



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

JUL 21 2017

Mr. Mark Klotz
Director
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3500

Dear Mr. Klotz:

Thank you for submitting New York's 2016 Clean Water Act (CWA) Section 303(d) list, dated December 21, 2016. In accordance with Section 303(d) of the Clean Water Act and Title 40 of the Code of Federal Regulations (CFR) Section 130.7, the U.S. Environmental Protection Agency (EPA) conducted a complete review of New York's Section 303(d) list and supporting documentation and information.¹ The enclosed supporting documentation describes the statutory and regulatory requirements and EPA's review of New York State's compliance with them.

Section 303(d) of the CWA and EPA's implementing regulations at 40 CFR § 130.7 require the New York State Department of Environmental Conservation (NYSDEC) to identify waters within its boundaries for which technology-based and other controls are not stringent enough to implement any water quality standards applicable to those waters and for which Total Maximum Daily Loads (TMDLs) must still be developed. Under EPA's regulations at 40 CFR § 130.7(b)(4), NYSDEC is required to identify the pollutants causing the impairment of the listed waters. Section 303(d) further requires NYSDEC to establish a priority ranking for the listed waters, taking into account the severity of the pollution and the designated uses of the listed waters. Finally, NYSDEC is required to identify the waters targeted for TMDL development over the next two years.

New York State's 2016 Section 303(d) list identifies 792 waterbody/pollutant combinations requiring TMDLs. Of these, NYSDEC identified six as high priority waters targeted for TMDL/Restoration Strategy Development through 2017. Two of these six waterbody/pollutant combinations have been addressed by TMDLs approved in 2016.

NYSDEC announced the availability of the draft 2016 Section 303(d) list in the State's Environmental Notice Bulletin on January 13, 2016, and provided a 45-day comment period, which ended on March 4, 2016. NYSDEC prepared a response to comments summary document.

Based upon our review of the submittal, EPA partially approves and partially disapproves New York's 2016 Section 303(d) list. Specifically, EPA approves New York's 2016 303(d) list with respect to the 792 waterbody/pollutant combinations requiring TMDLs that New York has included on its list, the State's priority ranking for these waterbody/pollutant combinations and the waterbody/pollutant

¹ New York State 2016 Section 303(d) List of Impaired Waters Requiring a TMDL (the 2016 303(d) list); 2016 DELISTED Waters (NOT Included on the 2016 Section 303(d) List) (2016 Delisted Waters); and Response to Comments on The 2016 NYS 303(d) List of Impaired Waters Requiring a TMDL (Response to Comments).

combinations targeted for TMDL/Restoration Strategy development in 2017. However, EPA disapproves New York's 2016 303(d) list because EPA has determined that it does not include seventy-one waterbody/pollutant combinations that meet 303(d) listing requirements. These seventy-one waterbody/pollutant combinations include:

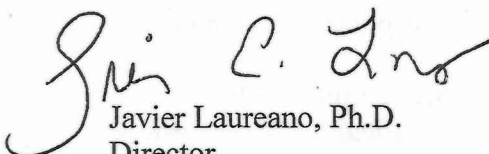
- (1) thirty-eight waterbody/pollutant combinations New York previously placed in Integrated Report Category 4b (i.e., impaired waters where a TMDL is not necessary because other required controls will result in attainment of water quality standards within a reasonable period of time) without adequate justification;
- (2) one waterbody/pollutant combination New York delisted from the 2014 303(d) list and moved to Integrated Report Category 4b without adequate justification;
- (3) four waterbody/pollutant combinations New York delisted from the 2014 303(d) list without data or information indicating New York's applicable water quality standard for dissolved oxygen is met;
- (4) twenty-six waterbody/pollutant combinations New York delisted from the 2014 303(d) list without data or information indicating New York's applicable narrative nutrients standard is met; and
- (5) two waterbody/pollutant combinations New York did not include on the 2016 303(d) list where data or information indicate that New York's applicable water quality standard for dissolved oxygen is not met.

Further detail is provided in the attached Supporting Documentation.

Pursuant to this partial disapproval, EPA will open a public comment period in order to receive opinions and feedback on our proposal to add the seventy-one waterbody/pollutant combinations referenced above to the State's 2016 303(d) list. After examining comments received from the public, EPA will make any appropriate revisions to New York's 2016 Section 303(d) list.

I appreciate the informative discussions I have had with NYSDEC regarding the 2016 Section 303(d) List, as we collaboratively move forward in implementing the requirements under Section 303(d) of the CWA. In addition, EPA encourages NYSDEC to submit an Integrated Report in accordance with EPA guidance to improve transparency and clarity of future submissions. Please feel free to contact me at 212-637-4125, or your staff may contact Aimee Boucher at 212-637-3837 if you have any further questions on this matter.

Sincerely,



Javier Laureano, Ph.D.
Director
Clean Water Division

Enclosure