



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

MAY 11 2016

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

Dear Secretary *Randy*:

Thank you for the West Virginia Department of Environmental Protection's (WVDEP) April 13, 2015 final submission of its identification of waters under Section 303(d) of the Clean Water Act (CWA) (2014 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) and its implementing regulations. For the reasons discussed in the enclosures, EPA partially approves and partially disapproves West Virginia's 2014 Section 303(d) list consistent with the requirements of CWA Section 303(d) and 40 CFR § 130.7. EPA is partially disapproving West Virginia's Section 303(d) list to the extent that it omits waters due to 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 aquatic life. EPA's regulations require that states assemble and evaluate all existing and readily available water quality information. See 40 CFR 130.7(b)(5). EPA acknowledges that the West Virginia Legislature has directed WVDEP to adopt by rulemaking a new biological assessment methodology, and that WVDEP staff continue to work on the method. A further explanation of EPA's decision is provided in the attached "Review of West Virginia's 2014 Section 303(d) List and Decision Rationale" (See Enclosure 1). EPA's action does not preclude WVDEP from reassessing waters upon adoption of a new scientifically sound methodology. Given the significant technical evaluation necessary for TMDL development and the uncertain status of TMDL endpoints developed pursuant to a superseded methodology, EPA believes it would be appropriate for WVDEP to consider anticipated development of a new methodology when it develops its priority ranking for TMDL development.

Consistent with CWA Section 303(d) and EPA's regulations, if EPA disapproves a state's Section 303(d) list submission, EPA must identify waters not meeting the state's water quality standards and accept public comment on the proposed additions. EPA has evaluated the genus level data using the Genus-Level Index of Most Probable Stream Status (GLIMPSS). GLIMPSS was developed by WVDEP and EPA scientists, has undergone external peer review, and has been published in a widely recognized scientific journal. EPA believes that, by using GLIMPSS, 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. A more detailed explanation of how EPA arrived at its list of waters proposed to be added to West Virginia's Section 303(d) list is provided in Enclosure 2.

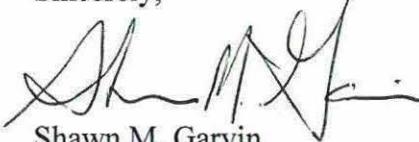


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Enclosure 3 contains a list of waters that EPA has identified as not meeting West Virginia water quality standards and will be proposed to be added to West Virginia's 2014 303(d) through a notice in the Federal Register. EPA will issue a notice in 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.

We recognize and appreciate the work of staff and managers at WVDEP in developing the final 2014 Section 303(d) list and your ongoing work to develop an updated bioassessment methodology that is based on sound science and meets the direction outlined by the West Virginia Legislature. 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)



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