



October 9, 2025

Jim Macy
U.S. EPA Region 7
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Lenexa, KS 66219
Email: R7-WaterDivision@epa.gov

RE: EPA Rescission of Partial Disapproval of 2024 List of Iowa Impaired Waters

Dear Mr. Macy:

The Iowa Environmental Council (IEC), Environmental Law & Policy Center (ELPC), and Food & Water Watch (FWW) write offering information and seeking clarification of EPA's rescission of its partial disapproval of Iowa's 2024 Impaired Waters list under Clean Water Act section 303(d). EPA issued that partial disapproval on November 13, 2024, instructing the Iowa Department of Natural Resources ("IDNR") to list seven water segments as impaired for nitrate. On July 11, 2025, EPA took the highly unusual step of rescinding the partial disapproval, claiming that it was removing the newly listed impaired segments because it was "appropriate to allow EPA to evaluate additional information" and "further evaluate [its] rationale."

As explained below, this rescission is legally unsupportable and procedurally improper. It also increases regulatory costs that Iowans bear to ensure their tap water is safe and fails to put the onus on polluters to adopt practices that will reduce pollution. We respectfully urge the agency to promptly restore the seven water segments to the impaired waters list.

I. Background

Under section 303(d) of the Clean Water Act and its implementing regulation, 40 C.F.R. § 130.7, states submit proposed lists of impaired waters to EPA; EPA can request additional information from the state if needed; and then EPA must approve or disapprove the list. IDNR published a list for comment in March 2024 and received a comment from EPA that IDNR was improperly applying the nitrate standard for drinking water sources. IDNR declined to change its approach and submitted the list to EPA for approval. EPA provided the required public notice seeking comment for a proposed partial disapproval of Iowa's list,¹ then added seven waters as impaired for nitrate on December 30, 2024. This decision constituted the final agency action on the 2024 impaired waters list. No party appealed EPA's decision.

¹ 40 C.F.R. § 130.7(d)(2); see "EPA Takes Action on Iowa's 2024 Impaired Waters List," U.S. EPA, *available at* <https://www.epa.gov/newsreleases/epa-takes-action-iowas-2024-list-impaired-waters> (last visited Sept. 19, 2025).

Months later, following an undocumented oral conversation,² IDNR emailed to EPA documents created when adopting the water quality standards in 2001, as well as EPA's 2002 approval letter and decision document supporting the approval. EPA had not requested this information under the procedures in 40 C.F.R. § 130.7 because EPA had already received or written these documents. IDNR's email to EPA did not articulate any arguments for changing the impaired waters list.³ This information exchange occurred outside the process contemplated in the Clean Water Act and its implementing regulations.⁴

EPA then reversed course and rescinded its prior disapproval via letter to IDNR. EPA's entire rationale was only two points:

1. IDNR provided information "that was not previously submitted to or considered by the EPA in its prior actions regarding the 2024 Section 303(d) List."
2. IDNR applies "the nitrate, nitrite and nitrate plus nitrite criteria as numeric criteria that solely protect against chronic effects."⁵

Because its partial disapproval considered "both chronic and acute human health effects," EPA rescinded the disapproval.

II. EPA Lacks Legal Justification for Rescission

EPA's action is arbitrary and capricious because the elements of its rationale are wrong.

A. The Documents Were Previously Submitted.

EPA claims that the documents IDNR provided "were not previously submitted" so EPA did not consider them. The documents only include items IDNR previously sent to EPA for approval and EPA's response. EPA has no basis to claim that the documents were new to the agency. Further, IDNR's private resubmission of these documents to EPA in no way remedies the errors identified by EPA's partial disapproval of Iowa's 303(d) list, including the IDNR's failure to "assemble and publicly evaluate available data from the Iowa Water Quality Information System, which includes data from the University of Iowa's Iowa Institute for Hydrologic Research (IIHR) and continuous data from the U.S. Geological Survey; data from local and state entities available through the organization Upper Iowa River; and volunteer data available through the Clean Water Hub."⁶

Section 130.7 allows for a change to the impaired waters list after EPA requests "additional information." EPA never sought additional information from the state under 130.7 to trigger this provision. It had no need to do so because it already had the documents. EPA's claim that the documents were not submitted has no basis.

² EPA's letter references documents submitted by IDNR on May 2, 2025. The text of the email from IDNR contains, in full, "Jeff, Jaime, I've attached the documents mentioned in last week's meeting regarding Iowa's WQS packages from 2001/2002. Hope you have a great weekend. Lori," followed by a signature block.

³ *See id.*

⁴ *See* 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d)(2).

⁵ Letter from Jim Macy (EPA) to Ed Tormey (IDNR), July 11, 2025, at 1.

⁶ Jeffrey Robichaud, EPA, 2024 Decision Document at 10-11 (Nov. 12, 2024).

B. The Standards Apply on an Acute Basis.

The documents cited as a basis for the change do not justify EPA's rescission because they fail to demonstrate that the nitrate standard is "solely [to] protect against chronic effects."⁷ IDNR's submission documents, subsequent implementation of the standard, and concurrent narrative water quality standard dictate listing the waters for nitrate impairment.

In 2001, IDNR stated that "The EPA WQS Handbook clearly notes that the human health numerical criteria are to protect against long-term (chronic) effects."⁸ The Handbook did set human health criteria as chronic standards.⁹ But in the same paragraph, IDNR correctly distinguishes the *human health criteria* under the Clean Water Act from *maximum contaminant levels* (MCLs) adopted under the Safe Drinking Water Act.¹⁰ EPA also distinguished in its approval between MCLs and human health criteria.¹¹ The nitrate water quality standard is derived from an MCL, not a chronic human health criterion.

The 2001 change in the IDNR rule replaced "acute" with "MCL" for nitrate as N.¹² The MCL protects against short-term exposure to infants, not long-term chronic effects.¹³ EPA's website for MCLs notes that the nitrate MCL is intended to prevent infants from becoming "seriously ill" with possibility of death if untreated.¹⁴ In addition, "Symptoms include shortness of breath and blue-baby syndrome."¹⁵ These are not chronic, oncogenic effects. EPA specifically identified the potentially toxic effects in the same Water Quality Standards Handbook that IDNR relied on: "MCLs of the SDWA, where they exist, control toxic chemicals in finished drinking water."¹⁶ IDNR explicitly wrote "MCL" into the 2001 submission (not "chronic") and thereby incorporated the MCL standard as the water quality standard. That is what EPA approved.

IDNR criticized the lack of formal "toxic" listing for nitrate as evidence that EPA was misinterpreting the standard.¹⁷ But the formal listing does not undermine the acute nature of nitrate's effects. EPA has not updated its lists of toxic parameters since 1982.¹⁸ Typical drinking water treatment does not remove nitrate; EPA has identified ion exchange, reverse osmosis, or

⁷ *Id.*

⁸ Iowa DNR, "1999 Triennial Review: Iowa's Water Quality Standards ISSUE PAPER – Class C Criteria & Its Implementation," at 2 (2001 IDNR Rulemaking Package at 75).

⁹ U.S. EPA, Water Quality Standards Handbook (1994 ed.) at 3-4.

¹⁰ *Id.*

¹¹ 2002 Letter at 13.

¹² Iowa DNR, "1999 Triennial Review: Iowa's Water Quality Standards ISSUE PAPER – Class C Criteria & Its Implementation," at 11 (2001 IDNR Rulemaking Package at 84).

¹³ See "National Primary Drinking Water Regulations," U.S. EPA (last accessed Sept. 15, 2025), *available at* <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>.

¹⁴ "National Primary Drinking Water Regulations," U.S. EPA (last accessed Sept. 15, 2025), *available at* <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>.

¹⁵ *Id.*

¹⁶ EPA WQS Handbook (1994) at 3-12.

¹⁷ Letter from Kayla Lyon (IDNR) to Jeff Robichaud (EPA), Dec. 19, 2024.

¹⁸ 40 C.F.R. § 401.15 (Feb. 4, 1981); 40 C.F.R. pt. 423, Appx A (Nov. 19, 1982).

electrodialysis as treatment options.¹⁹ Even without being listed as toxic, overlooking the acute consequences of high nitrate creates inconsistency with Safe Drinking Water Act requirements that apply on a single-sample basis to public water suppliers.

IDNR instead wants to treat nitrate as a conventional pollutant. The 10% binomial exceedance statistical approach that IDNR and EPA rely upon is appropriate for conventional pollutants. But nitrate is not listed a conventional pollutant.²⁰ Thus, nitrate is not listed as a conventional pollutant or toxic pollutant. Applying the approach for conventional pollutants does not protect the designated use.

From a practical standpoint, excursions above the water quality standard have created risk to drinking water suppliers who have designed systems that reasonably rely on Class C drinking water sources meeting the MCL. This standard is exceeded because a standard drinking water treatment process does not remove the nitrates and nitrites, so this level of nitrates is not normally removed through the treatment process.

The water quality standard documents that IDNR submitted to EPA do not define the methodology for impaired waters listing; IDNR's methodology for impairment was not part of the water quality standard package that EPA reviewed and approved. IDNR stated in its submission to EPA that "the use of the criterion by other Department activities, such as the development of 303d listings, 305b assessment, etc., must consider the basis of the numerical criteria and merge that with their own program guidance and procedures."²¹ Despite that, IDNR stated that in implementing wasteload allocations for permit limits, "Any Class C value would be treated as a chronic-type of criteria."²² In practice, however, IDNR has recognized the toxic nature of nitrate – it relied on EPA's *Technical Support Document for Water Quality-Based Toxics Control* to derive effluent limits.²³

Finally, even if the numeric criterion were interpreted as chronic, Iowa has a narrative water quality standard that prohibits toxic pollutants in toxic amounts for Class C waters.²⁴

All substances toxic or detrimental to humans or detrimental to treatment process shall be limited to nontoxic or nondetrimental concentrations in the surface water.

¹⁹ U.S. EPA, "Addressing Nitrate in Drinking Water with the Drinking Water State Revolving Fund," May 2021, available at https://www.epa.gov/sites/default/files/2021-06/documents/addressing_nitrates_with_the_dwsrf-final.pdf (describing funding for additional nitrate treatment for drinking water sources).

²⁰ 40 C.F.R. § 401.16.

²¹ IDNR, "Public Participation Responsiveness Summary" (Aug. 30, 2000), at 4 (2001 IDNR Rulemaking Package at 42).

²² Iowa DNR, "1999 Triennial Review: Iowa's Water Quality Standards ISSUE PAPER – Class C Criteria & Its Implementation," at 3 (2001 IDNR Rulemaking Package at 76).

²³ Tom Atkinson (IDNR), "Deriving total nitrogen limits from the WLA in the Cedar River TMDL," Nov. 20, 2008.

²⁴ IOWA ADMIN. CODE r. 567-61.3" c"(2); see also 40 C.F.R. § 130.7(b)(3) (defining applicable water quality standards for identifying water quality-limited segments to include "numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements").

Because blue baby syndrome is an acute effect, not chronic, nitrate must stay below the 10 mg/L level to meet the narrative standard. Central Iowa Water Works imposed a lawn watering ban in the summer of 2025 due to high nitrate concentrations that limited the utility's capacity to provide water below 10 mg/L nitrate.²⁵

III. EPA's Rescission Violated Procedural Requirements.

The Clean Water Act and its implementing regulations require public participation when adopting and modifying the impaired waters list.²⁶ IDNR accepted public comment before sending its proposed list to EPA and EPA accepted public comment on its proposed partial disapproval, both consistent with the public notice requirements in 40 C.F.R. section 130.7(d)(2). In its subsequent letter rescinding the disapproval, EPA cited that regulation, but did not provide the required public notice.²⁷

The rescission by EPA had no public participation. EPA did not publicly notice the change even alert those who commented earlier in the process. Similarly, IDNR did not provide notice to the public when it received the letter. IDNR posted a link to the letter on the web page that contained a list of documents related to the impaired waters list.²⁸ The public only discovered the rescission weeks after EPA took action.²⁹

EPA's failure to follow procedural requirements makes it unclear what role the public should have in the impaired waters process. There is no timeline for further EPA to "evaluate additional information" and no certainty that EPA will take any further action. EPA's letter creates uncertainty about the status of Iowa's impaired waters list. The agency must clarify that the proposed change to the impaired waters list includes opportunity for the public to provide comment.

IV. EPA's Action Shifts the Burden from Polluters to the Public

Removing water segments from the impaired waters list can delay action and fails to address the causes of the water pollution. This approach is inconsistent with the Clean Water Act and unfairly burdens water utilities that must comply with the Safe Drinking Water Act.

²⁵ "CIWW Issues Lawn Watering Ban Effective Immediately," Central Iowa Water Works (June 12, 2025), available at <https://www.ciww.gov/news-1/ciww-issues-lawn-watering-ban-effective-immediately> (last accessed Sept. 26, 2025).

²⁶ 40 C.F.R. § 130.7(d)(2).

²⁷ Letter from Jim Macy to Ed Tormey (dated July 11, 2025) at 1.

²⁸ "2024 305(b) Assessment Summary," Internet Archive WayBack Machine (captured July 21, 2025), available at <https://web.archive.org/web/20250721113854/https://programs.iowadnr.gov/adbnr/Assessments/Summary/2024>.

²⁹ Donnelle Eller, "Trump's EPA rescinds impaired listing for Des Moines, Raccoon rivers amidst water crisis," Des Moines Register (Aug. 12, 2025), available at <https://www.desmoinesregister.com/story/news/health/2025/08/12/epa-rescinds-impairment-listing-for-raccoon-des-moines-other-rivers/85566132007/>.

The Clean Water Act lays out steps to restore poor water quality, including biennial lists of impairment and total maximum daily load (TMDL) calculations.³⁰ For water that is not classified as impaired, the Act does not require any action. The TMDL calculations identify the degree of loading to meet the water quality standard and the reduction needed to meet the standard. Although TMDLs do not impose requirements on nonpoint sources, they require reductions from contributors to the impairment.³¹

Ultimately, removing the river segments identified by EPA from the impaired waters list tells the public that the waters are clean enough for the drinking water uses. Drinking water is a constant, year-round, and essential use for all Iowans. Lack of a suitable drinking water source creates immediate and serious problems. Drinking water issues across the state, from western Iowa³² to the waters removed from the list by EPA, demonstrate the necessity for further action to address pollution in drinking water sources.

V. Conclusion

The rescission action by EPA is inconsistent with the applicable law, adds to the regulatory costs to ensure Iowans have safe tap water, and fails to put the onus on polluters to adopt practices that will reduce the pollution.

In determining whether it lists the river segments as impaired, EPA is required to consider both chronic and acute effects of nitrates in drinking water sources. EPA has not previously said otherwise.

Based on decades of research, including research on Iowans themselves, scientists recognize both acute and long-term risks of nitrate in drinking water. IDNR and EPA need to ensure protection of the public from both acute and chronic effects of nitrate ingestions. We appreciate EPA's consideration of this information in its reevaluation of the state's Impaired Waters List and would welcome an opportunity to discuss it.

Sincerely,

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³⁰ 33 U.S.C. §§ 1313(d), 1315(b).

³¹ 40 C.F.R. § 122.44(d)(1)(vii)(B) (requiring point source discharges to be "consistent with the assumptions and requirements of any available wasteload allocation").

³² Ethan Hewitt, "Boil advisory for city of Clarinda, Southwest Regional Water customers lifted," KMA Land (Sept. 22, 2025), available at https://www.kmaland.com/news/boil-advisory-for-city-of-clarinda-southwest-regional-water-customers-lifted/article_77fd104b-7e1e-4bcd-abd0-e9e8c560e838.html (last visited Oct. 2, 2025) (identifying turbidity and algae leading to drinking water advisory in Clarinda, Iowa).

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