



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

The Honorable Randy C. Huffman, Secretary
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

MAR 25 2013

Dear Secretary Huffman: *Randy*

Thank you for the West Virginia Department of Environmental Protection's (WVDEP) final submission on December 21, 2012 of its identification of waters under Section 303(d) of the Clean Water Act (CWA) (2012 Section 303(d) list).

The U.S. Environmental Protection Agency (EPA) has reviewed the submission and supporting documentation pursuant to Section 303(d) of the Act, 33 U.S.C. §1313(d). For the reasons discussed in the enclosures, EPA partially approves and partially disapproves West Virginia's Section 2012 303(d) list consistent with the requirements of CWA Section 303(d) and 40 CFR 130.7. The basis of EPA's partial disapproval is WVDEP's decision not to evaluate existing and readily available data regarding whether certain waters are achieving West Virginia's narrative water quality criteria (W. Va. CSR § 47-2-3.2(e) & (i)) as applied to the aquatic life uses. (*See* 40 CFR 130.7(b)(5) - states must assemble and evaluate all existing and readily available water quality information.) EPA acknowledges WVDEP's position that, pending completion and adoption by rulemaking of a new methodology, it is precluded by West Virginia Senate Bill Number 562 (SB 562) from evaluating waters for purposes of determining compliance with the narrative water quality criteria as applied to the aquatic life uses. Recognizing WVDEP's position that it is unable to carry out the requirement set forth in 40 CFR 130.7(b)(5), EPA has an obligation to take action to ensure that the federal requirement is satisfied. A further explanation of EPA's decision is provided in the attached "Review of West Virginia's 2012 Section 303(d)" (See Enclosure 1).

As required by EPA regulations at 40 CFR 130.7(d)(2), if EPA disapproves listings, EPA must identify waters not meeting the state's water quality standards and accept public comment on the proposed additions. EPA has utilized as its starting point, the West Virginia Stream Condition Index (WVSCI), previously used by WVDEP for the state's 2002 through 2010 Section 303(d) lists. WVDEP has acknowledged that in the past WVSCI was a valid means of assessing compliance with West Virginia's currently applicable narrative water quality criteria as applied to the aquatic life uses. EPA believes that by using WVSCI, we are acting consistently with federal requirements, while also ensuring that our actions do not preempt WVDEP's completion of the methodology development process pursuant to SB 562. Please be aware that, while applying WVSCI in a manner substantially similar to



the way WVDEP has applied it in the past, EPA did not incorporate a statistically unsupported aspect of WVDEP's application of WVSCI. A more detailed explanation of how EPA arrived at its list of waters to be added to West Virginia's Section 303(d) list is provided in Enclosure 2.

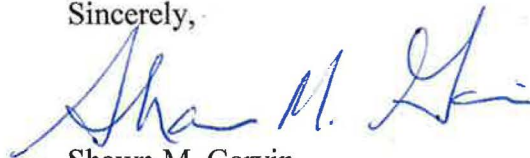
Enclosure 3 contains a list of waters that EPA identified as not meeting West Virginia water quality standards and will be proposed to be added to West Virginia's 2012 303(d) through a notice in the Federal Register. EPA will issue a notice in the Federal Register of our proposed action within 30 days of this disapproval. There will be a 30-day public comment period. Upon completion of the public comment period, EPA will review all comments and make changes to the proposed list accordingly.

EPA is aware that, as part of its draft 2012 Section 303(d) list, WVDEP considered removing 12 previously listed water quality limited segments (WQLSs) on the basis of new WVSCI scores, but chose not to do so in its final submission for purposes of consistency with its interpretation of SB 562. In light of EPA's action and proposal to add waters to the Section 303(d) list by evaluating water quality data using WVSCI, EPA believes it would be appropriate for WVDEP to submit to EPA for review and approval, a mid-cycle (i.e., prior to the 2014 Section 303(d) list) request to remove from the Section 303(d) list those 12 previously listed WQLSs described in WVDEP's draft 2012 Section 303(d) list.

We recognize and appreciate the work of staff and managers at WVDEP in developing the final 2012 Section 303(d) list. We look forward to continuing to work with you on this process to address water quality issues in West Virginia.

If you have any questions, please do not hesitate to contact me or have your staff contact Mr. Mark Ferrell, EPA's West Virginia Liaison, at (304) 542-0231.

Sincerely,



Shawn M. Garvin
Regional Administrator

Enclosures

cc: Mr. Scott Mandirola (WVDEP)

