

February 17, 2021

Angelo S. Liberti, Administrator
Surface Water Protection
Rhode Island Department of Environmental Management
Office of Water Resources
235 Promenade Street
Providence, RI 02908-5767

Dear Mr. Liberti:

Thank you for your submission of the State of Rhode Island's combined 2018-2020 Clean Water Act (CWA) Section 303(d) list of impaired waters. In accordance with Section 303(d) and 40 CFR §130.7, the U.S. Environmental Protection Agency, Region 1 (EPA) conducted a complete review of Rhode Island's 2018-2020 Section 303(d) list and supporting documentation. Based on this review, EPA has determined that Rhode Island's 2018-2020 Section 303(d) list meets the requirements of Section 303(d) of the CWA and EPA's implementing regulations. Therefore, by this letter, EPA hereby approves the State's Section 303(d) list, submitted to EPA on February 11, 2021.

Rhode Island's submission includes a list of water bodies for which technology-based and other required controls for point and nonpoint sources are not stringent enough to attain or maintain compliance with the State's Water Quality Standards. As required, this list includes a priority ranking for each listed water body and specifically identifies waters targeted for total maximum daily load (TMDL) development in the next two years. A long-term schedule for developing TMDLs for all waters on the State's list was also provided. The statutory and regulatory requirements, and EPA's review of the State's compliance with these requirements, are described in detail in the enclosed approval document.

Assessments of state waters conducted under Sections 305(b) and 303(d) of the CWA should be prepared in a manner to support their submission to EPA by April 1, of even numbered years in accordance with those sections of the CWA and 40 CFR §130.7. In addition, waters should be assessed using Water Quality Standards that are approved and in effect at the time of the assessment.

The Rhode Island Department of Environmental Management (DEM) has successfully completed a public participation process that provided the public an opportunity to review and comment on the State's 2018-2020 Section 303(d) list. We understand that DEM received eight comments from individuals and organizations, in addition to those submitted by EPA. Thank you for your responses to our comments. EPA reviewed the DEM's responses to the public

comments it received and determined that the State satisfactorily responded to all of the comments.

EPA would also like to commend DEM on the delisting and reopening of the Upper Narragansett Bay segment for shellfishing use, which we understand is the result of a major state investment in improving water quality in the Bay.

EPA appreciates the advance coordination between the two agencies and the opportunity to review pre-submittal drafts, which allowed us to expedite the formal approval. My staff and I look forward to continued cooperation with DEM in implementing the requirements of Section 303(d) of the CWA. If you have any questions regarding EPA's review or this approval, please contact Andrea Traviglia at (617) 918-1993 or have your staff contact Steven Winnett at (617) 918-1687.

Sincerely,

**KENNET
MORAFF** Digitally signed by
KENNETH MORAFF
Date: 2021.02.17
15:21:11 -05'00'

Ken Moraff, Director
Water Division

Enclosure

cc: Heidi Travers, RI DEM
Jane Sawyers, RI DEM
Andrea Traviglia, EPA
Mel Cote, EPA
Greg Dain, EPA
Steven Winnett, EPA

**EPA NEW ENGLAND’S REVIEW OF
RHODE ISLAND’S 2018-2020 CWA SECTION 303(d) LIST**
February 17, 2021

I. INTRODUCTION

EPA has conducted a complete review of Rhode Island’s (RI) combined 2018-2020 Section 303(d) list and supporting documentation and information. Based on this review, EPA has determined that Rhode Island’s list of water quality limited segments (WQLSs) still requiring total maximum daily loads (TMDLs) meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA implementing regulations. Therefore, EPA hereby approves Rhode Island’s combined 2018-2020 final CWA Section 303(d) list, submitted on February 11, 2021. The Section 303(d) list is a component of the State’s *2018-2020 Integrated Water Quality Report to Congress submitted pursuant to the Federal Clean Water Act Sections 305(b) and 303(d)* (the “Integrated Report” or “IR”), which the State will submit by the end of June 2021. The statutory and regulatory requirements, and EPA’s review of Rhode Island’s compliance with each requirement, are described in detail below.

The purpose of this review document is to describe the rationale for EPA’s approval of Rhode Island’s combined 2018-2020 Section 303(d) list. The following sections identify key elements to be included in the Section 303(d) list submittal based on the CWA and EPA regulations. See 40 CFR Section 130.7. The content of this review is based upon EPA’s 2006 Integrated Report Guidance, which describes categories of water quality-related data and information that may be existing and readily available. See EPA’s August 13, 2015, memorandum on *Information Concerning 2016 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*, (available at https://www.epa.gov/sites/production/files/2015-10/documents/2016-ir-memo-and-cover-memo-8_13_2015.pdf). That document recommended that the State’s integrated water quality reports follow the *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (2006 Integrated Report Guidance), issued July 29, 2005, (available at <https://www.epa.gov/sites/production/files/2015-10/documents/2006irg-report.pdf>) as supplemented by an October 12, 2006, memo and attachments, the May 5, 2009, memo and attachments, the November 15, 2010, memorandum, the March 21, 2011, memo and attachments, and the September 3, 2013, memorandum and attachments. All guidance, memoranda and attachments may be found at <https://www.epa.gov/tmdl/integrated-reporting-guidance>. While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

EPA reviewed Rhode Island’s combined 2018/2020 *Consolidated Assessment & Listing Methodology for 305(b) and 303(d) Integrated Water Quality Monitoring and Assessment Reporting* (CALM) used to develop the Section 303(d) list and the State’s description of the data and information it considered during preparation of the list. EPA’s review of Rhode Island’s Section 303(d) list is based on an analysis of whether the State reasonably considered all existing and readily available water quality-related data and information, and reasonably identified waters required to be listed. EPA also closely

examined all the requests made by the State to remove water bodies from the combined 2018-2020 Section 303(d) list that had appeared on the previous list in 2016 to ensure that only those which had the proper justification were allowed to be removed. The paragraphs below are arranged to reflect the organization of guidance from EPA, titled, *Recommended Framework for EPA Approval Decisions on 2002 State Section 303(d) List Submissions*, (available at https://www.epa.gov/sites/production/files/2015-10/documents/2002_06_04_tmdl_guidance_listapproval.pdf), transmitted in a memorandum from EPA Headquarters dated May 20, 2002.

II. STATUTORY AND REGULATORY BACKGROUND

Identification of WQLSs for Inclusion on Section 303(d) List

Section 303(d)(1) of the CWA directs states to identify those waters within their jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard (WQS) and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations provide that states do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Act, (2) more stringent effluent limitations required by state or local authority, and (3) other pollution control requirements required by state, local, or federal authority. See 40 CFR Section 130.7(b)(1).

Consideration of Existing and Readily Available Water Quality-Related Data and Information

In developing Section 303(d) lists, states are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate non-attainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 CFR Section 130.7(b)(5). In addition to these minimum categories, states are required to consider any other data and information that is existing and readily available. EPA guidance (U.S. EPA, 2005) describes categories of water quality-related data and information that may be existing and readily available. While states are required to evaluate all existing and readily available water quality-related data and information, states may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring states to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR Section 130.7(b)(6) require states to include as part of their submissions to EPA documentation to support decisions to rely or not rely on particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

Priority Ranking

EPA regulations also codify and interpret the requirement in Section 303(d)(1)(A) of the Act that states establish a priority ranking for listed waters. The regulations at 40 CFR Section 130.7(b)(4) require states to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, states must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that states establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and state or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA guidance (U.S. EPA, 2005).

III. REVIEW OF RHODE ISLAND'S SECTION 303(d) SUBMISSION

Rhode Island's Department of Environmental Management (DEM) submitted a final combined 2018-2020 Section 303(d) list to EPA on February 11, 2021. The combined 2018-2020 Section 303(d) list includes all waters that have been assigned to EPA Category 5 in accordance with the CALM.¹ The Section 303(d) list contains a schedule prioritizing EPA Category 5 water bodies for TMDL development by 2020 through 2035.

DEM released the draft 2018-2020 Section 303(d) list to the public on September 24, 2020, via emails to its list of interested individuals and organizations. On October 6, 2020, the State held a virtual workshop via Zoom to introduce the draft list to the public. Over 50 people attended. DEM closed the comment period on October 30, 2020. EPA provided comments to the State on that draft on October 28, and November 4, 2020. EPA had previously provided comments to DEM on June 29, 2020, in response to a May 12, 2020, version of the draft delisting document and had several information exchanges with DEM in the interim. In addition to EPA's comments, DEM received comments from eight (8) other individuals and organizations. DEM subsequently submitted its final 303(d) list documents to EPA on February 11, 2021.

¹ The EPA categories 1-5 discussed herein refer to the listing categories described in EPA's listing guidance referenced in Section I above.

Rhode Island has included all waters known or suspected not to be meeting water quality standards on the Section 303(d) list, or in EPA Category 4, as discussed below. Under its current listing approach, Rhode Island keeps a water body on its impaired waters list until it is shown that water quality standards are being attained, criteria are met for its placement in EPA Category 4, or the initial listing is shown to be incorrect. TMDLs for listed waters will be completed in accordance with the schedule established for its specific group, which reflect priority rankings and other relevant factors.

EPA Category 4 includes waters that are currently not meeting water quality standards and have an approved TMDL, or do not need a TMDL completed due to one of two reasons. Category 4A contains waters for which a TMDL has already been approved. Category 4B includes waters for which a “functionally equivalent” control action has been developed. An impairment caused by a pollutant is being addressed through other enforceable pollution control requirements. Waters in Category 4C are not attaining water quality standards but the cause is not associated with a pollutant. EPA reviews the Category 4 list to ensure that the waters are categorized appropriately and do not belong in Category 5.

EPA Category 5, which corresponds to the Section 303(d) list, contains waters where available data and/or information indicate that the water is impaired or threatened by pollutants for one or more designated uses and a TMDL is required. The CWA and 40 CFR Section 130.7 require EPA to review and approve or disapprove the Section 303(d) list of impaired waters.

Public Participation

As noted above, the State released the public review draft version of its Section 303(d) list on September 24, 2020, along with supporting documentation, to the public and began its public notice period at the same time, with notice posted on DEM’s website and emails to their list of interested individuals and organizations. DEM held a remote public workshop to present the combined 2018-2020 303(d) list on October 6, 2020, which was attended by more than 50 people. DEM received comments from eight individuals and organizations, in addition to those received from EPA, during its public comment period, from September 24, 2020, through October 30, 2020.

EPA reviewed DEM’s responses to the comments it received and determined that DEM satisfactorily responded to all of them.

IV. IDENTIFICATION OF WATERS AND CONSIDERATION OF EXISTING AND READILY AVAILABLE WATER QUALITY-RELATED DATA AND INFORMATION

EPA has reviewed the State’s submission and has concluded that the State developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR Section 130.7. EPA’s review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed. The assessment methodology used by Rhode Island is described in the CALM.

For the combined 2018-2020 assessment cycle, DEM used the Single Category Reporting format which assigns an individual assessment unit to one IR Category.

As noted in the CALM, DEM strives to consider all readily available water quality data and related information in developing the Integrated Report. In determining if data are appropriate, DEM considers quality assurance/quality control, data quality objectives, monitoring design, age of data, accuracy of sampling location information, data documentation and data format (hard copy versus electronic).

The primary source of data generated for assessments is developed from programs consistent with the Water Monitoring Strategy (<http://dem.ri.gov/programs/benviron/water/quality/surfwq/pdfs/ri-water-monitoring-strategy-19.pdf>). There are a variety of data generated by programs outside of the Water Monitoring Strategy framework. This includes data generated by special projects, research, volunteer efforts, and the federal government. DEM reports that it is interested in and considers all such data, but the applicability to the assessment process may be limited by the sampling design and data quality objectives of those projects. Because such data generally have not been collected for assessment purposes, they may be of limited utility for application in assessments due to the frequency of sampling, indicators used, number of samples, etc. The data quality objectives outlined in the CALM are used to allow DEM to determine, in a consistent manner, whether these data can be used to make determinations about the water quality attainment status.

DEM also uses predictive models and dilution calculations in concert with ambient and discharge data to identify water quality limited segments. DEM discusses its monitoring approach and its partnerships with other data gathering organizations in its submission.

DEM solicited submittal of such data and information for consideration in developing the combined 2018-2020 Integrated Report. It posted a notice to its website and sent out emails publicly requesting data for the preparation of the combined list on March 1, 2018 and closed the data request period on March 31, 2018. In addition, DEM used more recent data that was readily available in its assessment and listing decisions.

EPA has reviewed Rhode Island's description of the data and information considered in development of the Section 303(d) list, including but not limited to the State's methodology for identifying waters and the Rhode Island water quality standards. EPA concludes that the State properly assembled and evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 CFR Section 130.7(b)(5).

Waters included in Category 5 of the combined 2018-2020 Section 303(d) list were assessed using the CALM. Based upon that assessment, a total of 198 water body segments have been assigned to Category 5 of the impaired waters list, with a total of 318 water body segment-impairment cause combinations.

NEW IMPAIRMENTS

The seven (7) water body segments identified in Table 1 are newly listed in 2018-2020 with at least one impairment and with no previous listings.

Table 1 - Waters newly listed as impaired on the combined 2018-2020 List

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Cause of Impairment Added</u>
Borden Brook & Tribs	RI0010031R-01	Enterococcus Phosphorus, Total
Dry Brook & Tribs (Johnston)	RI0006018R-02B	Enterococcus
Quaket Creek	RI0010031R-04	Enterococcus Iron Phosphorus, Total
Trib to Nonquit Pond	RI0010031R-20	Enterococcus Phosphorus, Total
Indian Brook	RI0001006R-05	Iron
Sylvyns Brook	RI0001006R-09	Iron
Trib to Watson Reservoir	RI0010031R-21	Phosphorus, Total

Three (3) water body segments identified in Table 2 remain on the list from 2016 and have had one new impairment added in the combined 2018-2020 list.

Table 2 - Waters listed as impaired on the 2016 List with a new impairment added in 2018-2020

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Cause of Impairment Added</u>
Abbott Run Brook North & Tribs	RI0001006R-01A	Iron
Slatersville Reservoir	RI0001002L-09	Mercury in Fish Tissue
Chapman Pond	RI0008039L-01	Phosphorus, Total

In addition, the State added impairments for two (2) water bodies (Table 3, below) at least one of whose other, previously listed impairments have been moved to Category 4A (impaired but has an approved TMDL).

Table 3 - Waters with existing listing(s) in Category 4A (has an approved TMDL), with a new impairment(s) added in 2018-2020

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Cause of Impairment Added</u>
Burnt Swamp Brook & Tribs	RI0001006R-06	Iron
Buckeye Brook & Tribs*	RI0007024R-01	Zinc, Dissolved Lead

* This water body also has previously listed impairments in Category 5 with no TMDL.

While EPA is not acting to approve or disapprove Rhode Island's listing methodology, we have reviewed the material and we conclude that the methodology DEM used to develop the impaired waters list is reasonable and consistent with Rhode Island's water quality standards, and with the CWA Section 303(d) regulations and EPA guidelines.

DELISTINGS

WATER BODIES/IMPAIRMENTS MOVED TO CATEGORY 2

For the combined 2018-2020 Section 303(d) list, the State has, in its February 11, 2021 submittal, proposed to delist some or all of the impairments in eight (8) water body segments included as impaired on the 2016 Section 303(d) list because they are now meeting water quality standards. The following tables provide a summary of water body segments proposed for delisting for some or all of the impairments to assessed, designated uses from 2016 to 2020. DEM supplied data on these waters as part of this listing cycle.

Water Body Segments Proposed For Delisting For All Of Their Listed Impairments

One water body segment, Wood River & Tribs (RI0008040R-16D), previously listed for dissolved copper, is meeting all of its assessed designated uses and water quality criteria and is therefore proposed for complete delisting and placement in Category 2 (Table 4, below). EPA therefore approves its delisting to Category 2.

Table 4 - Waters proposed for delisting for all of their listed impairments

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Reason for Delisting</u>
Wood River & Tribs	RI0008040R-16D	Meets WQS for copper

Water Body Segments Proposed For Delisting For Some But Not All Of Their Impairments

Seven (7) water body segments have been proposed for delisting for some but not all of their impairments (see Tables 5 and 6, below) and will remain listed in Category 5 for other impairments. These segments now meet water quality standards for one or more of their previously listed impairments, demonstrated by multi-year data sets. These impairments will be moved to Category 2.

Table 5 – Waters proposed for delisting for some, but not all of their listed impairments

<u>Waterbody Name</u>	<u>Water Segment ID #</u>	<u>Reason for Delisting</u>
Upper Narragansett Bay, segment B	RI0007024E-01B	Meets shellfish criteria for fecal coliform

Upper Narragansett Bay segment RI0007024E-01, has been listed previously for a shellfish consumption impairment. EPA acknowledges that in this listing cycle, DEM subdivided the segment into new northern and southern portions, RI0007024E-01A and RI0007024E-01B, respectively. DEM has demonstrated that the new southern sub-segment, RI0007024E-01B, now meets its Class SA fecal coliform criteria and its shellfish consumption use has been restored. EPA therefore approves its delisting from Category 5 for fecal coliform bacteria and it will now be listed in Category 2 for that use, while continuing to be listed in Category 5 for dissolved oxygen and total nitrogen impairments. North sub-segment RI0007024E-01A will continue to be listed for a shellfish consumption impairment, along with dissolved oxygen and total nitrogen impairments.

Table 6 – Waters proposed for delisting for some but not all impairments, and with approved TMDLs for other pollutants

<u>Waterbody Name</u>	<u>Water Segment ID #</u>	<u>Reason for Delisting</u>
Blackstone River, segment A	RI0001003R-01A	Meets WQS for dissolved oxygen and total phosphorus
Blackstone River, segment B	RI0001003R-01B	Meets WQS for dissolved oxygen and total phosphorus
Mt. Hope Bay, segment A	RI0007032E-01A	Meets WQS for fish bioassessments
Mt. Hope Bay, segment B	RI0007032E-01B	Meets WQS for fish bioassessments
Mt. Hope Bay, segment C	RI0007032E-01C	Meets WQS for fish bioassessments
Mt. Hope Bay, segment D	RI0007032E-01D	Meets WQS for fish bioassessments

Blackstone River segments RI0001003R-01A and RI0001003R-01B have been previously listed for total phosphorus and dissolved oxygen. EPA acknowledges that in this listing cycle, DEM has demonstrated that these waters are now meeting criteria for those parameters, using monitoring data from locations most likely to be experiencing dissolved oxygen criteria exceedances, in river impoundments behind dams. EPA therefore approves the removal of these segments from Category 5 for these impairments.

In its justification, DEM cites permitting activities in upstream wastewater treatment plants in Massachusetts as contributing to the improvement in phosphorus levels. EPA notes that permitting activities, along with attenuation (reduction through natural processes) of phosphorus in upstream waters as they flow downstream, may have contributed to the Rhode Island portions of the Blackstone River attaining their water quality criteria, which is the standard under CWA section 303(d) for delisting the segments for these parameters.

EPA’s determination that it is appropriate for Rhode Island to delist the Rhode Island portions of the Blackstone River does not affect EPA’s determination that permitted sources upstream, in the Massachusetts portions of the Blackstone River, are appropriately permitted under the NPDES program given that the legal standard applicable to those sources is whether their discharges have a “reasonable potential” to cause or contribute to a violation of water quality standards. *See, e.g., In re City of Taunton*, 17 E.A.D. 105, 142-43 (EAB 2016) aff’d, 895 F.3d 120 (1st Cir. 2018), cert. denied, 139 S. Ct. 1240 (2019) (absence of impairment designation on 303(d) list does not obviate permit issuer’s obligation to include appropriate effluent limits in NPDES permits).

Both segments will remain in Category 4A, impaired by and with approved TMDLs for cadmium and lead. Segment A will remain in Category 4A for fecal coliform and enterococci bacteria. Both segments will remain in Category 5, impaired by iron, mercury in fish tissues, and PCBs in fish tissues, and segment B with fecal coliform and enterococci bacteria impairments.

EPA acknowledges that DEM has demonstrated that the four Rhode Island segments of Mt. Hope Bay, RI0007032E-01A, -01B, -01C, and -01D, listed in Category 4B since 2008, have been restored for the

impairment to their fish community (bioassessments). EPA therefore approves their removal from Category 4B, and they will be moved to Category 2. Please see Section 4B, below, for further information on the previous 4B listing. The four segments will remain in Category 4A with impairments and approved TMDLs for fecal coliform bacteria. The four segments will remain in Category 5 with impairments for total nitrogen and dissolved oxygen.

In summary, EPA recognizes that Rhode Island's proposed delistings in the combined 2018-2020 list of these previously Section 303(d)-listed water bodies have been done in accordance with Rhode Island's 2018/2020 CALM and consistent with Rhode Island's water quality standards. As provided in 40 CFR Section 130.7(b)(6)(iv), EPA requested that the State demonstrate good cause for not including these waters on its Section 303(d) list.

EPA has examined in detail all the supporting information provided by DEM and finds that the State has reasonably concluded that the water body-impairment combinations described above should no longer be on the 303(d) list for the indicated impairments. EPA therefore approves the State's Section 303(d) list without these water body-impairment combinations.

CATEGORY 4

The following tables show a summary of previously Section 303(d)-listed water bodies that have been moved to Category 4 in this listing cycle. These segments are impaired for one or more designated uses, but do not need a TMDL for one of three reasons specified. Water body segments in Category 4A already have a State-developed TMDL, which has been approved by EPA. Segments listed in Category 4B have other required and/or enforceable control measures that are expected to result in attainment of an applicable water quality standard in a reasonable period of time. Category 4C contains water body segments for which the State has demonstrated that the failure to meet water quality standards is not caused by a pollutant, but rather by other types of pollution (Table 8, below).

Category 4A

No water bodies/impairments were moved to Category 4A during the 2018-2020 listing cycle, with completed and EPA-approved TMDLs for the pollutant of concern. Consequently, no data are presented for the category. When applicable, EPA approves the State's Section 303(d) list without Category 4A waterbody-pollutant combinations because the removal of these listings is consistent with EPA's regulations and EPA's Guidance for Assessment, Listing and Reporting Requirements.

Category 4B

EPA re-evaluates the continued listing of any impairments in Category 4B in every listing cycle. The State's decision to include waters in Category 4B rather than on its Section 303(d) list is consistent with EPA regulations at 40 CFR Section 130.7(b)(1). Under 40 CFR Section 130.7(b)(1), states are not required to list impaired waters where effluent limitations required by the CWA, more stringent effluent

limitations required by state or local authority, or other pollution control requirements required by state, local, or federal authority, are stringent enough to implement applicable water quality standards. The regulation does not specify the time frame in which these various requirements must implement applicable water quality standards to support a state's decision not to list particular waters. EPA guidance states that water quality standards must be attained within the near future (U.S. EPA, 2005).

Monitoring should continue for any waters currently in Category 4B to verify that the water quality standard is attained as expected in a reasonable time frame. Where standards will not be attained through implementation of the requirements listed in 40 CFR Section 130.7(b)(1) in a reasonable time, it is appropriate for the water to be placed on the Section 303(d) list to ensure that implementation of the required controls and progress towards compliance with applicable standards is tracked. If it is determined that the water is meeting applicable standards when the next Section 303(d) list is developed, it would be appropriate for the state to remove the water from the list at that time.

Rhode Island is not proposing to add new waters into Category 4B in this listing cycle, but is proposing to remove four (4) water body segment-impairment combinations the State placed into Category 4B in the 2008 listing cycle, pursuant to 40 CFR Section 130.7(b)(1)(ii) (Table 7, below).

The estuarine segments of Mt. Hope Bay (RI0007032E-01A, 01B, 01C, 01D) were impaired by thermal modifications and biodiversity impacts by the cooling water discharges from the Brayton Point Power Station in Somerset, MA. The plant had been withdrawing nearly one billion gallons of water per day for cooling water, then discharging it back to the Bay, raising bay temperatures approximately 1.5 degrees F. The elevated temperatures degraded normal aquatic habitats, disrupted fish migration, and made the bay inhospitable to native species. The withdrawal itself was responsible for killing aquatic organisms directly in the plant. The elevated temperatures also violated water quality standards for temperatures.

EPA renewed the Brayton Point NPDES permit (No. MA0003654) on October 6, 2003, with strict limits to reduce total heat discharge and reduce water withdrawals. The limits were established to ensure that water quality standards would be met. The permit was appealed, and subsequently resolved, with the permit limits effective December 18, 2007. As part of its December 17, 2007, agreement to end all permit litigation, the owner of the power station, Dominion Energy, planned to install natural draft cooling towers as part of its compliance with the permit. EPA issued an administrative order which contained a schedule for compliance with the permit limits within 36 months of obtaining all construction and operating permits. Once compliance was achieved, it was expected that habitat quality would improve and annual fishery losses would be reduced by 94%.

As of May 2012, the Brayton Point Power Station had implemented operational measures designed to result in compliance with the permit requirements; the Station reduced its withdrawals and effluent through the use of the new, closed-cycle cooling towers. The Brayton Point Station permanently shut down in June 2017, and its thermal discharges to Mt. Hope Bay ended.

As noted above, based on the information DEM provided in its 2016 303(d) list submission, EPA determined that the four Mt. Hope Bay water body segments were appropriate for removal from Category 4B for their temperature impairments that were due to thermal modifications. In the combined

2018-2020 list, based on the data presented by DEM in its current delisting document, EPA has determined that the four segments are appropriate for removal from Category 4B for the impairments to fish bioassessments.

EPA acknowledges that, consequently, no waters will be listed in Category 4B moving forward.

Table 7 - Waters being removed from Category 4B from previous listing cycles, other pollution controls in place		
<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Other requirements in place</u>
Mt Hope Bay, segment A	RI0007032E-01A	Brayton Point NPDES discharge permit
Mt Hope Bay, segment B	RI0007032E-01B	Brayton Point NPDES discharge permit
Mt Hope Bay, segment C	RI0007032E-01C	Brayton Point NPDES discharge permit
Mt Hope Bay, segment D	RI0007032E-01D	Brayton Point NPDES discharge permit

Category 4C

The State has demonstrated that the water body segments moved into Category 4C are not attaining water quality standards as the result of pollution rather than the presence of a pollutant. The CWA defines pollution as “the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” The text of the combined 2018-2020 list, and the data that DEM enters into EPA’s ADB present good cause for the State to include these waters in Category 4C of its combined 2018-2020 Integrated Report.

DEM also identified new impairments not caused by a pollutant loading to both water bodies already on the 303(d) list or with an approved TMDL for other causes, and to water bodies not previously listed for any impairment (Table 8, below). Branch River & Tribs has an approved TMDL for one impairment and an impairment in Category 5 with no TMDL. Meshanticut Pond is newly listed in Category 4C with no other impairments.

EPA concurs that the placement of these water bodies into Category 4C is appropriate and has been done in accordance with Rhode Island’s 2018/2020 CALM and consistent with Rhode Island’s water quality standards.

Table 8 – Waterbody-impairment combinations newly placed into Category 4C – not impaired by a pollutant		
<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Cause of impairment</u>
Branch River & Tribs	RI0001002R-01B	Non-native aquatic plants
Meshanticut Pond	RI0006017L-01	Non-native aquatic plants

Priority Ranking

EPA also reviewed the State’s priority ranking of listed waters for TMDL development. DEM has

prioritized its list through its establishment of a schedule from 2020 to 2035 for completing TMDLs for waters on the list. According to the State's 2018/2020 CALM, this schedule reflects the high consideration the State has given to shellfishing waters, drinking water supplies and other areas identified by the public as high priority areas, with special attention to the Newport Water Supply Reservoirs. In addition, EPA reviewed the State's identification of WQLSs targeted for TMDL development in the next two years and concludes that the targeted waters are appropriate for TMDL development in this time frame.

Combinations of water body segments and impairment are given a priority for TMDL development based on their place in DEM's schedule. There are 198 water body segments in Category 5 with 318 (water body segment × impairment cause) combinations. DEM's TMDL development schedule is as follows, with the number of water body segment-impairment combinations due for development of TMDLs by the date shown:

2020:	27
2022:	2
2023:	25
2024:	64
2025:	30
2026:	72
2028:	34
2030:	63
2035:	1

DEM recognizes that changes in priorities may take place as new waters are added to the list and as other information becomes available. Overall, Rhode Island is committed to completing TMDL development for all currently listed waters by the year 2035.

EPA concludes that Rhode Island's water body prioritization and identification of waters targeted for TMDL study and/or development is reasonable and sufficient for the purposes of Section 303(d). DEM properly examined and considered the severity of pollution and uses of the listed waters, as well as other relevant factors identified in EPA's regulations. Further, EPA has determined that DEM priority ranking ensures reasonable progress in addressing high priority waters with challenging water quality problems (Memo from Geoffrey H. Grubbs, Supplemental Guidance on Section 303(d) Implementation, August 13, 1992). EPA and DEM assess yearly the pace of TMDL development versus the universe of impaired waters in the State.

Water bodies on tribal lands

EPA's approval of Rhode Island's Section 303(d) list extends to all water bodies on the list with the exception of those waters, if any, that are within Indian Country, as defined in 18 U.S.C. Section 1151. EPA is taking no action to approve or disapprove the State's list with respect to waters within Indian

country at this time. EPA, or any eligible Indian Tribe, as appropriate, will retain responsibilities under Section 303(d) for those waters.

Waters impaired by nonpoint sources of pollution

The State properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with Section 303(d) and EPA guidance. Section 303(d) lists are to include all WQLSs still needing TMDLs, regardless of whether the source of the impairment is a point and/or nonpoint source. EPA's long-standing interpretation is that Section 303(d) applies to waters impacted by point and/or nonpoint sources. In 'Pronsolino v. Marcus,' the District Court for Northern District of California held that Section 303(d) of the CWA authorizes EPA to identify and establish total maximum daily loads for waters impaired by nonpoint sources. Pronsolino v. Marcus, 91 F. Supp. 2d 1337, 1347 (N.D.CA. 2000). This decision was affirmed by the 9th Circuit court of appeals in Pronsolino v. Natri, 291 F.3d 1123 (9th Cir. 2002). See also EPA guidance (U.S. EPA, 2005). Waters identified by the State as impaired or threatened by nonpoint sources of pollution (NPS) were appropriately considered for inclusion on Rhode Island's combined 2018-2020 Section 303(d) list. Rhode Island properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with Section 303(d) regulations and EPA guidance.

EPA concludes that DEM properly considered waters identified by the State as impaired or threatened in nonpoint assessments under Section 319 of the CWA in the development of the combined 2018-2020 Section 303(d) list.