

EPA Decision Document on Vermont's 2024 Section 303(d) List

Contents

EPA Decision Document on Vermont's 2024 Section 303(d) List.....	1
1. Introduction.....	2
A. Integrated Report Categories.....	2
i. Category 1: All designated uses are supported, and no use is threatened.....	2
ii. Category 2: Available data and/or information indicate that some, but not all of the designated uses are supported.	2
iii. Category 3: There is insufficient available data and/or information to make a use support determination.....	2
iv. Category 4: One or more designated uses are impaired or threatened but establishment of a TMDL is not required for the particular cause.	2
v. Category 5: Available data and/or information indicate that at least one designated use is not being supported or is threatened, and a TMDL is needed (VT Part A).....	2
2. The EPA's Analysis of Vermont's Submission	3
A. Supporting documentation for making listing determinations	3
i. Description of the methodology used to develop the 303(d) list. 40 CFR 130.7(b)(6)(i).	4
ii. Description of the data and information used to identify waters. 40 CFR 130.7(b)(6)(ii).	4
iii. A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in 40 CFR 130.7(b)(5). 40 CFR 130.7(b)(6)(iii).....	4
iv. Other reasonable information requested by the Region. 40 CFR 130.7(b)(6)(iv).	4
B. Public participation.....	7
C. Assembling, evaluating, and using data and information	8
i. Assemble and evaluate data and information	8
ii. Use of data and information	8
D. Identification of waters for inclusion on the Section 303(d) list	9
i. Approval of identification of waters for inclusion on the 303(d) list	9
ii. Approval of exclusion of waters identified on previous 303(d) lists	9
E. Identification of pollutants causing or expected to cause a violation of applicable WQS (130.7(b)(4)).....	10
F. Priority ranking and two-year TMDL development (130.7(b)(4))	10
G. Tribal Consultation by EPA	11
3. Summary of EPA's decision on the 2024 CWA 303(d) list	11
References.....	12
Appendix A.....	12
Other Data, Summary Statistics, Supplemental Information, etc.	12

1. Introduction

This document sets forth the U.S. Environmental Protection Agency's (EPA) reasoning for approving Vermont's 2024 Clean Water Act (CWA) Section 303(d) list (303(d) list). The EPA received Vermont's 2024 303(d) list on October 1, 2024 through e-mail.

The EPA has conducted a complete review of the state's 2024 303(d) list and supporting documentation and information, including changes from the previous 303(d) list. The state's 303(d) list was provided via attachment to the e-mail submission. Based on this review, the EPA has determined that the state's 303(d) list of water quality-limited segments (WQLSs)¹ still requiring TMDLs (i.e., Part A of Vermont's 2024 List of Priority Surface Waters corresponding to EPA's Integrated Reporting (IR) Category 5) satisfies the requirements of Section 303(d) of the CWA and the EPA's implementing regulations. Therefore, the EPA hereby approves Vermont's 2024 303(d) list.

A. Integrated Report Categories

- i. **Category 1:** All designated uses are supported, and no use is threatened.
- ii. **Category 2:** Available data and/or information indicate that some, but not all of the designated uses are supported.
- iii. **Category 3:** There is insufficient available data and/or information to make a use support determination.
- iv. **Category 4:** One or more designated uses are impaired or threatened but establishment of a TMDL is not required for the particular cause.
 - 4a) A state-developed TMDL has been approved by EPA or a TMDL has been established by EPA for any segment-pollutant combination (**VT Part D**).
 - 4b) Other required control measures are expected to result in the attainment of an applicable water quality standard in a reasonable period of time (**VT Part B**).
 - 4c) The non-attainment of any applicable water quality standard for the segment is the result of pollution and is not caused by a pollutant (**VT Parts E and F**).
- v. **Category 5:** Available data and/or information indicate that at least one designated use is not being supported or is threatened, and a TMDL is needed (**VT Part A**).

Although Vermont's 2024 List of Priority Surface Waters describes that status of the state's waters corresponding to IR Categories 4a-4c and Category 5 (as described above), EPA is only acting on the waters listed in Part A. Impaired Surface Waters In Need Of TMDL, corresponding to IR Category 5, which is the State's 303(d) list.

2. The EPA's Analysis of Vermont's Submission

Section 303(d)(1) of the CWA and the EPA's implementing regulations at 40 CFR 130.7 require states, territories, and authorized Tribes (herein referred to as "states") to identify waters for which effluent limitations required by CWA Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard. States need not identify on their lists 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. 40 CFR 130.7(b)(1) and (2). CWA Section 303(d) lists must identify WQLSs still requiring TMDLs. 40 CFR 130.7(b)). The definition of "water quality limited segment" in 40 CFR 130.2(j) includes any segment where it is known that water quality does not meet applicable water quality standards (referred to as "impaired waters") and any segment that is not expected to meet applicable water quality standards (referred to as "threatened waters").¹ The term "applicable water quality standards" refers to those water quality standards established under Section 303 of the Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements. 40 CFR 130.7(b)(3). A WQLS must be on the 303(d) list and requires a TMDL unless the state can demonstrate that no pollutant(s) causes or contributes to the impairment.² In addition, in developing their CWA 303(d) lists, states must meet several procedural, submission, and content requirements as described in this decision document.

States must submit their 303(d) lists to the EPA on April 1 of every even-numbered year. 40 CFR 130.7(d)(1). The EPA must approve or disapprove the 303(d) list not later than 30 days after submission. The EPA approves a list only if it meets the requirements of 40 CFR 130.7(b). 40 CFR 130.7(d)(2). If the EPA approves the listing(s), the state must incorporate the listing(s) into its current Water Quality Management (WQM) plan. If the EPA disapproves a listing decision(s), the EPA must, not later than 30 days after the date of such disapproval, identify waters for inclusion on the 303(d) list (i.e., add the waters to the list). The EPA then must promptly issue a public notice seeking comment on the listing(s). After considering public comment and making any revisions the EPA deems appropriate, the EPA must transmit the listing(s) to the state, which must incorporate the listing(s) into its WQM plan. 40 CFR 130.7(d)(2).

The statutory and regulatory requirements, and the EPA's review of the state's compliance with the requirements, are described in detail in this document. To the extent that any EPA-approved listing decisions are unchanged from prior approved Section 303(d) list actions, EPA incorporates the reasoning of those previous list actions unless otherwise noted.

A. Supporting documentation for making listing determinations

The EPA regulations at 40 CFR 130.7(b)(6) require states to include, as part of their submissions to the EPA, documentation to support the state's determination to list or not to list its waters. Such documentation must include, at a minimum, the information discussed in subsections i through iv, immediately below.

¹ EPA uses this term to reflect the combination of a water segment and an applicable WQS that is not attained or is threatened. For example, if a segment is not meeting three applicable WQS then there are three WQLS for that segment.

²See CWA Sections 303(d)(1)(A) and 303(d)(1)(C); 40 CFR § 130.7(b)(4); 2006 Integrated Reporting Memorandum, page 60; 2024 Integrated Reporting Memorandum, pages 18-19. EPA Integrated Reporting Memoranda may be found at <https://www.epa.gov/tmdl/integrated-reporting-guidance-under-cwa-sections-303d-305b-and-314>.

i. Description of the methodology used to develop the 303(d) list. 40 CFR 130.7(b)(6)(i).

The EPA regulations at 40 CFR 130.7(b)(6) require states to include a description of the methodology used to develop the 303(d) list.³ EPA does not approve or disapprove assessment methodologies. Instead, in acting on CWA 303(d) lists, EPA evaluates whether the state, territory, or authorized tribe met listing requirements in determining whether applicable WQS are met and included waters requiring TMDLs on its 303(d) list. 2024 Integrated Reporting Memorandum (IR Memo) at 15.

The EPA finds that Vermont has provided a description of its methodologies used for determining whether its waters are achieving the state's WQS, satisfying the regulatory requirement to provide a "description of the methodology used to develop the list." 40 CFR 130.7(b)(6)(i). (Vermont Department of Environmental Conservation, 2023). The EPA has considered the state's methodology as part of its review of the state's 303(d) list.

ii. Description of the data and information used to identify waters. 40 CFR 130.7(b)(6)(ii).

The EPA regulations at 40 CFR 130.7(b)(6)(ii) require states to provide a description of the data and information used to identify waters, including a description of the data and information used by the state as required by 40 CFR 130.7(b)(5). The EPA finds that Vermont has provided a description of the data and information that it assembled and evaluated. 40 CFR 130.7(b)(6)(ii). This description is provided for in Vermont's Surface Water Assessment and Listing Methodology. (Vermont Department of Environmental Conservation, 2023). The EPA has considered the state's description as part of its review of the state's 303(d) list.

iii. A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in 40 CFR 130.7(b)(5). 40 CFR 130.7(b)(6)(iii).

The EPA regulations at 40 CFR 130.7(b)(6)(iii) require states to provide a rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in 40 CFR 130.7(b)(5). 40 CFR 130.7(b)(6)(iii). The EPA evaluates whether a state provides a technical, science-based rationale for decisions not to use data or information in developing the list.⁴ Because EPA finds that Vermont considered and evaluated all readily available data and information, pursuant to 40 CFR 130.7(b)(6)(iii), Vermont did not need to provide a rationale for not using any additional data.

iv. Other reasonable information requested by the Region. 40 CFR 130.7(b)(6)(iv).

The EPA regulations at 40 CFR 130.7(b)(6)(iv) require states to provide any other reasonable information requested by EPA. Upon request by EPA, each state must demonstrate good cause for not including a water or waters on the list. Consistent with 40 CFR 130.7(b)(6)(iv), good cause includes, but is not limited to:

- assessment and interpretation of more recent or accurate data in the record demonstrate that the applicable WQS is met;
- more sophisticated water quality modeling;

³EPA's Integrated Reporting Memoranda provide more information on assessment methods. See 2006 Integrated Reporting Memorandum at 29.

⁴ 2024 IR Memo at FN 15 (citing court cases); 2006 IR Memo at 37 (EPA evaluates whether there is a "reasonable technical rationale").

- flaws in the original analysis that led to the water being listed;
- changes in conditions.

Good cause may also include, for example (see, e.g., 2006 IR Memo at 58-59):

- EPA approved or established TMDL;
- demonstration that the impairment is being addressed through more stringent effluent limits or other pollution control requirements; or
- demonstration that the impairment is not caused by a pollutant.

The EPA finds Vermont provided such additional reasonable information requested by EPA. Additional information was requested demonstrating good cause for determinations made by the state that 86 newly created assessments units belong in IR Category 2 (Table 1) and not in the IR Category 5 303(d) list. The state provided detailed reporting for the newly added assessment units demonstrating good cause for not including these waters on the IR Category 5 303(d) list. Instructions for requesting a copy of this reporting are provided in Appendix A. EPA considered this information as part of its review of the state's 303(d) list.

Table 1 – New AUs added directly to IR Category 2 as available data and/or information indicate that some, but not all, of the designated uses are supported and others are unassessed

Assessment Unit ID	Assessment Unit Name
VT01-02.03	Cedar Hill Brook
VT01-03.11	Upper Paran Creek
VT01-03.12	Cold Spring Brook
VT01-03.13	Cedar Mill Creek
VT03-08.04	Pond Brook, rm 1.5 upstream to rm 3.5
VT03-11.02	Blue Bank Brook
VT03-11.03	Blue Bank Brook Trib 6
VT03-12.07	Alder Brook
VT03-12.08	Goshen Brook
VT03-12.09	Goshen Brook Trib 2
VT03-14.11	Mendon Brook, Meadow Lake Drive upstream to Wheelerville Road
VT04-04.01	Big Brook
VT04-04.02	Benson Landing Tributary
VT04-04.03	Coggman Creek
VT05-07.10	Stevens Brook Trib 7
VT05-09.04	Pond Brook
VT05-09.05	Malletts Creek, Middle Road upstream to Duffy Road (4 miles)
VT05-11.13	McCabe's Brook, rm 1.4 upstream
VT05-12.02	Kimball Brook, mouth upstream to Greenbush Road
VT07-03.03	Beaver Meadow Brook
VT07-10.01	Browns River, confluence with Lee River upstream 0.8 miles
VT07-10.02	Abbey Brook

VT07-10.03	Browns River, mouth upstream to Abbey Brook
VT07-14.02	North Branch Lamoille River, route 108 upstream to Belvidere Pond
VT07-14.03	Basin Brook
VT07-14.04	Rattling Brook
VT07-14.05	Calavale Brook
VT07-15.05	Gihon River, river mile 2.9 upstream to Lake Eden
VT07-15.06	Wild Brook
VT07-15.07	White Branch
VT08-12.13	Ranch Brook, rm 0.9 upstream
VT08-13.05	Hardwood Brook below Hardwood Pond
VT09-01.02	White River, rm 14.6 to 15.6
VT09-01.03	White River, rm 15.6 upstream to Third Branch
VT11-05.03	Barnes Brook
VT11-05.04	Bull Creek
VT11-05.05	Weaver Brook
VT11-16.05	Winhall River (I.P. Co. Bridge upstream)
VT12-01.02	South Branch Deerfield River, mouth upstream to rm 1.3
VT12-02.01	West Branch Deerfield River Trib 7 Trib 1
VT12-03.02	East Branch Deerfield River, Somerset Reservoir upstream
VT12-04.02	Medbury Brook
VT12-05.12	North Branch Deerfield River, Mt. Snow Pond upstream 0.4 miles
VT12-05.13	Cold Brook, mouth upstream to Gatehouse Trail
VT12-05.14	Cold Brook, Oak Brook confluence upstream
VT12-05.15	Airport Stream, mouth upstream 0.5 miles
VT12-05.16	Blue Brook
VT12-05.17	Ellis Brook, river mile 0.5 upstream
VT12-05.18	Binney Brook
VT12-05.19	Rose Brook
VT12-05.20	Haystack Brook
VT12-06.01	Green River, rm 16.6 upstream to 21.9
VT13-07.01	Lulls Brook
VT13-07.02	McArthur Brook
VT13-07.03	Shepherd Brook
VT13-10.03	Ellis Brook, Rockingham Road upstream to Route 91
VT13-15.01	Broad Brook, rm 3.8 upstream to 5.4
VT13-17.01	Fall River
VT15-05.03	Stark Brook
VT15-05.04	Barnes Brook
VT16-08.01	Keyer Brook
VT16-08.02	Jacobs Chopping Brook
VT16-08.03	Clay Brook
VT16-08.04	Leach Creek
VT16-08.05	Halls Stream

VT16-14.01	Emery Brook
VT16-14.02	Cutler Mill Brook
VT16-14.03	Washburn Brook, river mile 1.0 upstream
VT16-15.01	Mink Brook, confluence with Neal Brook upstream
VT16-15.02	Catbow Brook
VT16-16.02	Halls Brook
VT16-16.03	Miles Stream
VT16-17.01	Mad Brook
VT16-18.01	Manchester Brook
VT16-18.02	McIndoe Falls tributary, I91 upstream
VT16-19.01	Roaring Brook
VT16-19.02	Halls Brook
VT16-20.01	Zebedee Brook
VT16-20.02	Glen Falls Brook
VT16-21.01	Dothan Brook
VT16-21.02	Bloody Brook, confluence with New Boston Brook upstream
VT16-21.03	Charles Brown Brook
VT17-08.03	Barton River, confluence with Willopughby river upstream to Railroad Ave.
VT17-08.04	Roaring Brook, Lake Parker Upstream
VT17-08.05	Shadow Lake Brook
VT17-08.06	Annis Brook

B. Public participation

The EPA regulations require states to provide for public participation in the development of their 303(d) lists, including describing their process for involving the public and other stakeholders in their Continuing Planning Processes (CPPs). 40 CFR 130.7(a). States are expected to demonstrate how they considered public comments in their final decisions. The EPA considers the public comments and state responses as appropriate in its actions on 303(d) lists in determining whether a state has provided reasoned support for its submission. See 2006 IR Memo at 25-26.

The state's 2024 303(d) list submission to the EPA included a summary of public comments and the state's responses to comments. The Vermont Department of Environmental Conservation (VTDEC) conducted a public participation process, in which it provided the public the opportunity to review and comment on the state's 2024 draft Section 303(d) list. A public comment period was opened on April 12, 2024, and was closed on May 17, 2024. Comments were solicited from the public through the VTDEC website.

VTDEC prepared a "Response to Comments" document which lists each comment and the State's response. Of particular note, in response to EPA's inquiry into some apparent phosphorus exceedances not listed, Vermont explained the applicability of the state's combined nutrient criteria to wadable versus non-wadable streams but also made the commitment to "develop a better assessment methodology in the near future applicable to waters not covered by the combined nutrient criteria. Most notably, these include larger, non-wadable rivers and streams and would include Dead Creek, which was specifically referenced in comment. The development and application of this improved

assessment methodology will provide a better framework and provide reassurance that these waters are properly assessed against the narrative Vermont Water Quality Standards,” which will help drive the development of future TMDLs for nutrient impaired streams. (Vermont Department of Environmental Conservation, 2024, p. 7)

The EPA concludes Vermont provided an opportunity for public comment on its 303(d) list consistent with 40 CFR 130.7(a). In addition, the state demonstrated how it considered public comments in its final decision.

C. Assembling, evaluating, and using data and information

i. Assemble and evaluate data and information

States must assemble and evaluate all existing and readily available water quality-related data and information to develop the CWA 303(d) list. 40 CFR 130.7(b)(5). In reviewing a state’s 303(d) list submission, the EPA considers whether the state has satisfied the requirements under 40 CFR 130.7(b)(5) to assemble and evaluate all existing and readily available water quality-related data and information when developing their CWA 303(d) lists. This includes, at a minimum, all 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 CWA Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate non-attainment of applicable water quality standards; (3) waters for which water quality problems have been reported by local, state, and federal agencies; members of the public; academic institutions (these organizations and groups should be actively solicited for research they may be conducting or reporting); and (4) waters identified as impaired or threatened in any CWA Section 319 nonpoint source assessment submitted to the EPA. In addition to these minimum categories, states are required to assemble and evaluate any other water quality-related data and information that is existing and readily available. 40 CFR 130.7(b)(5).

On October 9, 2023 VTDEC solicited the public, via their “Public Notices” website, for data relating to water quality in the State of Vermont for assessment purposes. VTDEC received four sets of data from the public, described in Table 2. The VTDEC Biomonitoring and Aquatic Studies Section and Rivers Program provide much of the data used in the assessment of monitored river miles. The VTDEC Lakes and Ponds Program provides much of the data used in the assessment of monitored lake acres. Other sources noted on page 5 of VT’s Surface Water Assessment and Listing Methodology provide fewer and less widespread, but nevertheless important, data.

The EPA has reviewed the state’s submission, including the state’s description of the data and information that it assembled and evaluated and finds that the state satisfied the requirement to assemble and evaluate all existing and readily available water quality-related data and information to develop its list under 40 CFR 130.7(b)(5).

ii. Use of data and information

States must use existing and readily available water quality-related data and information in developing the CWA 303(d) list, 40 CFR 130.7(b)(5), unless they provide a rationale not to use them, 40 CFR

130.7(b)(6)(iii). The EPA evaluates whether a state provides a technical, science-based rationale for decisions not to use data or information in developing the list.⁵

The EPA evaluated whether Vermont provided a technical, science-based rationale for any decisions not to use existing and readily available water quality-related data or information to make a WQS attainment status determination. Because EPA finds that Vermont considered and evaluated all readily available data and information, Vermont did not need to provide a rationale for not using any additional data, pursuant to 40 CFR 130.7(b)(6)(iii).

D. Identification of waters for inclusion on the Section 303(d) list

As noted above, the EPA regulations at 40 CFR 130.7(b)(6) require states to provide documentation to support the state's determination to list or not to list its waters. EPA has reviewed the state's submission, including its assessment methodology and additional supporting documentation for its listing determinations.

i. Approval of identification of waters for inclusion on the 303(d) list

The EPA determined that Vermont's 2024 303(d) list encompasses waters consistent with the CWA 303(d) and 40 CFR 130.7 requirements, and the EPA is approving all waters the state included on the 303(d) list. The EPA's approval of the waters on the 303(d) list is based on the EPA's review of the state's submission including the description of the data and information concerning individual waters, documentation to support decisions to rely or not rely on particular data and information, such as provided for below in Table 2, and a description of how data and information were applied to make WQS attainment status determinations. The EPA also considered applicable public comments and responses. The state's 303(d) list of WQLS may be found in Part A of VTDEC's submission, with newly listed WQLS identified by a double asterisk (**).

ii. Approval of exclusion of waters identified on previous 303(d) lists

Vermont's 2024 303(d) list submission delists one WQLS. In reviewing the state's 2024 303(d) list, the EPA carefully considered the state's decision to remove this WQLS from the 303(d) list submission, its justification for this removal, any applicable comments and responses, and the methodology used in making the decision. The EPA concludes that the decision to remove the WQLS identified as part of the 303(d) list is reasonable, based on all existing and readily available water quality-related data and information, applicable WQS, and sound science, and the removal decision is properly justified.

Vermont has demonstrated a good cause rationale for delisting the WQLS VT08-02.08 Sunnyside Brook, impaired by chloride for aquatic biota and wildlife that may utilize or are present in the waters, via the state's recently developed Chloride TMDL for this WQLS, approved by EPA. This delisting is identified with the state's 2024 303(d) list submission in their 2024 List of Priority Surface Waters, Part D. Impaired Surface Waters with a TMDL. Consistent with the EPA's regulations at 40 CFR 130.7(b), the state appropriately moved this previously listed water to Category 4a of the IR where an EPA-approved TMDL is now in place.

iii. Approval of exclusion of other waters not included on the list

⁵ See FN 4.

The EPA carefully reviewed the state’s rationale not to include certain waters on the 303(d) list, the relevant supporting documentation, and any applicable public comments and responses. The EPA concludes that the decisions to exclude the newly defined segments listed in Table 1 from the state’s 2024 303(d) list, and instead list them in IR Category 2, are reasonable, based on all existing and readily available water quality-related data and information, applicable WQS, and sound science. The EPA also concludes that the decision to exclude waters in the Connecticut and White Rivers from the state’s 2024 303(d) list is reasonable based on the following information provided by the public.

Table 2 – Description of data received via public solicitation and state’s decision

Description of data	Decision by the state
<i>E. coli</i> data from the Connecticut River in southern Vermont and Massachusetts from 2023.	No Connecticut River observations were above criteria.
<i>E. coli</i> data from the White River from 2023.	Data shows non-attainment for swimming use in the already impaired reaches but does not show impairment in fully supporting reaches.

E. Identification of pollutants causing or expected to cause a violation of applicable WQS (130.7(b)(4))

As part of their CWA 303(d) lists, states are required to identify the pollutants causing or expected to cause violations of the applicable WQS. 40 CFR 130.7(b)(4). This includes a pollutant that by itself or in combination with other pollutants causes or is expected to cause violations of applicable WQS. States must identify in their 303(d) lists all pollutants that are known to be causing or are expected to cause violations of the applicable WQS. 40 CFR 130.7(b)(4), see also, 2024 IR memo at 17-19. For listed waters, if the available data and information do not support identification of pollutants causing or expected to cause the exceedance, list submissions would identify the pollutant as “unknown.”

Consistent with 40 CFR 130.7(b)(4), Vermont appropriately identified the pollutants that were causing or expected to cause a violation of the applicable WQS. For waters where the available data and information did not support identification of pollutants causing or expected to cause the exceedance, the state appropriately included the water on the 2024 303(d) list and identified the pollutant as “unknown.” EPA encourages the state to reassess and potentially refine that determination when additional data and information become available. See, e.g., 2024 IR memo.

F. Priority ranking and two-year TMDL development (130.7(b)(4))

The CWA and the EPA’s regulations, require states to establish a priority ranking for the waters on their CWA 303(d) list “taking into account the severity of the pollution and the uses to be made of such waters.” CWA Section 303(d)(1)(A); 40 CFR 130.7(b)(4). The regulations at 40 CFR 130.7(b)(4) provide that this priority ranking must include “all listed water quality limited segments still requiring TMDLs” and further require that states submit their priority rankings to the EPA as a component of their biennial CWA 303(d) lists. Additionally, the regulations require that the priority ranking identify the waters targeted for TMDL development in the next two years. 40 CFR 130.7(b)(4).

Vermont's description of how all listed WQLSs are prioritized for TMDL development, including identification of waters targeted for TMDL development in the next two years, is included within the State's 303(d) list submission. In addition, Vermont described how its priority ranking took into account the severity of pollution and the uses to be made of such waters in the state's 2024 Assessment and Listing Methodology: "Priority ranking for TMDL development is done with consideration of many factors. These include but are not limited to: (1) health issues, (2) the nature, extent, and severity of the pollutant(s), (3) the use or uses that are impaired, (4) the availability of resources and methods to develop a TMDL, (5) the degree of public interest, and (6) the utility of TMDL development to the elimination of the impairment." (Vermont Department of Environmental Conservation, 2023, p. 26)

EPA's review of Vermont's submission finds that the state established a priority ranking for all waters on the CWA 303(d) list, taking into account the severity of the pollution and the uses to be made of such waters.⁶ In addition, the state identified the waters targeted for TMDL development in the next two years.

G. Tribal Consultation by EPA

EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect Tribes. To promote coordination and consultation, all Tribes that may be affected by EPA's upcoming action on the state's CWA 303(d) list are identified, notified of the upcoming state's list submission for EPA action, and offered the opportunity to engage in consultation with EPA. There are no federally recognized Tribes to be consulted in Vermont.

3. Summary of EPA's decision on the 2024 CWA 303(d) list

After careful review of Vermont's final CWA 303(d) list submission package, EPA has determined that Vermont's 2024 303(d) list meets the requirements of Section 303(d) of the CWA and EPA's implementing regulations. Therefore, EPA approves Vermont's 2024 303(d) list.

⁶ In addition to these two statutory factors, states may also consider other factors when prioritizing TMDLs. See 57 Fed. Reg. 33040, 33,044-45 (July 24, 1992).

References

Vermont Department of Environmental Conservation. (2023). *Vermont Surface Water Assessment and Listing*. Retrieved from Agency of Natural Resources: Department of Environmental Conservation:
https://dec.vermont.gov/sites/dec/files/documents/2024%20A%26LM_update%20final.pdf

Vermont Department of Environmental Conservation. (2024). *Vermont 2024 303(d) List: Comment Response Summary*.

Appendix A

Other Data, Summary Statistics, Supplemental Information, etc.

Other data, summary statistics, and the supplemental information requested by EPA from the state can be provided by request. For more information, please contact Ivy Mlsna at mlsna.ivy@epa.gov or (617) 918-1311.