



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
dep.wv.gov

July 5, 2016

Bill Richardson
Water Protection Division (3WP30)
USEPA, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Comments on EPA's Partial Approval and Partial Disapproval of West Virginia's
2014 Section 303(d) List.

FR DOC #: 2016-13030
35350 Federal Register / Vol. 81, No. 106 / Thursday, June 2, 2016 / Notices
[FRL-9947-21-Region 3]

Dear Mr. Richardson,

Please accept these comments in response to EPA's request for public input regarding its decision to approve in part and disapprove in part West Virginia's 2014 Clean Water Act (CWA) Section 303(d) list of impaired waters and its decision to overlist thereon 61 additional streams or stream segments.

DEP has evaluated the streams for which EPA has proposed to add biological impairments to the 2014 list to determine if contemporary TMDLs for numeric water quality criteria exist and if implementation of those TMDLs could reasonably be expected to resolve biological stress. Where information was available, DEP performed a stressor identification process similar to that used for biologically-impaired streams in our TMDL development process. The attached spreadsheet identifies 33 streams for which DEP concluded that implementation of existing TMDLs would resolve the identified stressors. It documents the key findings of stressor identification and provides the rationales to support our conclusions. Therefore, we respectfully request EPA's consideration of this analysis and remove those 33 streams from the overlist.

As a reminder, the West Virginia Legislature clearly spoke during the Regular Session in 2012 when it passed Senate Bill 562, amending the West Virginia Water Pollution Control Act to require DEP to establish, via Legislative rulemaking, a procedure for determining compliance with the biologic component the narrative water quality standard, which procedure must take into consideration the holistic health of an aquatic ecosystem. In other words, the West Virginia

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Bill Richardson
July 5, 2016
Page 2 of 2

Legislature has made the policy decision that the biologic health a stream or stream segment must be measured using more factors than simply a benthic macroinvertebrate score taken at one point in a watercourse.

DEP has been diligently pursuing an assessment methodology that is scientifically defensible and consistent with Legislative direction. Despite our efforts, there is simply not enough information to complete a meaningful Statewide fish methodology at this time, though we continue to work on it. While we intend to keep generating necessary additional information, it will still be some time before we have sufficient data to compliment any benthic macroinvertebrate index. Until then, we developed the list at issue using the approach EPA itself chose to use in overlisting West Virginia's 2012 list. We maintain that it is inappropriate for EPA to use the proposed alternative method since it not State sanctioned in accordance with SB562 and does not include a specific method for considering uncertainty.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Scott G. Mandirola
Director