



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103-2852

Harold Ward, Secretary
West Virginia Department of
Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304

Dear Secretary Ward,

Thank you for the West Virginia Department of Environmental Protection's (WVDEP) May 5th, 2023, final submission of its identification of impaired waters under Section 303(d) of the Clean Water Act (CWA) (combined 2018-2020-2022 Section 303(d) list).

The U.S. Environmental Protection Agency, Region 3 (EPA) 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 disapproves West Virginia's 2018-2020-2022 Section 303(d) list consistent with the requirements of CWA Section 303(d) and 40 CFR § 130.7. EPA's partial disapproval of West Virginia's Section 303(d) list is based on the extent that it omits waters due to WVDEP's decision not to evaluate all 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. A further explanation of EPA's decision is provided in the attached *Rationale for EPA's Action on West Virginia's 2018-2020-2022 Clean Water Act Section 303(d) List* (See Enclosure 1). EPA's partial disapproval does not preclude WVDEP from reassessing waters using all existing and readily available data.

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 waters EPA has identified. EPA has evaluated existing and readily available genus-level biological monitoring data using the Genus-Level Index of Most Probable Stream Status (GLIMPSS). 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 the attached *West Virginia 2018-2020-2022 Clean Water Act Section 303(D) List: EPA's Process for Identifying Additional Impaired Waters* (see Enclosure 2).

Enclosure 3 contains a list of waters that EPA has identified as not meeting West Virginia water quality standards to be added to West Virginia's 2018-2020-2022 303(d) list. EPA will issue a notice identifying these waters in the Federal Register within 30 days of this partial disapproval, after which 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 its identification of additional impaired waters as appropriate and transmit the final list of identified waters to WVDEP. Please note that EPA has also



identified 27 waters that WVDEP included on its list as impaired, but that EPA would consider to be meeting applicable water quality standards based on genus-level data (See Enclosure 4).

We acknowledge and appreciate the work of staff and managers at WVDEP in developing the final 2018-2020-2022 Section 303(d) list. We recognize the significant effort you have committed to updating the geospatial scale of WVDEP's assessment unit framework. We also respect WVDEP's ongoing efforts to begin incorporating more of its genus-level biological data into water quality assessments and encourage you to continue moving in that direction. 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,

Adam Ortiz
Regional Administrator

Enclosures

Cc: Katheryn Emery (WVDEP)
Mindy Neil (WVDEP)

