



REGION 2

NEW YORK, N.Y. 10007

January 17, 2025

Carol Lamb-Lafay, Director
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-3500

Dear Ms. Lamb-Lafay:

Thank you for submitting the "New York 2020-2022 Clean Water Act (CWA) 303(d) list" (New York 2020-2022 303(d) List), dated September 11, 2024, as well as a supplement to the New York 2020-2022 303(d) List, additional supporting documentation and information, an initial upload of the New York 303(d) List and related data and information into the Assessment Total Maximum Daily Load (TMDL) Tracking and Implementation System (ATTAINS) and, on December 20, 2024, corrections to certain data and information in ATTAINS (hereinafter, the submission). In accordance with Section 303(d) of the CWA and 40 CFR § 130.7, the U.S. Environmental Protection Agency (EPA) conducted a complete review of the New York 2020-2022 303(d) list and supporting documentation and information. The enclosed supporting documentation describes the statutory and regulatory requirements and the EPA's review of New York's compliance with them.

Section 303(d) of the CWA and the EPA's implementing regulations at 40 CFR § 130.7, require the New York State Department of Environmental Conservation (NYSDEC) to identify waters within its boundaries for which technology-based and other controls are not stringent enough to implement any water quality standards applicable to those waters and for which Total Maximum Daily Loads (TMDLs) must be developed. Pursuant to 40 CFR § 130.7(b)(4), the NYSDEC is required to identify the pollutants causing the impairment of the listed waters. Section 303(d) of the CWA further requires the NYSDEC to establish a priority ranking for the listed waters, taking into account the severity of the pollution and the designated uses of the listed waters. Finally, the NYSDEC is required to identify the waters targeted for TMDL development over the next two years.

The NYSDEC identified 1,004 waterbody/pollutant combinations requiring TMDLs on the New York 2020-2022 Section 303(d) list. Of these, the NYSDEC identified six (6) as high priority for TMDL development through 2024.¹

¹ The NYSDEC completed a TMDL for Total Phosphorus for Cayuga Lake that was submitted to and approved by the EPA on July 25, 2024.

The NYSDEC announced the availability of the draft New York 2020-2022 303(d) list in the State's Environmental Notice Bulletin, on December 29, 2021, and provided a 59-day public comment period, which included extensions and ended on February 25, 2022. The NYSDEC prepared and included in the submission, a response to comments summary document.

Based upon the EPA's review of the submission, the EPA is partially approving, partially disapproving, and has further action pending on the New York 2020-2022 303(d) list. Specifically, the EPA is approving the New York 2020-2022 303(d) list with respect to the one thousand and four (1,004) waterbody/pollutant combinations New York included on the list as requiring a TMDL. The EPA is disapproving the New York 2020-2022 303(d) list because the EPA has determined that the NYSDEC did not include ninety-six (96) waterbody/pollutant combinations on the 2020-2022 303(d) list that meet 303(d) listing requirements. The EPA has further action pending additional analysis and discussion with the NYSDEC of eighty-two (82) waterbody/pollutant combinations. These waterbody/pollutant combinations are described in further detail in the attached supporting documentation.

By this letter and attached supporting documentation, the EPA is adding the 96 waterbody/pollutant combinations referenced above to the New York 2020-2022 303(d) list. Pursuant to 40 CFR § 130.7(d)(2), the EPA will open a public comment period in order to receive comments on the addition of these 96 waterbody/pollutant combinations. After examining comments received from the public, the EPA will make any appropriate revisions to the New York 2020-2022 Section 303(d) list. After considering public comment and making any revisions the EPA deems appropriate, the EPA will transmit its listings to the State. Pursuant to Section 303(d)(2) of the CWA, when the EPA disapproves a State 303(d) list and identifies waters on the list, New York "shall incorporate them into its current [Water Quality Management] plan under subsection (e) of this section" and include these waters on all subsequent 303(d) lists, unless the State demonstrates that the water no longer meets 303(d) listing requirements.

I appreciate the informative discussions that our staffs have had together regarding the New York 2020-2022 303(d) list, as we collaboratively move forward in implementing the requirements under Section 303(d) of the CWA.

I also appreciate the NYSDEC's efforts to utilize the ATAINS system for reporting, as well as the NYSDEC's use of a new automated assessment tool to help in assessing water quality data against New York's numeric water quality criteria.

We look forward to continuing technical discussions with the goal of advancing the program, tackling complicated issues of emerging concern, and reaching mutually agreed upon fundamentals to achieve all Clean Water Act-based programmatic requirements. Examples include key updates to assessment methodologies that effectively use all existing and readily available water quality data and information, and New York's use of a comprehensive Integrated Report package. We are also looking forward to continuing to work on our collective efforts to address environmental justice and account for climate change impacts.

Please feel free to contact me at 212-637-4125, or your staff may contact Ryan Van Manen at vanmanen.ryan@epa.gov with any questions.

Sincerely,

Javier Laureano, Ph.D.
Director
Water Division

Enclosure

1. Support Document for Review and Partial Approval/Partial Disapproval of the New York 2020-2022 303(d) List