as the greatest amount of a pollutant that a water can receive without violating water quality standards (40 C.F.R. §130.2(f)).

The pollutant loadings may be expressed as either mass-per-time, toxicity or other appropriate measure (40 C.F.R. §130.2(i)). If the TMDL is expressed in terms other than a daily load, e.g., an annual load, the submittal should explain why it is appropriate to express the TMDL in the unit of measurement chosen. The TMDL submittal should describe the method used to establish the cause-and-effect relationship between the numeric target and the identified pollutant sources. In many instances, this method will be a water quality model.

The TMDL submittal should contain documentation supporting the TMDL analysis, including the basis for any assumptions; a discussion of strengths and weaknesses in the analytical process; and results from any water quality modeling. EPA needs this information to

review the loading capacity determination, and load and wasteload allocations, which are required by regulation.

TMDLs must take into account *critical conditions* for stream flow, loading, and water quality parameters as part of the analysis of loading capacity. (40 C.F.R. §130.7(c)(1)). TMDLs should define applicable *critical conditions* and describe their approach to estimating both point and nonpoint source loadings under such *critical conditions*. In particular, the TMDL should discuss the approach used to compute and allocate nonpoint source loadings, e.g., meteorological conditions and land use distribution.

Comment:

The loading capacity for the South Branch Yellow Medicine River TMDL is 200 organisms/100 ml. MPCA, however, will target a loading capacity of 180 organisms/100 ml, which translates to a loading capacity of 9.84×10^{11} organisms/day, to ensure that WQSs are met (Section 5 of the TMDL Report). In order to attain this loading capacity, MPCA will target the current wet-weather fecal coliform load of 4.34×10^{12} organisms/day (Page 32 of the TMDL Report). MPCA believes that targeting the wet-weather fecal load is most appropriate since fecal coliform concentrations are highest during wet-weather events (Section 5 of the TMDL Report). According to MPCA, meeting the fecal coliform load reductions under wet conditions will meet the standard under all conditions (Page 32 of the TMDL Report). The current wet-weather fecal load of 4.34×10^{12} organisms/day will be reduced to 9.84×10^{11} organisms/day for all seasonal and weather-related conditions (Page 32 of the TMDL Report). This represents approximately a 78% reduction from the current wet-weather load.

Data collected from the milestone site YMS-10.1 of the SBYMR at CSAH-10 near the City of Minneota showed that 42 fecal coliform samples out of 64 samples collected exceeded the WQS of 200 organisms/100 ml between the years 1990-1999, according to MPCA (Page 11 of the TMDL Report). The geometric mean of fecal coliform exceeded the WQS during a five-month period across each year, in which more than five samples were taken for each month. MPCA stated that from May - September 1999, data was collected at 11 locations within the South Branch reach, and 3 - 5 samples were collected for each month. A single station exceeded the WQS in May, and all stations sampled were above the WQS from June - August, with one exception. For September, MPCA determined that approximately half of all stations sampled were in exceedance of the 200 organisms/100 ml WQS (Page 11 of the TMDL Report). In 2001, data was collected at 25 stations in the downstream portion of the South Branch between April and September. Five stations exceeded WQSs in April and May, but nearly all stations were in exceedance in at least one of the summer months. In addition, five stations were reported to exceed the WQS in September (Page 14 of the TMDL Report).

MPCA used a "Bacteria Matrix" spreadsheet to calculate fecal coliform loads to the SBYMR during wet conditions, and to calculate loads during spring, summer, and fall seasons. The geometric mean of the fecal coliform concentration and flow data were used to assess fecal coliform levels in the SBYMR (Page 30 of the TMDL Report). The simulation indicated that fecal coliform concentrations are over eight times larger during wet conditions (Page 31 of the TMDL Report), and WQSs were met during spring and fall, but were not met during the summer

(Page 30 of the TMDL Report).

MPCA determined that the critical condition for achieving load reductions is summer rain events, which is the peak season of cattle grazing and agriculture, and when most water contact from recreational use occurs (Page 35 of the TMDL Report). During wet-weather conditions, runoff from various sources, including surface applied manure, is distributed throughout the SBYMR (Page 26 of the TMDL Report).

EPA finds the State's approach acceptable and it meets the requirements of this section.

4. Load Allocations (LAs)

EPA regulations require that a TMDL include LAs, which identify the portion of the loading capacity attributed to existing and future nonpoint sources and to natural background. Load allocations may range from reasonably accurate estimates to gross allotments (40 C.F.R. §130.2(g)). Where possible, load allocations should be described separately for natural background and nonpoint sources.

Comment:

The load allocation for fecal coliform has been established by MPCA at 9.84×10^{11} organisms/day (Page 33 of the TMDL Report). The current fecal coliform load delivered to the SBYMR during wet conditions is 7.29×10^{12} organisms/day, and 2.22×10^{11} organisms/day during dry conditions (Page 29 of the TMDL Report). The TMDL submittal identifies surface applied manure as the primary nonpoint source contributor of fecal coliform loads to the SBYMR (Page 23 of the TMDL Report). Overgrazed pasture, feedlots and stockpiles, septic systems, municipal sources, wildlife, and domestic animals were also identified as sources of fecal coliform bacteria to the SBYMR by MPCA (Pages 22 and 23 of the TMDL Report). Stormwater dischargers are also located in the SBYMR watershed, and the fecal coliform delivery from this source was accounted for under the urban portion of the pet source.

EPA finds the State's approach acceptable and it meets the requirements of this section.

5. Wasteload Allocations (WLAs)

EPA regulations require that a TMDL include WLAs, which identify the portion of the loading capacity allocated to individual existing and future point source(s) (40 C.F.R. §130.2(h), 40 C.F.R. §130.2(i)). In some cases, WLAs may cover more than one discharger, e.g., if the source is contained within a general permit.

The individual WLAs may take the form of uniform percentage reductions or individual mass based limitations for dischargers where it can be shown that this solution meets WQSs and does not result in localized impairments. These individual WLAs may be adjusted during the NPDES

permitting process. If the WLAs are adjusted, the individual effluent limits for each permit issued to a discharger on the impaired water must be consistent with the assumptions and requirements of the adjusted WLAs in the TMDL. If the WLAs are not adjusted, effluent limits contained in the permit must be consistent with the individual WLAs specified in the TMDL. If a draft permit provides for a higher load for a discharger than the corresponding individual WLA in the TMDL, the State/Tribe must demonstrate that the total WLA in the TMDL will be achieved through reductions in the remaining individual WLAs and that localized impairments will not result. All permittees should be notified of any deviations from the initial individual WLAs contained in the TMDL. EPA does not require the establishment of a new TMDL to reflect these revised allocations as long as the total WLA, as expressed in the TMDL, remains the same or decreases, and there is no reallocation between the total WLA and the total LA.

Comment:

MPCA identified one NPDES municipal sewage facility in the SBYMR, the Minneota facility (NPDES #MNG580033) (Page 23 of the TMDL Report). The highest fecal coliform concentration recorded from this facility is 90 organisms/100 ml. The largest acute discharge from this source is equivalent to 0.2% of the fecal coliform load during wet conditions, and 7% of the river load during dry conditions. According to MPCA, the WLA was determined to be negligible in contributing to the impairment (0.02% of the total wet-weather fecal load), and therefore the WLA was considered to be 0 in the calculation of this TMDL (Page 33 of the TMDL Report). According to MPCA, the discharge from this facility is within permit limits, and no reductions in fecal coliform is needed from this source (Page 23 of the TMDL Report). This source, however, is subject to its NPDES limit.

EPA finds the State's approach acceptable and it meets the requirements of this section.

6. Margin of Safety (MOS)

The statute and regulations require that a TMDL include a margin of safety (MOS) to account for any lack of knowledge concerning the relationship between load and wasteload allocations and water quality (CWA §303(d)(1)(C), 40 C.F.R. §130.7(c)(1)). EPA's 1991 TMDL Guidance explains that the MOS may be implicit, i.e., incorporated into the TMDL through conservative assumptions in the analysis, or explicit, i.e., expressed in the TMDL as loadings set aside for the MOS. If the MOS is implicit, the conservative assumptions in the analysis that account for the MOS must be described. If the MOS is explicit, the loading set aside for the MOS must be identified.

Comment:

MPCA determined that an explicit 10% MOS is appropriate for the SBYMR TMDL (Page 34 of the TMDL Report). The MOS will account for uncertainties and assumptions in the TMDL method. According to page 35 of the TMDL Report, a 10% MOS is appropriate for the SBYMR TMDL because the targeted load reduction was based on a worse-case scenario of wet-weather conditions. Fecal coliform concentrations are over eight times higher during wet-weather conditions in the SBYMR (Page 31 of the TMDL Report). Therefore, basing load reductions

using a “wet-weather condition” scenario provides an intrinsic MOS for attainment of WQSs, because load reductions were calculated using greater-than-normal fecal coliform concentrations. In addition, since pathogenic organisms have a more limited capability of surviving outside their hosts, a rate of decay would normally be used. However, the rate of decay of fecal coliform was not accounted for in the “Bacteria Matrix” spreadsheet when calculating the TMDL (Page 35 of the TMDL Report), providing an added MOS.

EPA finds the State’s approach acceptable and it meets the requirements of this section.

7. Seasonal Variation

The statute and regulations require that a TMDL be established with consideration of seasonal variations. The TMDL must describe the method chosen for including seasonal variations. (CWA §303(d)(1)(C), 40 C.F.R. §130.7(c)(1)).

Comment:

Seasonal variation was accounted for using the “Bacteria Matrix” spreadsheet. Existing load contributions were simulated for the spring, summer, and fall seasons. The “assumed shares” for each season and for each source contribution was calculated using the geometric mean fecal coliform concentration at all sites for spring (April - May), summer (June - August), and fall (September) (Page 30 of the TMDL Report). The simulation indicated that the WQS is satisfied in the spring and fall, but was not met during the summer season (Page 31 of the TMDL Report). MPCA determined that in the early spring, higher flows associated with runoff from snow melt that carried fecal coliform did not exceed the WQSs. For fall, low flows were characteristic, however fecal coliform levels still exceeded the WQS (Page 35 of the TMDL Report). Page 36 of the TMDL Report states that the loads and allocations developed for the SBYMR were developed for wet/dry conditions, and address all open water season conditions as well.

EPA finds the State’s approach acceptable and it meets the requirements of this section.

8. Reasonable Assurances

When a TMDL is developed for waters impaired by point sources only, the issuance of a National Pollutant Discharge Elimination System (NPDES) permit(s) provides the reasonable assurance that the wasteload allocations contained in the TMDL will be achieved. This is because 40 C.F.R. 122.44(d)(1)(vii)(B) requires that effluent limits in permits be consistent with “the assumptions and requirements of any available wasteload allocation” in an approved TMDL.

When a TMDL is developed for waters impaired by both point and nonpoint sources, and the WLA is based on an assumption that nonpoint source load reductions will occur, EPA’s 1991 TMDL Guidance states that the TMDL should provide reasonable assurances that nonpoint

source control measures will achieve expected load reductions in order for the TMDL to be approvable. This information is necessary for EPA to determine that the TMDL, including the load and wasteload allocations, has been established at a level necessary to implement water quality standards.

EPA's August 1997 TMDL Guidance also directs Regions to work with States to achieve TMDL load allocations in waters impaired only by nonpoint sources. However, EPA cannot disapprove a TMDL for nonpoint source-only impaired waters, which do not have a demonstration of reasonable assurance that LAs will be achieved, because such a showing is not required by current regulations.

Comment:

Section 10 of the TMDL Report describes the BMPs for addressing the implementation of the TMDL. The BMPs described in the TMDL include feedlot runoff controls, individual sewage treatment systems, municipal wastewater disinfection, techniques for land application of manure to reduce runoff, erosion control and sediment reduction, planned rotational grazing, and urban stormwater management practices. Many BMPs have already been implemented, which is especially important for reducing fecal coliform and sediment (turbidity). Much of the fecal coliform load is the result of runoff, therefore, the BMPs that are designed to reduce fecal coliform loads will also reduce surface erosion, thereby reducing sediment (turbidity) in the SBYMR.

EPA finds that the TMDL document submitted by MPCA addresses this eighth element.

9. Monitoring Plan to Track TMDL Effectiveness

EPA's 1991 document, *Guidance for Water Quality-Based Decisions: The TMDL Process* (EPA 440/4-91-001), recommends a monitoring plan to track the effectiveness of a TMDL, particularly when a TMDL involves both point and nonpoint sources, and the WLA is based on an assumption that nonpoint source load reductions will occur. Such a TMDL should provide assurances that nonpoint source controls will achieve expected load reductions and, such TMDL should include a monitoring plan that describes the additional data to be collected to determine if the load reductions provided for in the TMDL are occurring and leading to attainment of water quality standards.

Comment:

The monitoring plan for this TMDL is described in Section 8 of the TMDL Report. MPCA will sample fecal coliform in the SBYMR at 25 sampling stations (Page 37 of the TMDL Report). Flow measurements and fecal coliform concentrations will be taken to determine the effectiveness of implementation efforts in reducing fecal coliform levels. According to MPCA, monitoring will commence two years after the implementation of BMPS. In the event that fecal

coliform levels do not respond to the implementation of BMPs, the TMDL strategy may be amended as new information of the watershed is developed, to better account for contributing sources of the impairment. Once BMPs are implemented, MPCA will determine if future implementation controls are needed to attain WQSs. Monitoring will resume every two years after significant implementation of BMPs until WQSs are attained (Page 37 of the TMDL Report).

EPA finds that the TMDL document submitted by MPCA addresses this ninth element.

10. Implementation

EPA policy encourages Regions to work in partnership with States/Tribes to achieve nonpoint source load allocations established for 303(d)-listed waters impaired by nonpoint sources. Regions may assist States/Tribes in developing implementation plans that include reasonable assurances that nonpoint source LAs established in TMDLs for waters impaired solely or primarily by nonpoint sources will in fact be achieved. In addition, EPA policy recognizes that other relevant watershed management processes may be used in the TMDL process. EPA is not required to and does not approve TMDL implementation plans.

Comment:

EPA is not required to and does not approve TMDL implementation plans. MPCA however, did identify implementation activities in the watershed. Sections 9 and 10 of the TMDL report describes proposed implementation activities in detail. As stated under the Reasonable Assurance section above (#8), BMP activities that were identified included feedlot runoff controls, individual sewage treatment systems, municipal wastewater disinfection, techniques for land application of manure to reduce runoff, erosion control and sediment reduction, planned rotational grazing, and urban stormwater management practices.

In the event that fecal coliform levels do not respond to the implementation of BMPs, the TMDL strategy may be amended as new information of the watershed is developed, to better account for contributing sources of the impairment.

EPA finds the submittal addressed this tenth element.

11. Public Participation

EPA policy is that there should be full and meaningful public participation in the TMDL development process. The TMDL regulations require that each State/Tribe must subject calculations to establish TMDLs to public review consistent with its own continuing planning process (40 C.F.R. §130.7(c)(1)(ii)). In guidance, EPA has explained that final TMDLs submitted to EPA for review and approval should describe the State's/Tribe's public participation process, including a summary of significant comments and the State's/Tribe's

responses to those comments. When EPA establishes a TMDL, EPA regulations require EPA to publish a notice seeking public comment (40 C.F.R. §130.7(d)(2)). Provision of inadequate public participation may be a basis for disapproving a TMDL. If EPA determines that a State/Tribe has not provided adequate public participation, EPA may defer its approval action until adequate public participation has been provided for, either by the State/Tribe or by EPA.

Comment:

For public participation, the Yellow Medicine River Watershed District convened two public meetings on June 24, 2003, and October 24, 2003. In addition, MPCA held a public meeting on July 28, 2004 at the MPCA Southwest Regional Office in Marshall. A draft of the TMDL report was made available to the public on MPCA's website. A public notice was posted in the State Register. The public comment period was July 6 - August 6, 2004, and no written comments were received during this period.

EPA finds the State's approach acceptable and it meets the requirements of this section.

12. Submittal Letter

A submittal letter should be included with the TMDL submittal, and should specify whether the TMDL is being submitted for a *technical review* or *final review and approval*. Each final TMDL submitted to EPA should be accompanied by a submittal letter that explicitly states that the submittal is a final TMDL submitted under Section 303(d) of the Clean Water Act for EPA review and approval. This clearly establishes the State's/Tribe's intent to submit, and EPA's duty to review, the TMDL under the statute. The submittal letter, whether for technical review or final review and approval, should contain such identifying information as the name and location of the waterbody, and the pollutant(s) of concern.

Comment:

U.S. EPA received the South Branch Yellow Medicine River TMDL on September 23, 2004, accompanied by a submittal letter dated September 20, 2004. In the submittal letter, MPCA stated "MPCA is pleased to provide the Final South Branch Yellow Medicine River Fecal Coliform Total Maximum Daily Load (TMDL Report) to the U.S. Environmental Protection Agency (EPA) for final review and approval ." The submittal letter included the date of the public meeting, and stated that no comments were received on this TMDL. The letter also contained the water quality standard for the TMDL.

EPA finds the State's approach acceptable and it meets the requirements of this section.

13. Conclusion

After a full and complete review, EPA finds that the TMDL report for the South Branch Yellow Medicine River satisfies all of the elements of an approvable TMDL. This approval addresses 1

waterbody (South Branch Yellow Medicine River, HUC #07020004-503) and 2 impairments on the 303(d) list (fecal coliform bacteria and turbidity).

EPA's approval of this TMDL does not extend to those waters that are within Indian Country, as defined in 18 U.S.C. Section 1151. EPA is taking no action to approve or disapprove TMDLs for those waters at this time. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under the CWA Section 303(d) for those waters.