



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

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FEB 15 2018

Mr. Keith Kawaoka  
Deputy Director for Environmental Health  
Hawaii Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

Subject: Approval of Hawaii's 2016 Section 303(d) List of Impaired Waters

Dear Mr. Kawaoka:

Thank you for submitting Hawaii's 2016 Clean Water Act (CWA) 303(d) List of Impaired Waters (2016 List). The U.S. Environmental Protection Agency (EPA) approves all water quality limited segments (WQLS) and associated pollutants identified by the Hawaii Department of Health (HDOH) as requiring a total maximum daily load under CWA section 303(d). The legal requirements and the rationale for the actions are enclosed.

HDOH's public process for developing the 2016 List is consistent with the procedural requirements of the CWA section 303(d) and its implementing regulations, including (40 CFR § 130.7(c)(1)). The priority WQLS rankings in Chapter 3 of the 2016 List comport with 40 CFR § 130.7(b) requirements and offer an appropriate framework for HDOH's future total maximum daily load development.

I value the collaboration between our two agencies and look forward to continuing our partnership to protect Hawaii's waters. If you have questions, please contact me at (415) 972-3337 or refer staff to Janet Hashimoto, Manager of the Water Quality Assessment Section, at (415) 972-3452.

Sincerely,

A handwritten signature in blue ink, appearing to be "Tomás Torres".

February 15, 2018

Tomás Torres  
Director, Water Division

Enclosure

cc: Alec Wong, HDOH

## Enclosure

### **EPA Review of Hawaii's 2016 303(d) List**

Date of Receipt by the EPA: January 24, 2018

Date of Receipt by the EPA with corrected date: January 29, 2018

#### **Purpose**

The purpose of this document is to describe the rationale for EPA's action on the State of Hawaii (the State) 2016 Clean Water Act (CWA) Section 303(d) list of water quality limited segments (WQLSs) requiring a Total Maximum Daily Load (TMDL) pursuant to 40 CFR § 130.7(a) (2016 List). The EPA reviewed the State's submittal, *2016 State of Hawaii Water Quality Monitoring and Assessment Report: Integrated Report to the U.S. Environmental Protection Agency and the U.S. Congress Pursuant to §303(d) and §305(b), Clean Water Act (P.L. 97-117)* (2016 Integrated Report), which includes the 2016 List, the listing decisions, the assessment methodology used by the State in developing its 2016 List, and supporting data.

The EPA's review of the 2016 List is based on the EPA's 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. This review describes the basis for the EPA's decision to approve the State's 2016 List identified in the State's submittal. The EPA's determinations are based on materials submitted by the State and references cited at the end of this document.

#### **Statutory and Regulatory Background**

##### **Identification of WQLSs for Inclusion in the List**

CWA Section 303(d)(1) directs each state to identify those waters within its jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to achieve any applicable water quality standard (WQS), and to establish a priority ranking for addressing such waters, taking into account the severity of the pollution and the uses to be made of such waters. The 303(d) listing requirements apply to both waters impaired by point sources and waters impaired by nonpoint sources of pollution.

The EPA regulations provide that a state does not need to list WQLSs where the following types of controls are adequate to implement applicable standards: (1) technology-based effluent limitations as required by the CWA, (2) more stringent effluent limitations required by federal, state or local authority, or (3) other pollution control requirements required by federal, state or local authority. See 40 CFR § 130.7(b)(1).

In developing its list, each state is required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum: (1) waters identified as partially meeting or not meeting designated uses or as threatened in the state's most recent CWA Section 305(b) report; (2) waters for which dilution calculations or predictive

modeling indicate nonattainment 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 CWA Section 319 nonpoint source assessment submitted to the EPA. See 40 CFR § 130.7(b)(5). The EPA's 2006 assessment and listing guidance describes additional types of water quality-related data and information that should be assembled and evaluated for developing state lists.

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

The EPA regulations at 40 CFR § 130.7(b)(6) require each state to include, as part of its submittals to the 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 EPA.

#### Priority Ranking

The EPA regulations at 40 CFR § 130.7(b)(4) require each state to prioritize waters on its list for TMDL development, and to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, each state must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See 303(d)(1)(A). A state 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, 33044-45 (July 24, 1992), and EPA 1991.

#### Analysis of Submittal from the State of Hawaii

##### Identification of WQLSs

The EPA has reviewed the State's submittal and concludes that the State developed the 2016 List in compliance with CWA Section 303(d) and 40 CFR § 130.7. The 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 State used the *2014 State of Hawaii Water Quality Monitoring and Assessment Report: Integrated Report to the U.S. Environmental Protection Agency and the U.S. Congress Pursuant to §303(d) and §305(b), Clean Water Act (P.L. 97-117)* (2014 Integrated Report), which includes the 2014 List as its starting point, and based its 2016 List on its analysis of readily available data and information to determine whether additions to or deletions from the final 2014 List were necessary. The State's approach, wherein previously listed waters remain WQLSs unless the existing and readily available water quality-related data no longer indicate impairment, is consistent with federal requirements. The EPA finds it was reasonable for the State to include

most of the previously listed waters on the 2016 List. Some additions were also made based on new data review.

### Assembly of Data

The EPA's review found the data compilation process was clear and provided an adequate basis for water body assessments. The State focused on data collected over a 2-year assessment period, between October 1, 2013 and November 30, 2015. The EPA finds it reasonable for the State to base its assessments on water quality data generally collected during the 2013 to 2015 timeframe because recent ambient water quality data are most likely to be representative and indicative of current water quality conditions.

The State assembled data and information for the 2016 Integrated Report and development of the 2016 List. Staff compiled data and information from multiple sources, including those identified at 40 CFR § 130.7(b)(5)(iii). The Hawaii Department of Health (HDOH) actively sought data from available websites, agencies, and groups likely to have data. Most of the data assessed in the 2016 Integrated Report originated from the HDOH Clean Water Branch's (CWB's) coastal beach samples collected in nearshore coastal areas, as most of the CWB's monitoring efforts are currently focused on routine beach monitoring, with only a minor amount of data assessed from inland water bodies. Additional water quality data considered for the 2016 Integrated Report originated from NPDES permitted facilities, private consulting firms, and routine and special sampling conducted by the HDOH or partnering entities as shown in Appendix A of the State's submittal. The State requested public submittal of water quality data in October 2014 that closed on November 1, 2015 via the CWB website and local newspapers. The State focused on data collected over the assessment period November 2013 through October 2015, beginning where the 2014 Integrated Report assessment cycle ended (October 2013). New, readily available data that met the QA/QC requirements were considered for assessment in the 2016 Integrated Report. The EPA finds that the State's approach to assembling readily available information to be reasonable.

### Listing Methodology

The State's submittal provides information on the listing methodology it uses to identify impaired waters, and specifies explicit factors for making listing and delisting decisions for different pollutant types based on different kinds of data. In general, the State includes a waterbody on the List based on adequate documentation showing that WQSs, contained in the Hawaii Administrative Rules (HAR) Title 11, Chapter 54, Water Quality Standards, were not met during the assessment period of November 2013 through October 2015.

Decisions for listing/delisting water bodies are based on the quality and quantity of data, water body type and the applicable WQS. The State's surface waters are monitored to determine if water quality conditions support both recreational health and ecosystem health.

The State's submittal includes assessment methodologies and quantitative assessment factors including statistical methods for evaluating potential WQS exceedances, minimum data set requirements, and data quality requirements. These decision factors are applied to various types

of data, including water chemistry, bacteria, nutrients, and other parameters. The State's submittal includes a list of segments that are still impaired but are being addressed by an EPA approved TMDL. The State uses the assessment decision factors as the basis for its 2016 listing decisions. The EPA reviewed the various assessments and concludes that the listing criteria are consistent with federal listing requirements and applicable WQS.

#### New Impairment Listings

All changes that have occurred since the 2014 List as a result of data analysis are documented in Table 5 for 55 marine water bodies and Table 8 for 12 inland water bodies. Based on all the existing and readily available data, the State identified 104 new impairment listings (Category 5 designations). Turbidity is the leading cause of impairments, while nutrients are the second leading cause.

#### Good Cause for Delisting

The State's 2016 Integrated Report identified 23 marine water bodies and 3 inland water bodies that were not included on the 2016 List because analysis of new available monitoring data supported a conclusion that applicable WQS were no longer exceeded. The delisted water bodies are shown in Table 5 for marine water bodies and Table 8 for inland water bodies. The State has demonstrated good cause for not listing these marine and inland water bodies, as provided in 40 CFR § 130.7(b)(6)(iv).

#### Public Comment

The State's 2016 Integrated Report included a public comment period and schedule. As part of the Integrated Report process, the State made a public request for water quality data submittal in October 2014 that closed on November 1, 2015 via the HDOH CWB's website and local newspapers. The State also solicited public comments for the draft 2016 Integrated Report over a 30-day period from March 20, 2017 to April 20, 2017 through notices in six newspapers (Hawaii Tribune-Herald, Honolulu Star-Advertiser, MidWeek, The Garden Island, The Maui News, and West Hawaii Today). The full list of public comments from 8 commenters and the State's responses to comments are available to the public via the CWB's website (<http://health.hawaii.gov/cwb/>) and in the 2016 Integrated Report submittal to the EPA. The EPA reviewed the State's responses to public comments and has found the State's responses reasonable and in accordance with federal listing requirements.

#### The EPA Is Not Required to Act on the State's TMDL Priority Ranking and Schedule

The State's submittal includes a priority ranking for TMDL completion for those waters requiring a TMDL, using a low/medium/high scale. The State's TMDL priority rankings are shown in Table 10 in the State's submittal. The EPA finds that the State's 2016 priority rankings for TMDL development meet requirements related to priority setting in 40 CFR § 130.7(b). The EPA is not taking action on these priorities as federal regulations do not require the EPA approval of priority rankings or schedules.

## **Administrative Record Supporting This Action**

The EPA carefully reviewed the following materials submitted by the State as the basis for approval of the State's inclusion of the waters and pollutants identified in the State's 2016 Integrated Report and List: documentation submitted by the State, the EPA guidance concerning preparation of Section 303(d) lists, the EPA's past comments on the State's listing methodology and draft lists, and the EPA's decision letter and this Enclosure.

The EPA is aware that the State compiled and considered additional materials (e.g., raw data and water quality analysis reports) as part of its list development process that were not included in the materials submitted to the EPA. It is unnecessary for the EPA to consider all of the materials considered by the State in order to determine that the State complied with the applicable federal listing requirements. Federal regulations do not require the State to submit all data and information considered as part of the submittal. See 40 CFR § 130.7(b)(6)(ii). The EPA has determined that the materials submitted by the State provide sufficient documentation to support the decision to approve the 2016 List.

### **References**

Hawaii Department of Health. Hawaii Administrative Rules. Title 11, Chapter 54. Water Quality Standards.

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Kawaoka, Keith E. January 9, 2017. Letter to Tomás Torres, Director, Water Division, U.S. EPA Region 9. Deputy Director for Environmental Health, Hawaii Department of Health, Honolulu, HI.

Kawaoka, Keith E. January 29, 2018. Resubmittal of Date Revised "Letter to Tomás Torres, Director, Water Division, U.S. EPA Region 9." Deputy Director for Environmental Health, Hawaii Department of Health, Honolulu, HI.

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U.S. Environmental Protection Agency. 1997. Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Supplement. Office of Water, Washington, DC. EPA 841-B-97-002B.

U.S. Environmental Protection Agency. 2002. Consolidated Assessment and Listing Methodology. Office of Wetlands, Oceans, and Watersheds, Washington, DC.

U.S. Environmental Protection Agency. 2003. Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act, Diane Regas, Office of Wetlands, Oceans, and Watersheds, Washington, DC.

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U.S. Environmental Protection Agency. 2006. Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, Diane Regas, EPA Office of Wetlands, Oceans, and Watersheds, Washington, DC.

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U.S. Environmental Protection Agency. 2013. Information Concerning 2014 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, Denise Keehner, Office of Wetlands, Oceans, and Watersheds, September 3, 2013.

U.S. Environmental Protection Agency. 2015. Information Concerning 2016 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, Benita Best-Wong, Office of Wetlands, Oceans, and Watersheds, August 13, 2015.

Water Quality Planning and Management, 40 Code of Federal Regulations Part 130.