



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
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NEW YORK, NY 10007-1866

Mr. Mark Klotz
Director
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3500

Dear Mr. Klotz:

Thank you for submitting New York's 2018 Clean Water Act (CWA) Section 303(d) list, dated November 13, 2020 (with a revised submission received on December 07, 2020, and a supplement to the submission received on February 10th, 2022). In accordance with Section 303(d) of the Clean Water Act and Title 40 of the Code of Federal Regulations (CFR) Section 130.7, the U.S. Environmental Protection Agency (EPA) conducted a complete review of New York's Section 303(d) list and supporting documentation and information. The enclosed supporting documentation describes the statutory and regulatory requirements and EPA's review of New York's compliance with them.

Section 303(d) of the CWA and 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. Under EPA's regulations at 40 CFR § 130.7(b)(4), NYSDEC is required to identify the pollutants causing the impairment of the listed waters. Section 303(d) further requires 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, NYSDEC is required to identify the waters targeted for TMDL development over the next two years.

New York's 2018 Section 303(d) list identifies 835 waterbody/pollutant combinations requiring TMDLs. Of these, NYSDEC identified six (6) as high priority for TMDL/Restoration Strategy Development through 2018. Two of these 6 waterbody/pollutant combinations have been addressed by TMDLs approved in 2019. An alternative restoration plan is in place for one of these 6 waterbody/pollutant combinations. NYSDEC identified an additional fourteen (14) waterbody/pollutant combinations as high priority for TMDL/Restoration Strategy Development through 2022. Alternative restoration plans are in place for six of these waterbody/pollutant combinations.

NYSDEC announced the availability of the draft 2018 Section 303(d) list in the State's Environmental Notice Bulletin, on June 20, 2018, and provided a 45-day comment period, which ended on August 6, 2018. NYSDEC prepared a response to comments summary document.

Based upon EPA's review of the submittal, EPA is partially approving, partially disapproving, and has further action pending on the New York 2018 303(d) list. Specifically, EPA is approving the New York 2018 303(d) list with respect to the eight hundred thirty-five (835) waterbody/pollutant combinations New York included on the list as requiring a total maximum daily load (TMDL). EPA is disapproving the New York 2018 303(d) list because EPA has determined that New York did not include twenty-two

(22) waterbody/pollutant combinations on the 2018 303(d) list that meet 303(d) listing requirements. EPA has further action pending with regard to one hundred and fifty-six (156) waterbody/pollutant combinations. These waterbody/pollutant combinations are described in further detail in the attached supporting documentation.

By this letter and attached supporting documentation, EPA is adding the 22 waterbody/pollutant combinations referenced above to the New York 2018 303(d) list. Pursuant to 40 CFR 130.7(d)(2), EPA will open a public comment period in order to receive comments on the addition of these 22 waterbody/pollutant combinations. After examining comments received from the public, EPA will make any appropriate revisions to the New York 2018 Section 303(d) list. After considering public comment and making any revisions EPA deems appropriate, EPA will transmit its listings to the State.

I appreciate the informative discussions our staff had with NYSDEC regarding the New York 2018 303(d) list, as we collaboratively move forward in implementing the requirements under Section 303(d) of the CWA. In addition, EPA encourages NYSDEC to submit an Integrated Report in accordance with EPA guidance, to improve transparency and for added clarity of future submissions. We are also looking forward to working with NYSDEC's water quality program 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 Dr. Daniel Gurdak at 212-637-3634 if there are any questions.

Sincerely,

Javier Laureano, Ph.D.
Director
Water Division

Enclosure

Supporting Documentation for Review and Partial Approval/Partial Disapproval of New York State’s 2018 303(d) List

Pursuant to Section 303(d) of the Clean Water Act (CWA), New York State (the State or New York or NYSDEC) submitted its “New York State 2018 Section 303(d) List of Impaired Waters Requiring a TMDL/Other Strategy” (the New York 2018 303(d) list) to the U.S. Environmental Protection Agency (EPA) for approval or disapproval. The submission was received on Nov 13, 2020, a revised submission was received on December 07, 2020, and a supplement to the submission was received on February 10th, 2022.¹ The State also submitted to EPA, documents entitled “2018 DELISTED Waters (NOT Included on the 2018 Section 303(d) List)” (2018 Delisted Waters), “Response to Comments on The Final Proposed 2018 NYS 303(d) List of Impaired Waters Requiring a TMDL” (Response to Comments), and “List of Integrated Report (IR) Category 4a/b/c Waters- April 2020)” (IR Category 4 waters). The State did not submit to EPA an Integrated Report that includes and categorizes all assessed waters for the purposes of satisfying the reporting requirements of both Sections 303(d) and 305(b) of the CWA. EPA has reviewed the New York 2018 303(d) list and supporting documentation. The New York 2018 303(d) list and supporting documentation is referred to below collectively as the “submission.”

EPA reviewed the submission based upon whether the State developed its list in compliance with Section 303(d) of the CWA and EPA’s implementing regulations. This included whether the State assembled and evaluated all existing and readily available water quality-related data and information, and reasonably identified waters required to be listed. For the reasons set forth below, EPA is partially approving, partially disapproving, and has further action pending on the New York 2018 303(d) list. Specifically, EPA is approving the New York 2018 303(d) list with respect to the eight hundred thirty-five (835) waterbody/pollutant combinations New York included on the list as requiring a total maximum daily load (TMDL). EPA is disapproving the New York 2018 303(d) list because EPA has determined that New York did not include twenty-two (22) waterbody/pollutant combinations on the 2018 303(d) list that meet 303(d) listing requirements. These 22 waterbody/pollutant combinations comprise the following:

- A. Four (4) waterbody/pollutant combinations delisted from the New York 2016 303(d) list where data and/or information indicate that the applicable water quality criterion for odors is not met.
- B. Nine (9) waterbody/pollutant combinations delisted from the New York 2016 303(d) list where data and/or information indicate that the applicable water quality criterion/criteria for floatables is/are not met.

¹ The supplement received on February 10th, 2022 added the following nine (9) waterbody/pollutant combinations that were excluded from the New York 2018 303(d) list in error: Harbor Brook, Lower, and tribs (0702-0002), Ammonia; Onondaga Creek, Middle, and tribs (0702-0004), Ammonia; Geddes Brook and tribs (0702 0007), Ammonia; Harbor Brook, Lower, and tribs (0702 0002), Phosphorus; Onondaga Creek, Middle, and tribs (0702 0004), Phosphorus; Ninemile Creek, Lower, and tribs (0702 0005), Phosphorus; Eastchester Bay (1702-0007), Pathogens; Harbor Brook, Lower, and tribs (0702 0002), Pathogens; Ninemile Creek, Lower, and tribs (0702 0005), Pathogens.

- C. Two (2) waterbody/pollutant combinations delisted from the New York 2016 303(d) list where data and/or information indicate that the applicable water quality criterion for dissolved oxygen is not met.
- D. One (1) waterbody/pollutant combination delisted from the New York 2016 303(d) list where data and/or information indicate the presence of harmful algal blooms (HABs), which in turn, indicates that an applicable water quality standard is not met. New York did not demonstrate that no pollutant is causing the impairment and inappropriately moved this waterbody/pollutant combination to Integrated Report Category 4c².
- E. One (1) waterbody/pollutant combination for an assessment unit under 6.4 acres delisted from the New York 2016 303(d) list where data and/or information indicate that the applicable narrative water quality criterion for dissolved oxygen is not met.
- F. One (1) waterbody/pollutant combination delisted from the New York 2014 303(d) list and included in Integrated Report Category 4c where data and/or information indicate that the applicable narrative water quality criterion for nutrients is not met and New York did not demonstrate that no pollutant is causing the impairment.
- G. Three (3) waterbody/pollutant combinations where data and/or information indicate the presence of harmful algal blooms (HABs), which in turn, indicates that an applicable water quality standard is not met. New York did not demonstrate that no pollutant is causing the impairment and inappropriately included these waters in Integrated Report Category 4c.
- H. One (1) waterbody/pollutant combination where data and/or information indicate the presence of harmful algal blooms (HABs), which in turn, indicates that an applicable water quality standard is not met. New York did not include this waterbody/pollutant combination on the New York 2018 303(d) list or in any Integrated Report Category.

These waterbody/pollutant combinations are described in further detail in the respective section of this document below.

EPA has further action pending with regard to one hundred and fifty-six (156) waterbody/pollutant combinations:

- (1) Five (5) waterbody/pollutant combinations that are designated for shellfishing that New York did not include on the New York 2018 303(d) list despite not being certified for (and therefore closed to) shellfishing.
- (2) Seventy-two (72) waterbody/pollutant combinations that New York did not include on the New York 2018 303(d) list, and instead, included in Integrated Report Category 4c.
- (3) Sixty-five (65) waterbody/pollutant combinations that New York delisted from the New York 2016 303(d) list due to a change to their segmentation.
- (4) Fourteen (14) waterbody/pollutant combinations that are classified as Class I or Class SD waters where EPA will work with the State to assess data and/or information to determine whether the applicable standards, with respect to pathogens, are met.

² Integrated Report Category 4c includes waters where there is a demonstration that the failure to meet an applicable water quality standard is not caused by a pollutant, but instead is caused by other types of pollution, where the pollution does not result from a pollutant and a TMDL is not required (*Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (July 29, 2005))

These waterbody/pollutant combinations are described in further detail in the respective section of this document below. EPA is committed to working with the State to resolve these issues and to determine what additional waterbody/pollutant combinations, if any, must be included on the 303(d) list.

The Agency's action on the State's 2018 Section 303(d) list does not apply to any waters, or portions thereof, that are within Indian Country, as defined in 18 U.S.C. Section 1151. EPA, therefore, is taking no action to approve or disapprove the State's list with respect to any waters within Indian Country. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under CWA Section 303(d) for those waters.

Identification of Water Quality Limited Segments for Inclusion on the 303(d) List

Section 303(d)(1) of the CWA directs states to identify those waters within their jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standards, and to establish a priority ranking for those waters, taking into account the severity of the pollution and the uses to be made of those waters. The Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations do not require states to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the CWA; (2) more stringent effluent limitations required by state or local authority; and (3) other pollution control requirements required by state, local or federal authority. See, 40 C.F.R. §130.7(b)(1).

Assemble and Evaluate All Existing and Readily Available Water Quality-Related Data and Information

In developing 303(d) lists, states are required to assemble and evaluate all existing and readily available water quality-related data and information including, at a minimum, consideration of 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 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 Section 319 nonpoint assessment submitted to EPA. See, 40 C.F.R. § 130.7(b)(5). In addition to these minimum categories, states are required to consider any other data and information that is existing and readily available. EPA's guidance describes categories of water quality-related data

and information that may be existing and readily available.³ While states are required to evaluate all existing and readily available water quality-related data and information, states may decide to not rely on particular data or information in determining whether to list particular waters provided they have a reasonable, technical explanation for their decision.

In addition to assembling and evaluating all existing and readily available water quality-related data and information, EPA regulations, at 40 C.F.R. § 130.7(b)(6), require states to submit documentation in support of determinations to list or not list its waters. This documentation must be submitted together with the list and must include, at a minimum: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; (3) documentation to support decisions not to use particular data and information, as well as documentation to support decisions to list or not list waters; and (4) any other reasonable information requested by EPA, including good cause for not including a water or waters on the list.

Pursuant to Section 303(d)(2) of the CWA and 40 C.F.R. § 130.7(d)(2), New York is required to incorporate all waterbody/pollutant combinations that EPA has previously listed on the New York 303(d) list subsequent to a disapproval, into its water quality management plan and include them on all future lists, unless, after assembling and evaluating all existing and readily available water quality-related data and information, New York reasonably concludes that a water(s) is not impaired or otherwise does not require a TMDL, New York submits documentation to EPA in support of a determination not to list a water(s) and EPA approves a subsequent list submission.

Consistent with EPA's guidance, Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates - EPA841-B-97-002A and EPA841-B-97-002B, 1997, and Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act, July 29, 2005 ("EPA's 2006 Integrated Report Guidance"), the New York State Department of Environmental Conservation (NYSDEC) developed a Consolidated Assessment and Listing Methodology (CALM) to integrate the monitoring and assessment activities under Sections 305(b) and 303(d). The NYSDEC's CALM describes the process for evaluating and consolidating monitoring data and information. The CALM contains three sub-parts: Monitoring Strategy, Assessment Methodology and Listing Methodology. The Listing Methodology describes the process for developing the 303(d) list from evaluation and assessment of data gathered through the Monitoring Strategy and the Assessment Methodology. The State's CALM is updated periodically, generally in concert with the federal biennial assessment and listing cycle. EPA does not approve or disapprove the State's CALM.

The foundation for the State's listing process (both 305(b) and 303(d)) is the State's Water Inventory/Priority Waterbodies List (WI/PWL), which is based on the results of the State's monitoring and application of its assessment methodologies. Waters listed on the 303(d) list are

³ Guidance for Water Quality-Based Decisions: The TMDL Process, EPA Office of Water, 1991, EPA 440-4-91-001.

drawn directly from the WI/PWL. The WI/PWL is a comprehensive inventory of waterbodies throughout the State, including those waters known or suspected to have designated uses with some degree of impairment or which are threatened by potential impairment. Designated use impairments are determined by evaluation of all available information on the waterbodies, including: use restriction orders (drinking water restrictions, bathing beach closures, fish consumption and shellfishing advisories); comparison of data from the NYSDEC ambient monitoring network, other agencies and local or public/citizen monitoring programs with parameter-specific water quality standards; the use of surrogate indicators; and qualitative perception and observational information (stream habitat assessments, recreation use or fishery resource surveys and citizen complaints).

The WI/PWL categorizes waters according to the severity of the problem (precluded, impaired, stressed, threatened, no known impact/impairment or unassessed waters) and the level of documentation of the problem (known, suspected, possible). Based upon WI/PWL categorization, the State determines which category described in EPA's Integrated Report Guidance the water is to be placed. Waterbody segments listed as "precluded" or "impaired" due to pollutants are listed under Section 303(d), or Category 5, as described in EPA's 2006 Integrated Report Guidance. Where known, the State's list identifies the pollutants causing the impairment for each listed segment.

Public input for the WI/PWL is provided through the Water Management Advisory Committee, the Statewide Nonpoint Source Committee, county water quality coordinating committees, citizen's advisory committees for Remedial Action Plans and Lake Management Plans and other interest groups. The WI/WPL also includes input from a public outreach program conducted by local county and soil and water conservation districts working in conjunction with the State. The State solicited data indicating impairment of waters in the May 10, 2017 Environmental News Bulletin (ENB). The State requested that all data submissions be received by September 29, 2017, to allow the State sufficient time for the review and consideration of all data and information.

NYSDEC organizes the 303(d) list in separate sections, allowing NYSDEC to manage its 303(d) list to meet its different programmatic needs. The following describes the structure and nomenclature of NYSDEC's 303(d) list:

Part 1: Individual Waterbody Segments with Impairments Requiring TMDL Development

Part 2: Multiple/Categorical Waterbody Segments with Impairments Requiring TMDL Development

Part 2a: Waterbody Segments Impaired by Atmospheric Deposition/Acid Rain

Part 2b: Waterbody Segments Impaired by Fish Consumption Advisories

Part 2c: Waterbody Segments Impaired by Shellfishing Restrictions

Part 3: Waterbodies for which TMDLs are/may be Deferred

Part 3a: Waterbodies Requiring Verification of Impairment

Part 3b: Waterbodies Requiring Verification of Cause/Pollutant/Source

Part 3c: Waterbodies Awaiting Development/Evaluation of Other Restoration Efforts

The 2018 303(d) list is comprised of 835 waterbody/pollutant combinations as designated by NYSDEC:

- Part 1 includes 225 waterbody/pollutant combinations
- Part 2a includes 57 waterbody/pollutant combinations
- Part 2b includes 213 waterbody/pollutant combinations
- Part 2c includes 77 waterbody/pollutant combinations
- Part 3a includes 80 waterbody/pollutant combinations
- Part 3b includes 95 waterbody/pollutant combinations
- Part 3c includes 88 waterbody/pollutant combinations

EPA has reviewed the State's submission, as well as its description of the data and information considered, its methodology for classifying waters, and the WI/PWL. EPA has also compared the waterbody/pollutant combinations on the New York 2018 303(d) list and the impaired/delisted waterbody/pollutant combinations not included on the 2018 303(d) list with the waterbody/pollutant combinations on the New York 2016 303(d) list.

EPA investigated interstate waters to ensure assessment and listing consistency between New York and other border states. Differences in listing of interstate waters were noted in Vermont, Connecticut, New Jersey, Massachusetts, and Pennsylvania. Because states have different waterbody classifications and water quality standards, and because data may not be available for an entire waterbody, these differences are not necessarily inconsistent with regulatory requirements under 40 C.F.R. § 130.7. None of the states that border New York submitted comments on the draft New York 2018 303(d) list.

With respect to the 835 waterbody/pollutant combinations New York included on the New York 2018 303(d) list, the State properly assembled and evaluated all existing and readily available data and information, including data and information relating to the categories of waters specified in 40 C.F.R. § 130.7(b)(5), and identified these waterbody/pollutant combinations on the New York 2018 303(d) list. This includes waters where parameters and/ or assessment units were changed since the 2016 list (see below for more details).

With respect to the 22 waterbody/pollutant combinations that meet 303(d) listing requirements that are not included on the New York 2018 303(d) list, EPA has concluded that New York did not properly assemble and evaluate all existing and readily available data and information and failed to include these waters on the New York 2018 303(d) list. More detail is provided for each of these waterbody/pollutant combinations in the respective section of this document below.

Changes to Causes of Impairments or Assessment Units

For two-hundred seven (207) of the 835 waterbody/pollutant combinations included on the New York 2018 303(d) list, the State updated the parameter(s) (see Table 1) identified on the list, to better reflect the cause of the impairment and New York’s applicable water quality standards, and for which EPA is in agreement. Note, in some cases the listing was “split” to reflect the two separate impairments, resulting in additional waterbody/pollutant combinations on the New York 2018 303(d) list.

Table 1: Summary of cause of impairment changes from the New York 2016 to the New York 2018 303(d) lists (number of waterbody/ pollutant combinations enclosed in parenthesis)

<i>From [in 2016]</i>	<i>To [in 2018]</i>
“Dissolved Oxygen” (4)	“Low D.O.” (4) ^a
“DO/Oxygen Demand” (2)	“Low D.O.” (2)
“DO/Oxygen Demand” (13)	“Oxygen Demand” (13) ^a
“Floatables” (23)	“Garbage & Refuse” (23)
“Floatables” (4)	“Oils & Floating Sub” (4)
“Pathogens” (112)	“Fecal Coliform” (112)
“Nitrogen/ Low D.O.” (6)	“Low D.O.” (6) ^b
“Nitrogen/Low D.O.” (1)	“Nitrogen” (1) ^c
“Oxygen Demand” (20) ^d	“Low D.O.” (20)
“Phosphorus/Low D.O.” (19)	“Phosphorus” (19)
“Phosphorus/Low D.O.” (1) ^e	“Phosphorus” (1)
	“Low D.O.” (1)
“Silt/Sediment” (1)	“Unknown” (1) ^f

^a Waterbodies listed for “Low D.O” are distinguished from waterbodies listed for “Dissolved Oxygen” as follows: for waterbodies listed for “Low D.O.”, NYSDEC has determined that a nutrient pollutant is also known to be present and is the likely cause of the dissolved oxygen impairment.

^b These six waterbodies are also listed for “Nitrogen” (they were added to the New York 2016 list for Nitrogen by EPA subsequent to disapproval)

^c This waterbody is also listed for “Low D.O.” (it was added to the New York 2016 list for “Oxygen Demand” by EPA subsequent to disapproval)

^d These waterbody/pollutant combinations were added to the New York 2016 list by EPA subsequent to disapproval (19 of these waterbody/pollutant combinations are also listed for “Phosphorus” and 1 is also listed for “Nitrogen”)

^e This listing was split to reflect the two separate impairments.

^f The cause of impairment for this waterbody/pollutant combination was modified because, “An updated assessment for this waterbody indicated causes and sources of impairments to this water are not fully understood and it is most appropriate to place it in Part 3b until more sampling is conducted.” Quote taken from footnote on 2018 303(d) list.

New York changed the segmentation of seventy-five (75) assessment units by resegmenting and incorporating assessment units less than 6.4 acres into another assessment unit. The impairment was maintained on the New York 2018 303(d) list if the following criterion was met for the new combined assessment unit: if the smaller, impaired assessment unit comprised more than 20% of the total area of the new (i.e., combined) assessment unit OR if the assessment unit for which the

smaller unit was combined into, was already listed for the same impairment. The ten (10) waterbody/pollutant combinations specified in Table 2 below, were not delisted from the New York 2016 303(d) list, as the smaller impaired assessment unit is still on the New York 2018 303(d) list due to being combined into an already listed assessment unit. Assessment units where the smaller, impaired waterbody comprised less than 20% of the total areas of the new (i.e., combined) assessment unit were not listed by New York (65 segments) and are discussed in a subsequent section of this document, “Waters New York Did Not Include on the 303(d) List Where Further Action is Pending by EPA” (also see Appendix B: Resegmented assessment units for which further action is pending by EPA).

Table 2: Changed segmentation from the 2016 list, but impairment for waterbody/pollutant combination on the New York 2018 303(d) list.

<i>NYS index number</i>	<i>2016 Assessment Unit</i>	<i>2016 Pollutant/Cause</i>	<i>2018 Assessment Unit</i>	<i>2018 Pollutant/Cause</i>
(MW1.2) S 1-8- 1-1	Springville Creek, Upper, and tribs (1701-0186)	Unknown (biol imp)	Richmond Creek, Upper, and tribs (1701-0043)	Unknown (biol imp)
C (portion 2b)	Willsboro Bay (1001-0015)	PCBs	L. Champlain, Middle, Willsboro Bay (1000-0002) ^b	PCBs
(MW3.6) LIS-13	Byram River, Lower (1702-0132)	Pathogens	Port Chester Harbor/Lower Byram River (1702-0260) ^c	Fecal Coliform
--	Spring Pond/Lake (1701-0230) ^a	Chlordane	Upper Yaphank Lake (1701-0323)	Chlordane
SL-1- 162-28-P231	Rock Pond (0903-0013)	pH	Mountain Pond, more (0903-0176)	Acid/Base (pH)
SL-25-115-P307	Lost Pond (0905-0040)	pH	Dillon Pond (0905-0186)	Acid/Base (pH)
C-15-51- 2 .. P79	Unnamed P #2-079 (1003-0027)	pH	Towbridge Brook and tribs (1003-0070)	Acid/Base (pH)
C-15-51-2 .. P80	Unnamed P #2-080 (1003-0028)	pH		
C-15-51-2 .. P81	Marsh Pond (1003-0020)	pH		
SLC-32-6-31-P87	Mountain Pond (0902-0019)	pH	Mountain Ponds (0902-0108)	Acid/Base (pH)
<i>a This segment is also nominally referred to as "Spring Pond" and as assessment unit "1701-002" across documents and listings</i>				
<i>b This segment was listed for this impairment in 2016</i>				
<i>c This segment was listed for "pathogens" in 2016 and the parameter was updated to "fecal coliform"</i>				

Delisted Waterbody/Pollutant Combinations

New York delisted thirty-two (32)^{4, 5} waterbody/pollutant combinations from the New York 2016 303(d) list. EPA regulations, at 40 C.F.R. § 130.7(b)(6), require states to submit, together with their list, documentation in support of determinations not to list waters. Pursuant to 40 C.F.R. § 130.7(b)(6)(iv), when requested by EPA, a state “must demonstrate good cause for not including a water or waters on the list.” EPA, throughout its review of the New York 2018 303(d) list, requested from New York, a demonstration of good cause for not including waterbody/pollutant combinations previously included on the 303(d) list. Consistent with 40 C.F.R. § 130.7(b), good cause, as described in EPA’s Integrated Report Guidance⁶, may be based on the following:

- The assessment and interpretation of more recent or more accurate data in the record demonstrate that the applicable water quality standard(s) is met;
- The results of more sophisticated water quality modeling demonstrate that the applicable water quality standard(s) is met;
- Flaws in the original analysis of data and information led to the segment being incorrectly listed;
- A demonstration, pursuant to 40 C.F.R. § 130.7(b)(1)(ii), that there are effluent limitations required by state or local authorities that are more stringent than technology-based effluent limitations, required by the CWA, and that these more stringent effluent limitations will result in the attainment of water quality standards for the pollutant causing the impairment;
- A demonstration, pursuant to 40 C.F.R. § 130.7(b)(1)(iii), that there are other pollution control requirements required by state, local, or federal authority that will result in attainment of water quality standards for a specific pollutant(s) within a reasonable amount of time (i.e., Integrated Report Category 4b);
- A demonstration that the failure to meet an applicable water quality standard is not caused by a pollutant, but instead is caused by other types of pollution where the pollution does not result from a pollutant and a TMDL is not required (i.e., Integrated Report Category 4c);
- Documentation that the state included on a previous section 303(d) list, an impaired segment that was not required to be listed by EPA regulations, e.g., segments where there is no pollutant associated with the impairment (i.e., Integrated Report Category 4c);
- Approval or establishment by EPA of a TMDL since the last 303(d) list;
- A state inappropriately listed a segment that is within Indian country, as defined in 18 U.S.C. section 1151; or
- Other relevant information that supports the decision not to include the segment on the 303(d) list.

⁴ Including: a) waterbody/pollutant combinations the state included in Enclosure #3: “2018 Delisted Waters NOT Included on the 2018 303(d) list”, and b) additional waterbody/pollutant combinations that do not appear anywhere in New York’s submission.

⁵ Excluding: a) waterbody/pollutant combinations noted in Enclosure 3 but parameter or assessment unit changes did not result in the waterbody/pollutant combination being delisted, and b) all waterbody/pollutant combinations for which further action by EPA is pending.

⁶ *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (July 29, 2005).

1. New York appropriately delisted fourteen (14) waterbody/pollutant combinations from the New York 2018 303(d) list based on one of the following reasons:

A. Approval or establishment by EPA of a TMDL since the New York 2016 303(d) list.

New York delisted seven (7) waterbody/pollutant combinations due to the completion and EPA approval of TMDLs (see Table 3).

Table 3: Delisted due to approved TMDLs

<u>NYS index number</u>	<u>Waterbody (Assessment Unit)</u>	<u>Pollutant/Cause</u>
Pa 63 13 23 P131	Bear Lake (0202-0008)	Phosphorus
SL- 1 (portion 6a)/P3Sb	Stark fall Reservoir (0903-0073)	Mercury
SL-1- 65-26-P54	Willis Pond (0903-0105)	Mercury
M- 240-82-63-19-9-P589	Engleville Pond (1202- 0009)	Phosphorus
H-240- 180 (portion 4)/P79 9	Hinkley Reservoir (1203-0022)	Mercury
H- 31- P44 - 23 - P59 6 - P62a	Lake Carmel (1302-0006)	Phosphorus
11- 31-P44-23-P59- 5-P61a	Palmer Lake (1302-0103)	Phosphorus

B. New York’s assessment and interpretation of more recent or more accurate data demonstrate that the applicable water quality standard is met.

New York delisted four (4) waterbody/pollutant combinations due to its reassessment of data and/or information where that data and/or information indicate water quality standard attainment (see Table 4).

Table 4: Delisted due to more recent/accurate data

<u>NYS index number</u>	<u>Waterbody (Assessment Unit)</u>	<u>Pollutant/Cause</u>
Ont 66-12-12- P154-3	Ley Creek and tribs (0702-0001)	Cyanide
Ont 19- 81-58-25- P874	Brook Trout Lake (0801-0009)	Acid/Base (pH)
H-391 (portion 3)/P374	Schroon Lake (1104-0002)	PCBs
1-1- 240-227	Ninemile Creek, Lower, and tribs (1201-0014)	Pathogens

C. The original basis for listing was incorrect.

New York delisted three (3) waterbody/pollutant combinations due to incorrect, insufficient or inadequate data and/or information to determine the water quality status at the time of listing, and therefore determined that the original basis for listing was incorrect (see Table 5).

Table 5: Delisted because the original basis for listing was incorrect.

<u>NYS index number</u>	<u>Waterbody (Assessment Unit)</u>	<u>Pollutant/Cause</u>
Ont 117 - 14	Red Creek and Tribs (0402-0024)	Unknown (biol impacts)
Ont 117 - 57	Jaycox Creek and tribs (0402-0064)	Phosphorus
Ont 117- 57	Jaycox Creek and tribs (0402-0064)	Silt/Sediment

2. New York improperly delisted seventeen (17) waterbody/pollutant combinations from the 2016 303(d) list that EPA has determined meet 303(d) listing requirements because data and information indicate that the applicable water quality standard is not met:

- A. New York delisted four (4) waterbody/pollutant combinations from the New York 2016 303(d) list where data and/or information indicate that the applicable water quality criterion for odors is not met.

New York’s narrative water quality criterion for odors is: “none in amounts that will adversely affect the taste, color or odor thereof, or impair the waters for their best uses.” In New York’s response to comments document, New York explains that its basis for delisting these waters is that “there is no quantitative data available to support any of these listings.” Despite this general statement about data representativeness, New York did not discuss, identify or address the specific data that was used to support the original listing. New York’s previous determination that these waters were impaired by odors, as evidenced by their inclusion on the New York 2016 303(d) list as impaired by odors, is information indicating that the applicable water quality standard for odors is not met in these waters.

New York did not provide new data and/or information indicating that the applicable water quality standard for odors is met in these waters (see Table 6), nor did it provide an updated analysis of the data and/or information that supported its earlier determination that odors are present “in amounts that ...adversely affect the taste, color or odor thereof” or “impair the waters for their best uses.” Because data and/or information indicates that the applicable water quality standard for odors is not met and New York did not demonstrate good cause for not including these waterbody/pollutant combinations on the list, EPA is partially disapproving the New York 2018 303(d) list with respect to these waters.

Table 6: Waters for which the applicable water quality criterion for odors is not met.

<i>Waterbody (Assessment Unit)</i>	<i>Pollutant/Cause</i>
Hendrix Creek (1701-0006)	Odors
Gowanus Canal (1701-0011)	Odors
Paerdegat Basin (1701-0363)	Odors
Hutchinson River, Lower, and tribs (1702-0003)	Odors

- B. New York delisted nine (9) waterbody/pollutant combinations from the New York 2016 303(d) list where data and/or information indicate that the applicable water quality criterion/criteria for floatables is/are not met.

New York states, in its response to comments document, that “NYSDEC currently has two narrative WQS that can be associated with the generic term ‘Floatables:’ ‘oil and floating substances’ and ‘garbage, cinders, ashes, oils, sludge and other refuse.’ New York’s water quality criterion for “oil and floating substances” is “no residue attributable to sewage, industrial wastes or other wastes, nor visible oil film nor globules of grease.” New York’s water quality criterion for “garbage, cinders, ashes, oils, sludge and other refuse” is “none in any amounts.” New York explains that its basis for delisting these waters is “a lack of data” to support these listings (see Table 7). Despite this general statement about data, New York did not discuss, identify or address the specific data that was used to support the original listing. New York’s previous determination that these waterbody/pollutant combinations were impaired by floatables, as evidenced by their inclusion on the New York 2016 303(d) list as impaired by floatables, is information indicating that the applicable water quality standard(s) for floatables is not met.

New York did not provide new data and/or information indicating that the applicable water quality standard for floatables is met, nor did it provide an updated analysis of the data and/or information that supported its earlier determination that the waters were impaired for floatables. Because data and/or information indicates that the applicable water quality standard(s) for floatables is/are not met and New York did not demonstrate good cause for not including these waterbody/pollutant combinations on the list, EPA is partially disapproving the New York 2018 303(d) list, with respect to these waters.

Table 7: Waters for which the applicable water quality criterion/criteria for floatables is/are not met.

<i>NYS index number</i>	<i>Waterbody (Assessment Unit)</i>	<i>Pollutant/Cause</i>
(MW3.1) LIS (portion 2a)	Larchmont Harbor (1702-0116)	Floatables
(MW3.3) LIS (portion 2b)	Mamaroneck Harbor (1702-0125)	Floatables
(MW3.4) LIS (portion 2c)	Milton Harbor/Lower Blind Brook (1702-0063)	Floatables
H-240 (portion 13)	Mohawk River, Main Stem (1201-0010)	Floatables
H-240 (portion 14)	Mohawk River, Main Stem (1201-0094)	Floatables
(MW3.6) LIS (portion 2d)	Port Chester Harbor (1702-0260)	Floatables
H-4	Saw Mill River (1301-0007)	Floatables
H-240 (portion 12b)	Utica Harbor (1201-0228)	Floatables
(MW3.1) LIS (portion 1b)	New Rochelle Harbor (1702-0259)*	Floatables
* New York did not include, anywhere in its 2018 submission, this waterbody/pollutant combination that was on the 2016 303(d) list through EPA disapproval		

C. New York delisted two (2) waters (Spring Creek and Paerdegat Basin) from the New York 2016 303(d) list impaired by Low Dissolved Oxygen.

New York’s applicable water quality criterion for dissolved oxygen in these waters is that dissolved oxygen “shall not be less than 4.0 mg/L at any time.” In New York’s response to comments document, New York explains that its basis for delisting these waters is that there is: (1) 98% compliance between 2015-2017 with the 4.0 mg/L D.O. standard in Spring Creek, and (2) 99% compliance between 2014-2017 with the 4.0 mg/L D.O. standard in Paerdegat Basin. Because New York’s applicable water quality criterion for dissolved oxygen is expressed as “*shall* not be less than 4.0 mg/L *at any time*” (emphasis added), the criterion must be met 100% of the time. Any other interpretation would not be consistent with the expression of this criterion. In other words, percent attainment rules are not appropriately applied if their application is not consistent with the manner in which the applicable water quality criteria are expressed.⁷ Because data and/or information indicate that the applicable water quality criterion for dissolved oxygen in these waters is not met and New York did not demonstrate good cause for not including

⁷ Use of a percent rule for interpreting water quality data is usually not consistent with water quality criteria expressed either as: 1) instantaneous maxima not to be surpassed at any time, or 2) average concentrations over specified times. In the case of “instantaneous maxima (or minima) never to occur” criteria, use of a percent rule typically leads to the belief that segment conditions are equal or better than specified by the criteria. *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (July 29, 2005).

these waterbody/pollutant combinations on the list, EPA is partially disapproving the New York 2018 303(d) list (see Table 8).

Table 8: Waters for which the applicable water quality criterion for Dissolved Oxygen is not met.

<i>NYS index number</i>	<i>Waterbody (Assessment Unit)</i>	<i>Pollutant/Cause</i>
(MW8.5b) JB-249	Spring Creek (1701-0361)	Oxygen Demand
(MW8.6) JB-250a	Paerdegat Basin (1701-0363)	Oxygen Demand

- D. New York delisted one (1) water (Owasco Lake) from the New York 2016 303(d) list where data and/or information indicate the presence of harmful algal blooms (HABs), which in turn, indicates that an applicable water quality standard is not met. New York did not demonstrate that no pollutant is causing the impairment and inappropriately moved this waterbody/pollutant combination to Integrated Report Category 4c

Data and/or information for this water indicate that an applicable water quality standard is not met. The presence of algal blooms and harmful algal blooms indicate that the applicable primary contact designated use of this water is not met. Data and/or information indicate impairment of the narrative nutrients criterion is also likely⁸. In 2008, New York added Owasco Lake to the 303(d) list for “nutrients.” On the 2016 303(d) list, New York changed the Cause/Pollutant to “cause unknown” with a footnote stating:

“This listing is the result [of] frequent harmful algal blooms (HABs) that impair recreational use (and threaten water supply use) in the Lake. Listings for waterbodies impaired due to HABs are not listed with HABs as the cause/pollutant because HABs is not a pollutant that can be regulated with a TMDL. More typically, listings of waterbodies impaired by HABs identify nutrients as the cause/pollutant however in this case the levels of phosphorus and chlorophyll-*a* in the open lake waters are low and indicate that something other than nutrient eutrophication is driving the occurrence of HABs. Therefore until there is a better understanding of the cause(s) of HABs in this situation, the most appropriate place to list this waterbody is Part 3b with the cause/pollutant noted as *Unknown*.”

In New York’s 2016 303(d) list submission, New York identified “Oswaso Lake (0706-0009) for Unknown” as one of the waterbody/pollutant combinations for TMDL/Restoration Strategy Development through 2022.

⁸ New York’s narrative nutrients criterion, at 6 NYCRR §703.2, is “[n]one in amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages.”

New York delisted this water in this (2018) listing cycle by removing it from the 303(d) list and including it in Integrated Report Category 4c for “algal/weed growth.” In its response to comments document, New York acknowledges that Owasco Lake is impaired due to Harmful Algal Blooms (HABs) and states that the blooms cannot be explicitly attributed to phosphorus. The State explains that data collected in 2017-2018 indicate that phosphorus concentrations in the lake are less than 15 ug/L, which is less than New York’s guidance value for phosphorus (numeric translation for phosphorus of New York’s narrative nutrients criterion) of 20 ug/L. New York further states that it, “considers HABs to be a condition of pollution, not a pollutant, and appropriate for placement in IR Category 4c.”

With respect to the appropriate use of Integrated Report Category 4c, “[s]egments should be placed in Category 4c when the states demonstrates that the failure to meet an applicable water quality standard is not caused by a pollutant, but instead is caused by other types of pollution....Pollution, as defined by the CWA, is ‘the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water’ (section 502(19)). In some cases, the pollution is caused by the presence of a pollutant and a TMDL is required. In other cases, pollution does not result from a pollutant and a TMDL is not required. States should schedule these segments for monitoring to confirm that there continues to be no pollutant associated with the failure to meet the water quality standard and to support water quality management actions necessary to address the cause(s) of the impairment.”⁹

EPA also notes that a segment must be included on the 303(d) list even when the cause is not known. “[I]f a designated use is not supported and the segment is impaired or threatened, the fact that the specific pollutant is not known does not provide a basis for excluding the segment from Category 5. These segments must be listed unless the state can demonstrate that no pollutant(s) causes or contributes to the impairment. Prior to establishing a TMDL for such segments the pollutant causing the impairment must be identified. If the assessment of the new data and information demonstrates that the use impairment is not associated with a pollutant and is attributable only to other types of pollution (e.g., flow or habitat alteration) the segment may be placed into Category 4c.”¹⁰

NYSDEC’s HABs Program includes HABs notification, archiving, and monitoring research. NYSDEC assigns a HABs status to waterbodies on a four-level scale (see table below) based on one or a combination of HABs reports and/or monitoring data. NYSDEC’s Suspicious Algal Bloom Report form allows anyone to submit information including photographic evidence of HABs occurrences throughout the State using an online platform¹¹. Photographic evidence is evaluated to characterize the bloom and the bloom is assigned either a status of “Suspicious Bloom” or “Confirmed Bloom.” Water sampling and monitoring data, where available, can be used to assign a status of “Confirmed Bloom” (C) or a “Confirmed Bloom with High Toxins Bloom” (HT).

⁹ Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act (July 29, 2005)

¹⁰ Id.

¹¹ See “Report it” at- <https://www.dec.ny.gov/chemical/77118.html>

NYSDEC HABs status levels “C” and “HT” can be assigned based on the presence of microcystins (see Table 9).

*Table 9: Description of the four levels of Harmful Algal Bloom (HAB) status that NYSDEC assigns under its HABs Program.**

Bloom Status & Description
<p>No Bloom</p> <p>Applied to a HAB report evaluated by NYSDEC HABs Program or NYSDOH staff to have a low likelihood of a cyanobacteria bloom present. At least one of the following criteria must be met: (1) visual evidence is not consistent with a cyanobacteria bloom; (2) Blue Green (BG) chlorophyll levels $\leq 25 \mu\text{g/L}$; (3) microscopic indication that sample is not dominated by cyanobacteria or not present in bloom-like density; or (4) total microcystins $\leq 4 \mu\text{g/L}$ (only in absence of the previous criteria being met).</p> <p>Suspicious Bloom (S)</p> <p>Applied to any HAB report received that NYSDEC or NYSDOH staff are unable to determine conclusively as a cyanobacteria bloom because photos were not provided, or the report was otherwise inconclusive.</p> <p>Confirmed Bloom (C)</p> <p>Applied to a HAB report received from the public or a trained participant in a HAB reporting program that NYSDEC or NYSDOH staff determine, based on digital photographs or a descriptive field report, is a cyanobacteria bloom; OR HAB report received by NYSDEC with associated laboratory analytical results from a sampled bloom, that meet the following criteria:</p> <ul style="list-style-type: none"> (1) BG chlorophyll levels $\geq 25 \mu\text{g/L}$; (2) microscopic confirmation that majority of sample is cyanobacteria and in absence of chlorophyll value, at a density indicative of bloom conditions; (3) only in absence of the previous criteria being met: total microcystins $\geq 4 \mu\text{g/L}$ but $< 20 \mu\text{g/L}$ and digital photographs or a descriptive field report. <p>Confirmed with High Toxins Bloom (HT)</p> <p>Applied to a HAB report received by NYSDEC with associated laboratory analytical results from a sampled bloom, that meet the criteria of a Confirmed Bloom AND any of the following criteria:</p> <ul style="list-style-type: none"> (1) total microcystins $\geq 20 \mu\text{g/L}$ (shoreline samples only); (2) total microcystins $\geq 10 \mu\text{g/L}$ (open water samples only); (3) DEC and NYSDOH staff determine potential risk of exposure to anatoxin or another cyanotoxin.
<p>*Adapted from NYSDEC Harmful Algal Blooms (HABs) Program Guide – version 3: https://www.dec.ny.gov/docs/water_pdf/habsprogramguide.pdf</p>

According to information submitted by the Cayuga County Water Quality Management Agency during the NYSDEC’s data solicitation for the 2016 303(d) list, water purveyors who purchased water from the Town of Owasco and the City of Auburn have been cited by the Health Department for disinfection by-product (DBP) violations due to chlorine reacting to excessive organic material present in the source water. Also, blue green algae were seen in the City of Auburn’s intake to its treatment plant, residents have been

complaining about the taste and odor of their water and there were several beach closures in 2015 due to algae blooms. Additionally, for HABs reports for Owasco Lake during August 2013 and October 2017, NYSDEC applied the bloom status level: “Confirmed with High Toxins Bloom.”

As mentioned above, New York acknowledges and has determined that Owasco Lake is experiencing “frequent harmful algal blooms (HABs) that impair recreational use (and threaten water supply use).” Although New York determined that Owasco Lake is impaired, New York has not demonstrated that no pollutant(s) is causing or contributing to the impairment. Harmful algal blooms (HABs) and hypoxia are primarily a result of high nutrient loading.¹² Notwithstanding whether the phosphorus guidance value is the appropriate endpoint for an attainment decision, only accounting for phosphorus may be an overly simplistic model for managing algal blooms.¹³ Because data and/or information indicates that the applicable primary contact recreation designated use in this water is not met and New York did not demonstrate an adequate basis for not including this waterbody/pollutant combination on the list, EPA is partially disapproving the New York 2018 303(d) list (see Table 10). Data and/or information indicate impairment of the narrative nutrients criterion is also likely.

Table 10: Water for which the applicable primary contact recreation designated use is not met.

<i>NYS index number</i>	<i>Waterbody (Assessment Unit)</i>	<i>Pollutant/Cause</i>
Ont 66 -12-43-P212	Owasco Lake (0706-0009) ¹⁴	HABs/ algal

- E. New York delisted one (1) waterbody/pollutant combination from the New York 2016 303(d) list for an assessment unit under 6.4 acres from the New York 2016 303(d) list where data and/or information indicate that the applicable water quality criterion for dissolved oxygen is not met.

All waters in the state that are “waters of the United States” (as defined in 40 C.F.R. § 122.2) should be assessed and reported on regardless of size.¹⁵ New York resegmented the assessment units in Appendix A of the New York 2016 303(d) list by combining those smaller assessment units into other assessment units, except for the assessment unit for this waterbody/pollutant combination, and New York delisted this waterbody/pollutant combination from the New York 2016 303(d) list. Since New York previously determined that this water was impaired by dissolved oxygen and it was on the New York 2016 303(d) list as impaired by dissolved oxygen, this information indicates that the applicable water

¹² https://data.pnnl.gov/sites/default/files/2020-09/IHTM_Workshop_Report_FINAL_0.pdf

¹³ <https://www.epa.gov/sites/default/files/documents/nandpfactsheet.pdf>

¹⁴ New York State Priority Waterbody List (PWL) factsheet is found at <https://www.dec.ny.gov/data/WQP/PWL/0706-0009.pdf>

¹⁵ Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act (July 29, 2005)

quality standard for dissolved oxygen is not met. New York did not provide new data indicating that the applicable water quality standard for dissolved oxygen is met. Because data and/or information indicates that the applicable water quality criterion for dissolved oxygen in these waters is not met and New York did not demonstrate good cause for not including this waterbody/pollutant combination on the list, EPA is partially disapproving the New York 2018 303(d) list (see Table 11).

Table 11: Water delisted where data and information indicate that the applicable water quality criterion for dissolved oxygen is not met.

<i>Old Assessment Unit</i>	<i>2016 Pollutant/Cause</i>	<i>New Assessment Unit</i>
Milburn Pond (1701-0053)	Low dissolved oxygen	No new segment specified.

Impaired waters not included on the New York 2016 or 2018 303(d) list

1. New York did not include, on the New York 2018 303(d) list, one (1) water (Jones Inlet/Jones Bay) that EPA listed on the New York 2014 303(d) list where data and/or information indicate that the applicable narrative water quality criterion for nutrients is not met. New York did not demonstrate that no pollutant is causing the impairment and inappropriately included this water in Integrated Report Category 4c for “algal/weed growth.”

As noted, New York’s narrative nutrients criterion is “[n]one in amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages.” By e-mail, dated February 19, 2014, EPA sent NYSDEC data and/or information indicating nutrient impairment in Jones Inlet/Jones Bay. This e-mail included links to several articles about excess amounts of algae washing up on the shores of Point Lookout Beach; photographs of the algae; and blogs where boaters, fishers and visitors of Jones Inlet/Jones Bay complained about the algae problem. The presence of algal growth is often an indicator of excess nutrients.¹⁶ Based on the photographs, articles and citizen complaints, EPA determined that the narrative criterion for nutrients is not met in Jones Inlet/Jones Bay. Though the algal growth in Jones Inlet/Jones Bay may be caused by nitrogen originating from sources in the adjacent waters of the Western Bays, the narrative water quality criterion for nutrients is nevertheless not met in Jones Inlet/Jones Bay. Because NYSDEC did not include this water on the New York 2014 303(d) list,

¹⁶ *Guiding Principles on an Optional Approach for Developing and Implementing a Numeric Nutrient Criterion that Integrates Causal and Response Parameters*, (Sept. 2013), <https://www.epa.gov/sites/default/files/2013-09/documents/guiding-principles.pdf> (characterizing algal growth as one of the variables “most indicative of nutrient pollution in streams” and an “ideal response indicator” of excess nutrients.)

EPA partially disapproved New York's list and added this water to the New York 2014 303(d) list.

On February 23, 2015, EPA published a notice in the Federal Register (Federal Register, Vol. 80, No. 35, pp. 9456-9457) announcing the partial approval/partial disapproval of the New York 2014 303(d) list and opening a public comment period on EPA's addition of Jones Inlet/Jones Bay to the New York 2014 303(d) list. After considering all submissions and in accordance with the Clean Water Act and EPA regulations and guidance, EPA confirmed that its addition of Jones Inlet/Jones Bay was appropriate. On April 23, 2015, EPA transmitted this listing to NYSDEC.

New York did not include this waterbody/pollutant combination on the New York 2016 and 2018 303(d) lists. As noted, New York is required to incorporate all waterbody/pollutant combinations that EPA adds to the 303(d) list into its water quality management plan and include them on all future lists, unless, after assembling and evaluating all existing and readily available water quality-related data and information, New York reasonably concludes that the waters are not impaired or otherwise do not require a TMDL, submits documentation to EPA in support of a determination not to list a water(s), and EPA approves a subsequent list submission. New York did not submit any new data and/or information along with its 2016 list indicating that the narrative nutrients criterion in Jones Inlet/Jones Bay is met, however, because EPA, in error, approved the 2016 303(d) list without this waterbody/pollutant combination, this waterbody/pollutant combination is no longer on the New York 303(d) list.

New York, in its response to comments document for the 2018 303(d) list, states that the “ulva impacts observed are due to excessive macroalgae growth in adjacent waters of the Western Bays, where nitrogen concentrations are 4-16 times higher than those found in Jones Inlet/Bay. Excess ulva growing in the nitrogen-rich Western Bays then washes into Jones Inlet/Bay due to the prevailing currents....NYSDEC concluded that this waterbody is impaired by algal/weed growth, but not nitrogen. The ulva conditions in Jones Inlet/Bay is due to pollution, not a pollutant, and therefore more appropriately recorded in Integrated Report Category 4c.”

Noted above and repeated here, with respect to the appropriate use of Integrated Report Category 4c, “[s]egments should be placed in Category 4c when the states demonstrates that the failure to meet an applicable water quality standard is not caused by a pollutant, but instead is caused by other types of pollution....Pollution, as defined by the CWA, is ‘the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water’ (section 502(19)). In some cases, the pollution is caused by the presence of a pollutant and a TMDL is required. In other cases, pollution does not result from a pollutant and a TMDL is not required. States should schedule these segments for monitoring to confirm that there continues to be no pollutant associated

with the failure to meet the water quality standard and to support water quality management actions necessary to address the cause(s) of the impairment.”¹⁷

A segment must be included on the 303(d) list even when the cause is not known. “[I]f a designated use is not supported and the segment is impaired or threatened, the fact that the specific pollutant is not known does not provide a basis for excluding the segment from Category 5. These segments must be listed unless the state can demonstrate that no pollutant(s) causes or contribute to the impairment. Prior to establishing a TMDL for such segments the pollutant causing the impairment must be identified. If the assessment of the new data and information demonstrates that the use impairment is not associated with a pollutant and is attributable only to other types of pollution (e.g., flow or habitat alteration) the segment may be placed into Category 4c.”¹⁸

Although New York determined that Jones Inlet/Jones Bay is impaired, New York, however, has not demonstrated that no pollutant(s) is causing or contributing to the impairment. Only accounting for nitrogen may be an overly simplistic model for managing algal blooms.¹⁹ Placement in Integrated Report Category 4c, therefore, is not appropriate. Also, as noted in EPA’s response to comments document after it added this waterbody/pollutant combination to the New York 2014 303(d) list,

“[S]ection 303(d) of the CWA requires a water to be listed if an applicable water quality standard for the water is not met. The water must be listed whether or not the source of the impairment originates within the waterbody itself. States must list water quality-limited waters regardless of the type, location and/or level of knowledge of the source. See, EPA’s *National Clarifying Guidance For 1998 State and Territory Clean Water Act Section 303(d) Listing Decisions* (August 17, 1997). Further, despite the fact that bottom cover of *Ulva* is low in most of the area, the algae accumulating along the shoreline causes impairment of recreational use.”^{20, 21}

Because data and/or information indicate that the narrative nutrients criterion for Jones Inlet/Jones Bay is not met and New York did not demonstrate good cause for not including this waterbody/pollutant combination on the list, EPA is partially disapproving the New York 2018 303(d) list (see Table 12). The presence of algal blooms also indicates that the applicable primary contact designated use of this water is not met.

¹⁷ *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (July 29, 2005)

¹⁸ *Id.*

¹⁹ <https://www.epa.gov/sites/default/files/documents/nandpfactsheet.pdf>

²⁰ Response Summary for EPA’s Proposed Listing of Jones Inlet/Jones Bay on New York’s 2014 303(d) list (April 23, 2015)

²¹ EPA notes that New York appropriately includes Reynolds Channel East (1701-0215) and West (1701-0216) on the 2018 303(d) list. New York, in footnote 12 on its 2018 303(d) list, states, “the impact of the transported macroalgae [from adjacent waters] into the Channel and deposits along the shore result in the impairment of uses....[N]itrogen levels in the Channel will be addressed through the Western Bays Nitrogen TMDL and other efforts to restore water quality and coastal habitat in Hempstead Bay and other adjacent waters.”

Table 12: Jones Inlet/Jones Bay assessment unit impaired by Nutrients.

<i>NYS index number</i>	<i>Waterbody (Assessment Unit)</i>	<i>Pollutant/Cause</i>
(MW8.3) MDB (portion 7) JI/JB	Jones Inlet/Jones Bay (1701-0373)	Nutrients

2. New York did not include three (3) waters on the New York 2018 303(d) list where data and information indicate the presence of HABs, which in turn, indicates that an applicable water quality standard is not met. New York did not demonstrate that no pollutant is causing the impairment and inappropriately included these waters in Integrated Report Category 4c.

Data and/or information for these waters indicate that an applicable water quality standard is not met. The presence of algal blooms and harmful algal blooms indicate that the applicable primary contact designated use of these waters is not met. Data and/or information indicate impairment of the narrative nutrients criterion is also likely.²² New York, in its response to comments document, states that these waters “experience impacts from HABs. However, none of the subject waterbodies exceed the total phosphorus guidance value of 20 ug/L that NYSDEC uses to protect aesthetic conditions that could affect the best uses of primary and secondary contact recreation. Since this threshold is not exceeded in these waters, NYSDEC considers the observed HABs to be a condition of pollution, not a pollutant, and appropriate for placement in IR Category 4c.” NYSDEC, under its HABs Program, has assigned a bloom status level of “Confirmed” and “Confirmed with High Toxins” to each of these waters (see Table 9 for New York’s definition of HABs status levels).

Again, with respect to the appropriate use of Integrated Report Category 4c, segments should be placed in Category 4c when the states demonstrates that the failure to meet an applicable water quality standard is not caused by a pollutant, but instead is caused by other types of pollution. New York acknowledges that there are HABs in these waters and has determined that these waters are impaired, however, New York has not demonstrated that no pollutant(s) is causing or contributing to the impairment. Notwithstanding whether the phosphorus guidance value is the appropriate endpoint for attainment decision, only accounting for phosphorus may be an overly simplistic model for managing algal blooms.²³ As noted, the fact that the specific pollutant is not known does not provide a basis for excluding the segment from the 303(d) list. Because data and/or information indicates that the applicable primary contact recreation designated use in these waters is not met and New York did not demonstrate good cause for not including these waterbody/pollutant combinations on the list,

²² New York’s narrative nutrients criterion, at 6 NYCRR §703.2, is “[n]one in amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages.”

²³ <https://www.epa.gov/sites/default/files/documents/nandpfactsheet.pdf>

EPA is partially disapproving the New York 2018 303(d) list (see Table 13). Data and/or information indicate impairment of the narrative nutrients criterion is also likely.

Table 13: Waters where the applicable primary contact recreation designated use is not met and the associated HAB status assigned pursuant to New York’s HABs Program

<u>Period of record from DEC HABs Program</u>	<u>Waterbody Name</u>	<u>Bloom Type(s) *</u>	<u>Location in New York’s 2018 Submission</u>	<u>Pollutant / Cause</u>
September 2012 to October 2016	Cazenovia Lake (0703-0021) ²⁴	C & HT	4c, “Algal/ Weed Growth”	HABs/ Algal
April 2015 to October 2017	Canandaigua Lake (0704-0001) ²⁵	C & HT	4c, “Algal/ Weed Growth”	HABs/ Algal
June 2012 to October 2017	Roaring Brook Lake (1301-0037) ²⁶	C & HT	4c, “Algal/ Weed Growth”	HABs/ Algal
* Data source: https://data.ny.gov/Energy-Environment/Harmful-Algal-Blooms-by-Waterbody-Summary-Beginnin/95my-wjim				

3. New York did not include on the 2018 303(d) list, one (1) water (Lake Como) where data and/or information indicate the presence of HABs, which in turn, indicates that an applicable water quality standard is not met. New York did not include Lake Como on the 303(d) list or any Integrated Report Category.

Data and/or information for this water indicates that an applicable water quality standard is not met. The presence of algal blooms and harmful algal blooms indicate that the applicable primary contact designated use of this water is not met. Data and/or information indicate impairment of the narrative nutrients criterion is also likely.²⁷ As mentioned by EPA in its comments on the 2018 Draft 303(d) list, “[d]uring the 2016 listing cycle, the EPA was aware that Lake Como (0705-0029) is impaired due to the presence of harmful algal blooms in 2015. According to information sent to the NYSDEC during the [2016] data solicitation period, the Cayuga County Health Department, on multiple occasions, advised the public to avoid swimming or otherwise expose themselves to the lake due to the blooms. This indicates that the narrative nutrient standard....is not being met.”²⁸

In its response to comments document for the New York 2018 303(d) list, New York states that “phosphorus data...nears the threshold for impairment, but the other trophic state metrics

²⁴ New York State Priority Waterbody List (PWL) factsheet is found at <https://www.dec.ny.gov/data/WQP/PWL/0703-0021.pdf>.

²⁵ New York State Priority Waterbody List (PWL) factsheet is found at <https://www.dec.ny.gov/data/WQP/PWL/0704-0001.pdf>.

²⁶ New York State Priority Waterbody List (PWL) factsheet is found at <https://www.dec.ny.gov/data/WQP/PWL/1301-0037.pdf>.

²⁷ New York’s narrative nutrients criterion, at 6 NYCRR §703.2, is “[n]one in amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages.”

²⁸ Comments on the Draft New York State 2018 303(d) List: U.S. Environmental Protection Agency (EPA), Region 2 to New York State Department of Environmental Conservation (NYSDEC) (August 6, 2018)

indicate phosphorus in not causing the HABs....[and the] phosphorus guidance value (numeric translator of the narrative Phosphorus WQS) of 20 ug/L [is met].” It further states that “NYSDEC considers HABs to be a condition of pollution, not a pollutant, and appropriate for placement in IR Category 4c.” New York, nevertheless, has not included this water anywhere in its submission. NYSDEC, under its HABs Program, has assigned a bloom status level of “Confirmed” and “Confirmed with High Toxins” to this water (see Table 9 for New York’s definition of HABs status levels).

New York acknowledges that there are HABs in this lake and has determined that the water is impaired, however, New York did not demonstrate that no pollutant(s) is causing or contributing to the impairment. Notwithstanding whether the phosphorus guidance value is the appropriate endpoint for attainment decision, only accounting for phosphorus may be an overly simplistic model for managing algal blooms.²⁹ Again, as noted, the fact that the specific pollutant is not known does not provide a basis for excluding the segment from the 303(d) list. Because there is data and/or information that indicate that the applicable primary contact recreation designated use in this water is not met and New York did not demonstrate good cause for not including this waterbody/pollutant combinations on the list, EPA is partially disapproving the New York 2018 303(d) list (see Table 14). Data and/or information indicate impairment of the narrative nutrients criteria is also likely.

Table 14: The applicable primary contact recreation designated use in Lake Como is not met and the associated HAB status assigned pursuant to New York’s HABs Program

<u>Period of record from DEC HABs Program</u>	<u>Waterbody Name</u>	<u>Bloom Type(s)*</u>	<u>Location in New York’s 2018 Submission</u>	<u>Pollutant /Cause</u>
July 2013 to October 2015	Lake Como (0705-0029) ³⁰	C & HT	Not included on 2018 list**	HABs/ Algal
* Data source: https://data.ny.gov/Energy-Environment/Harmful-Algal-Blooms-by-Waterbody-Summary-Beginnin/95my-wijm ** As per NYSDEC communication and the NYSDEC response to comments, NYSDEC intended to include this water in Integrated Report Category 4c.				

²⁹ <https://www.epa.gov/sites/default/files/documents/nandpfactsheet.pdf>

³⁰ New York State Priority Waterbody List (PWL) factsheet is found at <https://www.dec.ny.gov/data/WQP/PWL/0705-0029.pdf>.

Waters New York Did Not Include on the New York 2018 303(d) List Where Further Action is Pending by EPA

Waters for which further action is pending by EPA maintain the listing status under the New York 2016 303(d) list, until action is taken by EPA on these waters.

1. New York did not include on the New York 2018 303(d) list, five (5) waters designated for shellfishing that are not certified for (or are otherwise closed to) shellfishing.

In a memorandum dated October 24, 2000, EPA included recommendations on the use of fish and shellfish consumption advisories and certain shellfish growing area classifications in determining attainment of water quality standards and listing impaired waterbodies under Section 303(d) of the CWA. In this memorandum, EPA indicates that “[it] generally believes that fish and shellfish consumption advisories and certain shellfish growing area classifications based on waterbody specific information demonstrate impairment of CWA section 101(a) ‘fishable’ uses. This applies to fish and shellfish consumption advisories and certain shellfish area classifications for all pollutants that constitute potential risks to human health, regardless of the source of the pollutant.”³¹

The National Shellfish Sanitation Program (NSSP)³² is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC)³³ for the sanitary control of shellfish produced and sold for human consumption. The purpose of the NSSP is to promote and improve the sanitation of shellfish (oysters, clams, mussels and scallops) moving in interstate commerce through federal/state cooperation and uniformity of State shellfish programs. The NSSP Guide for the Control of Molluscan Shellfish (2017 Model Ordinance)³⁴ is intended to provide guidance and represents the FDA’s current thinking on the safe and sanitary control of the growing, processing, and shipping of molluscan shellfish for human consumption. Through a state’s participation in the NSSP and membership in the ISSC, the state agrees to enforce the Model Ordinance as the criteria which are minimally necessary for the sanitary control of molluscan shellfish. New York both participates in the NSSP and is a founding member of the ISSC.³⁵

³¹ <https://www.epa.gov/sites/production/files/2015-01/documents/standards-shellfish.pdf>

³² <https://www.fda.gov/food/federalstate-food-programs/national-shellfish-sanitation-program-nssp>

³³ The ISSC was formed in 1982 to foster and promote shellfish sanitation through the cooperation of state and federal regulatory agencies, the shellfish industry, and the academic community. FDA has a formal Memorandum of Understanding (MOU) with the ISSC that outlines each other's responsibilities.

³⁴ <https://www.fda.gov/media/117080/download>

³⁵ <https://www.dec.ny.gov/outdoor/9161.html>

Under the NSSP, states can classify waterbodies designated for shellfishing use as either: “Approved”³⁶; “Conditionally Approved”³⁷; “Restricted”³⁸; “Conditionally Restricted”³⁹; and/or “Prohibited.” In particular, under NSSP, “Prohibited” means a classification used to identify a growing area where the harvest of shellstock for any purpose, except depletion, gathering of seed or nursery culture for aquaculture, is not permitted.

New York does not classify waterbodies designated for shellfishing consistent with the NSSP classifications. New York, rather, classifies waters designated for shellfishing as: “Certified” (open); “Seasonally uncertified”⁴⁰; “Uncertified” (closed) and “Temporary Emergency Closures.”⁴¹ When shellfishing areas are closed for administrative reasons, New York classifies these waters as “Uncertified” (also known as administrative closures). These administrative closures are not based on water quality data. The 5 waters on Table 15 of this document are classified as Class SA⁴² waters and New York has classified them as “Uncertified.”

Further action is pending by EPA on these 5 waters. EPA is committed to working with New York to determine whether these waters are impaired and if so, are appropriate for inclusion on the 303(d) list. Pursuant to 40 C.F.R. § 130.7(b)(6)(iv), EPA requests that New York demonstrate good cause for not including these waters on the list. In particular, EPA requests that New York explain, in detail, why these waters are closed to shellfishing, specifically, the “administrative reasons” leading to their status as “Uncertified,” and why New York believes that these waters, that are designated for shellfishing yet closed to shellfishing, should not be included on the New York 303(d) list.

³⁶ “Approved” means a classification used to identify a growing area where harvest for direct marketing is allowed.

³⁷ “Conditionally Approved” means a classification used to identify a growing area which meets the criteria for the approved classification except under certain conditions described in a management plan.

³⁸ “Restricted” means a classification used to identify a growing area where harvesting shall be by special license and the shellstock, following harvest, is subjected to a suitable and effective treatment process through relaying or depuration.

³⁹ “Conditionally Restricted” means a classification used to identify a growing area that meets the criteria for the restricted classification except under certain conditions described in a management plan.

⁴⁰ <https://www.dec.ny.gov/outdoor/103483.html>

⁴¹ <https://www.dec.ny.gov/outdoor/7765.html>

⁴² The best usages of Class SA waters are shellfishing for market purposes, primary and secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish and wildlife propagation and survival (see New York’s 6 NYCRR 701.10).

Table 15: Waters designated for shellfishing for which further action is pending by EPA.

<u>Waterbody (Assessment Unit)</u>	<u>2016 List Status (Pollutant)</u>
Spring Pond/Lake (1701-0230) *	Impaired, 5 (Pathogens)
Dering Harbor (1701-0050)	4a (Pathogens)
Budds Pond (1701-0234)	4a (Pathogens)
Wickham Creek and tribs (1701-0378)	Impaired, 5 (Pathogens)
West Harbor, Fishers Island (1702-0046)	4a (Pathogens)
* Spring Pond (1701-0230) is a Class SA waterbody and is listed for Pathogens on the New York 2016 303(d) list. New York resegmented Spring Pond/Lake (1701-0230) during the 2018 cycle and it is now part of the Upper Yaphank Lake (1701-0323) segment. Upper Yaphank Lake (1701-0323) is a Class B(T) waterbody as per the 2018 New York 303(d) list submission. Spring Pond (1701-0230) was listed for Chlordane in 2016 and in 2018 Upper Yaphank Lake (1701-0323) was listed for Chlordane; Upper Yaphank Lake (1701-0323) was not for Chlordane in 2016.	

2. New York did not include seventy-two (72) impaired waters on the New York 2018 303(d) list and instead included them in Integrated Report Category 4c.

The following table summarizes the causes/pollutants of 72 waters that New York included on Integrated Report Category 4c based on a determination that these waters are impaired and development of a TMDL is not necessary (Appendix A: Impaired waters on Integrated Report Category 4c for which further action is pending by EPA (72) of this document tabulates all 72 4c waterbody/pollutant combinations):

Table 16: Summary of the number of impaired waters grouped by causes/pollutants on Integrated Report Category 4c for which further action is pending by EPA.

<u>Causes/Pollutants</u>	<u>Number of waters</u>
Algal/Weed Growth	69*
Aquatic vegetation	1
Aquatic weeds	1
Odors	1
* New York has identified on Integrated Report Category 4c, a total of 74 waters for “algal/ weed growth.” Described earlier in this document, EPA determined that five (5) of these waterbodies on Integrated Report Category 4c waters for “algal/ weed growth” meet 303(d) listing requirements and are therefore excluded from the waters for which further action is pending by EPA.	

Noted above and repeated here, with respect to the appropriate use of Integrated Report Category 4c, “[s]egments should be placed in Category 4c when the states demonstrates that the failure to meet an applicable water quality standard is not caused by a pollutant, but instead is caused by other types of pollution. . . .Pollution, as defined by the CWA, is ‘the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water’ (section 502(19)). In some cases, the pollution is caused by the presence of a pollutant and a TMDL is required. In other cases, pollution does not result from a

pollutant and a TMDL is not required. States should schedule these segments for monitoring to confirm that there continues to be no pollutant associated with the failure to meet the water quality standard and to support water quality management actions necessary to address the cause(s) of the impairment.”⁴³

Also noted, a segment must be included on the 303(d) list even when the cause is not known. “[I]f a designated use is not supported and the segment is impaired or threatened, the fact that the specific pollutant is not known does not provide a basis for excluding the segment from Category 5. These segments must be listed unless the state can demonstrate that no pollutant(s) causes or contribute to the impairment. Prior to establishing a TMDL for such segments, the pollutant causing the impairment must be identified. If the assessment of the new data and information demonstrates that the use impairment is not associated with a pollutant and is attributable only to other types of pollution (e.g., flow or habitat alteration), the segment may be placed into Category 4c.”⁴⁴

Further action is pending by EPA on these 72 waters identified on Integrated Report Category 4c to determine if these impaired waters are in the appropriate category and whether there is good cause for not including these waters on the 303(d) list (see Table 16). EPA is committed to working with New York to determine whether any of these waterbody/pollutant combinations are appropriate for inclusion on the 303(d) list. Pursuant to 40 C.F.R. § 130.7(b)(6)(iv), EPA requests that New York demonstrate good cause for not including these waters on the list, including a demonstration that any failure to meet water quality standards is not caused by a pollutant, but instead caused by other types of pollution.

3. [New York changed the segmentation of sixty-five \(65\) assessment units that were on the New York 2016 303\(d\) list by incorporating them into another assessment unit and did not include the new assessment unit on the New York 2018 303\(d\) list](#)

New York changed the segmentation of seventy-five (75) assessment units by resegmenting and incorporating assessment units less than 6.4 acres into another assessment unit. The impairments of ten of these assessment units were taken on by the new assessment unit (see Table 2 above). Sixty-five (65) of the assessment units were smaller, impaired waterbodies that comprised less than 20% of the total area of the new (i.e., combined) assessment unit and were not listed by New York, amounting to a total of 65 assessment units (see Appendix B: Resegmented assessment units for which further action is pending by EPA).

⁴³ *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (July 29, 2005)

⁴⁴ *Id.*

All waters in the state that are “waters of the United States” (as defined in 40 C.F.R. § 122.2) should be assessed and reported on regardless of size.⁴⁵ While there is no single approach to the development of a segmentation methodology, EPA does provide some guidance which is summarized here.⁴⁶ It is important that the selected segmentation approach be consistent with the state’s water quality standards and be capable of providing a spatial scale that is adequate to characterize the water quality standards attainment status of the segment. Segments should not span more than one water quality standard. The individual size of segments will vary based upon assessment methodologies. Segments should, however, be larger than a sampling station but small enough to represent a homogenous standard attainment within individual segments.

Further action is pending by EPA on the 65 waterbody/pollutant combinations identified on the New York 2016 303(d) list that New York resegmented and did not include the assessment unit to which the water was combined, on the New York 2018 303(d) list (see Appendix B: Resegmented assessment units for which further action is pending by EPA). EPA is committed to working with New York to determine whether any of these waterbody/pollutant combinations are appropriate for inclusion on the 303(d) list. Pursuant to 40 C.F.R. § 130.7(b)(6)(iv), EPA requests that New York demonstrate good cause for not including these waters on the list.

4. EPA will work with the State to assess data and/or information to determine if fourteen (14) waterbody/pollutant combinations that New York did not include on the 2018 303(d) list or delisted from the 2016 303(d) list do or do not meet the applicable standards, with respect to pathogens

Further action is pending by EPA on these waterbody/pollutant combinations for the 14 waters in *Table 17*. EPA will work with New York to determine whether these waters are impaired and if so, are appropriate for inclusion on the New York 303(d) list. See note in the table below regarding Spring Creek, which continues to be on the New York 303(d) list pending further action by EPA. Pursuant to 40 C.F.R. § 130.7(b)(6)(iv), EPA requests that New York demonstrate good cause for not including these waters on the list.

⁴⁵ *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (July 29, 2005)

⁴⁶ *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (July 29, 2005)

Table 17: Class I and SD waters for which further action is pending by EPA.

Assessment Unit ID	Waterbody name	6 NYCRR	Class	Pollutant/Cause
1301-0006	Hudson River, Class I	864.6-1	I	Pathogens
1701-0001	Shellbank Basin	891.6-14	I	Pathogens
1701-0011	Gowanus Canal	890.6-7	SD	Pathogens
1701-0183	Newark Bay	890.6-14	SD	Pathogens
1701-0184	Kill Van Kull	890.6-15	SD	Pathogens
1701-0185	Erie Basin	890.6-6.1	SD	Pathogens
1701-0362	Fresh Creek	891.6-17	I	Pathogens
1701-0363	Paerdegat Basin	891.6-17	I	Pathogens
1702-0004	Harlem River	890.6-56	I	Pathogens
		890.6-56.1	I	Pathogens
1702-0010	East River, Upper	890.6-53	I	Pathogens
		935.6-1	I	
		935.6-2	I	
1702-0011	East River, Lower	890.6-52	I	Pathogens
		890.6-53	I	
1702-0012	Westchester Creek	935.6-47	I	Pathogens
1702-0115	Minor Tribs to Upper East River	935.6-1	I	Pathogens
		935.6-2	I	
		935.6-4	SD	
1701-0361*	Spring Creek	891.6-16	I	Pathogens

*New York delisted Spring Creek (1701-0361) as impaired by Pathogens, from the New York 2016 303(d) list, however, because further action is pending by EPA on this waterbody/pollutant combination, Spring Creek continues to be on the 303(d) list for Pathogens, because EPA approved the inclusion of this waterbody/pollutant combination on the New York 2016 303(d) list.

Additional EPA Comments on New York's Submission

1. New York, in its response to comments document, states that “USEPA recognizes NYC’s floatable control efforts on their Trash Free Water’s website as an acceptable TMDL substitute.” EPA notes that it does not indicate on its website that NYC’s floatable control efforts are “an acceptable TMDL substitute,” rather, EPA points to NYC and its 2015 Municipal Separate Storm Sewer (MS4) permit as an example of a “jurisdiction actively addressing trash through.....stormwater permits.”⁴⁷ Additionally, EPA does not indicate on its website that NYC’s floatable control efforts will result in meeting New York’s applicable water quality standards for floatables. Moreover, the NYC MS4 permit applies to the outfalls of the MS4 system and therefore, protects the receiving waters to which the outfalls discharge. NYC is not serviced wholly by an MS4 system and therefore all of the waters surrounding NYC are not protected by the MS4 permit.
2. Referring to EPA’s comment regarding New York’s listing of certain impaired waters by groups of pollutants (e.g., “pathogens,” “other toxics,” “pesticides”), New York, in its response to comments document, stated “the data required to split out the grouped pollutants into individual impairments supported by an underlying WQS is not immediately available to NYSDEC....” Pursuant to Section 303(d) of the CWA, states must identify waters on the list for which “any water quality standard applicable to such waters” is not met. Pursuant to 40 C.F.R. § 130.7(b)(4), states “shall identify the pollutants causing or expected to cause violations of applicable water quality standards.” EPA expects New York to assemble and evaluate all existing and readily available data and information to identify the specific pollutant(s) causing these impairments that will in turn, better identify the applicable water quality standard(s) that is not met.
3. EPA reiterates a comment it submitted on New York’s Draft 2018 303(d) list. Pursuant to 40 C.F.R. § 130.7(d), “each State shall submit to EPA lists required under paragraph (b) on April 1 on every even-numbered year” and CWA Section 305(b)(1) requires states to prepare and submit to EPA a water quality 305(b) report on April 1, 1976, and biennially thereafter. States and territories, therefore, are required to submit both the 303(d) list and 305(b) report on April 1 of every even numbered year. New York is one of the few remaining states to submit the 303(d) list for EPA review and subsequently submit its 305(b) report after EPA’s review and approval deadline for the list.

Nearly all 56 states and territories submit a biennial Integrated Report (consolidated CWA Section 303(d) list and 305(b) report) to EPA. EPA provides assistance to state and territorial partners in the data management and migration of a state or territory’s Integrated Report into the Assessment, Total Maximum Daily Load (TMDL) Tracking and Implementation System (ATTAINS), which is an online database for accessing information about the Nation’s surface waters. As stated in EPA’s 2018 Integrated Report Guidance, “EPA expects all IR

⁴⁷ <https://www.epa.gov/trash-free-waters/clean-water-act-and-trash-free-waters>

[Integrated Report] submissions (both attribute and geospatial data) will be submitted electronically to the EPA via ATTAINS. This transition to an electronic IR submission allows the EPA and states to process information in a timelier manner for use in the *National Water Quality Inventory Report to Congress*; the variable portion of the Section 106 grant allocation formula; water quality listing decisions; and analyses supporting actions to protect and restore waters and track progress toward that goal.”⁴⁸ As NYSDEC and EPA work together to migrate the CWA Section 303(d) list and 305(b) report into the electronic ATTAINS database, EPA recommends future submissions of an electronic Integrated Report. Through one consolidated 303(d) list and 305(b) report, NYSDEC will benefit not only from a more streamlined process that minimizes the redundancy of reporting and reduces inconsistency in 303(d) and 305(b) assessment determinations, but also from a timelier submittal for EPA, a record of listing decisions and the ability to easily track waters from cycle to cycle (including a basis for previously listed waters and waterbody restoration), and provides transparency for all environmental partners and the public. EPA looks forward to continuing this collaboration with NYSDEC using the ATTAINS database and encourages electronic Integrated Report submissions for the future listing cycles.

4. For the waters listed on Part 3a of New York’s 2018 303(d) list that are impaired by “Low D.O.” and for which footnote 8 refers, New York states, “[m]orphology and other natural conditions may contribute to periodic dissolved oxygen (D.O.) depletion at lower depths in this water. However, bottom water conditions are not necessarily representative of the waterbody as a whole and the aquatic life best use within this waterbody are fully supported.” New York’s water quality criteria for dissolved oxygen applicable to these waters do not contain an exception to meeting the criteria where natural conditions exist and cause an exceedance. Pursuant to 40 C.F.R. §131.11(a), states must adopt water quality criteria to protect the designated use. Criteria, therefore, are set at levels to protect the designated use of the water, and when criteria are not met, the designate use is not met.⁴⁹
5. New York, in its response to comments document, states,” Flanders Bay, West/Lower Sawmill Creek (1701-0254), Meetinghouse/Terry Creek and tribs (1701-0256), and Peconic River, Lower and tidal tribs (1701-0259) are Class SC waters and should no longer be included as IR Category 4a waters for pathogen impairments. The subject waters had coverage under the shellfishing TMDLs, because they were adjacent Class SA waters impaired for pathogens.....The waters have been removed from IR Category 4a and assigned to IR 3 until updated monitoring data is available.” EPA notes that these waters were not covered by the shellfishing TMDLs to which NYSDEC refers, however, EPA supports NYSDEC’s commitment to obtaining updated monitoring data to adequately assess whether these waters are impaired for pathogens.

⁴⁸ Information Concerning 2018 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions (December 22, 2017)

⁴⁹ EPA’s 303(d) listing regulations at 40 C.F.R. § 130.7(b)(3) define a “water quality standard applicable to such waters” and “applicable water quality standards” as “those water quality standards established under 303 of the Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements;” *Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* (July 21, 2003)

6. On the New York 2018 303(d) list, New York states, “Section 303(d) of the Act also requires states to identify Impaired Waters, where specific designated uses are not fully supported, and for which the state must consider the development of a Total Maximum Daily Load (TMDL) *or other strategy to reduce the input of the specific pollutant(s) that restrict waterbody uses, in order to restore and protect such uses*” (emphasis added). EPA notes that TMDLs are required for all waters on the 303(d) list. Through the requirement, under Section 303(d) of the CWA, to rank waters on the 303(d) list for TMDL development, states have the discretion to determine when it will develop a TMDL for each water. In making this determination, it is reasonable for states to consider other restoration strategies, if any, that are underway or planned for each water.
7. New York, in footnote 5 of the 2018 303(d) list, states, “[i]n addition to the contaminants for which there are specific Health Advisories for the consumption of fish, other contaminants have also been identified as contributing to the fish consumption impairment. These substances may include mercury, dioxins/furan, PAHs, pesticides and other heavy metals.” Pursuant to Section 303(d) of the CWA, states must identify waters on the list for which “any water quality standard applicable to such waters” is not met. Pursuant to 40 C.F.R. § 130.7(b)(4), states “shall identify the pollutants causing or expected to cause violations of applicable water quality standards.” EPA expects New York to assemble and evaluate all existing and readily available data and information to identify the specific pollutant(s) causing these impairments that will in turn, better identify the applicable water quality standard(s) that is not met, including mercury, dioxins/furan, PAHs and the specific pesticides and other heavy metals.
8. New York, on Part 2b of the 2018 303(d) list, “Multiple Segment/Categorical Waterbody Segments Impaired due to Fish Consumption Advisories,” states, “[d]esignation of waters as impaired for fish consumption and inclusion in the Section 303(d) List is based on New York State Department of Health advisories contained in its annual Chemicals in Sportfish and Game publications. Where available water quality data for a waterbody is in conflict with these health advisories, decisions regarding listing will reflect the health advisories. Because the specific extent and conditions of the health advisories are reported more precisely/ frequently through these advisories than through the Section 303(d) List, the health advisories provide better delineated and more timely information regarding fish consumption recommendations for the waters of New York than does the Section 303(d) List.”

Water quality data indicating that an applicable water quality standard is not met is existing and readily available water quality data or information. EPA expects, therefore, that where there is water quality data that indicates that an applicable water quality standard is not met but there is no health advisory for that water, New York will include the water on its 303(d) list, unless it reasonably concludes that a water is not impaired or otherwise does not require a TMDL, and New York submits documentation to EPA in support of a determination not to list the water.

9. New York, on Part 2c of the 2018 303(d) list, “Multiple Segment/Categorical Waterbody Segments Impaired due to Shellfishing Restrictions,” states, “[d]esignation of waters as impaired for shellfishing use and inclusion in the Section 303(d) List is based on shellfishing certifications issued by NYSDEC Shellfisheries Program per 6 NYCRR Part 47.3 and the National Shellfish Sanitation Program. Where available water quality data for a waterbody is in conflict with its shellfishing certification status, decisions regarding listing will reflect the shellfishing certification status. Because the specific extent and conditions of the closures are reported more precisely/frequently through the shellfishing programs than through the Section 303(d) List, these programs provide better delineated and more timely information regarding shell fishing certification in the waters of New York than docs the Section 303(d) List.”

Water quality data indicating that an applicable water quality standard is not met is existing and readily available water quality data or information. EPA expects, therefore, that where there is water quality data that indicates that an applicable water quality standard is not met but the water is not closed to shellfishing, New York will include the water on its 303(d) list, unless it reasonably concludes that a water is not impaired or otherwise does not require a TMDL, and New York submits documentation to EPA in support of a determination not to list the water.

Priority Ranking

EPA regulations codify Section 303(d)(1)(A) of the CWA, which requires states to establish a priority ranking for listed waters. EPA regulations, at 40 C.F.R. § 130.7(b)(4), require states to prioritize waters on their Section 303(d) lists for TMDL development, and to identify those waterbody segments targeted for TMDL development in the next two years. In prioritizing and targeting waters, states must take into account the severity of the pollution and the uses of the waters. See, Section 303(d)(1)(A) of the CWA. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreation, economic and aesthetic importance of particular waters, degree of public interest and support and state or national policies and priorities. See, *57 Federal Register* 33040, 33045 (July 24, 1992) and EPA's 1991 Guidance.

The State has identified the below six waterbody/pollutant combinations for “TMDL/restoration strategy scheduled for development in 2018” and 14 waterbody/pollutant combinations for “TMDL/restoration strategy scheduled for development....over longer term, through 2022.” See, New York 2018 303(d) list. These two sets of waters are considered high priority for TMDL/restoration strategy development, while the remaining waters on the 303(d) list have been ranked as medium or low priority for TMDL/restoration strategy development.

Six Waterbody/Pollutant Combinations Identified for TMDL/Restoration Strategy Development through 2018:

- Honeoye Lake (0402-0032) for Phosphorus⁵⁰
- Honeoye Lake (0402-0032) for Low D.O.
- Conesus Lake (0402-0004) for Phosphorus⁵¹
- Conesus Lake (0402-0004) for Low D.O.
- Tidal Tribs to West Moriches Bay (1701-0312) for Nitrogen⁵²
- Tidal Tribs to West Moriches Bay (1701-0312) for Low D.O.

EPA notes that Honeoye Lake (0402-0032) and Conesus Lake (0402-0004) are included on the New York 2018 303(d) list as impaired for phosphorus, however, a TMDL for phosphorus for Honeoye Lake (0402-0032) and Conesus Lake (0402-0004) was approved by EPA on August 15, 2019. These TMDLs were approved after June 20, 2018, the date NYSDEC provided notice of availability of the draft New York 2018 303(d) list. EPA expects NYSDEC to delist these waterbody/pollutant combinations in the 2020 303(d) listing cycle due to approval or establishment by EPA of a TMDL (Integrated Report Category 4a).

14 Waterbody/Pollutant Combinations Identified for TMDL/Restoration Strategy Development through 2022:

- Owasco Inlet, Upper and tribs (0706-0014) for Nutrients
- Cayuga Lake, Southern End (0705-0040) for Phosphorus
- Steele Creek tribs (1201-0197) for Phosphorus
- Ballou, Nail Creeks (1201-0203) for Phosphorus
- Ballou, Nail Creeks (1201-0203) for Low D.O.
- Great South Bay, East (1701-0039) for Nitrogen⁵³
- Great South Bay, East (1701-0039) for Low D.O.⁵⁴
- Great South Bay, Middle (1701-0040) for Nitrogen⁵⁵
- Great South Bay, Middle (1701-0040) for Low D.O.⁵⁶
- Great South Bay, West (1701-0173) for Nitrogen⁵⁷
- Great South Bay, West (1701-0173) for Low D.O.⁵⁸
- Lake Ronkonkoma (1701-0020) for Fecal Coliform
- Lake Ronkonkoma (1701-0020) for Phosphorus
- Hempstead Bay, Broad Channel (1701-0032) for Nitrogen

⁵⁰ Total Maximum Daily Load (TMDL) for Phosphorus in Conesus Lake, Livingston County, NY (dated August 2019)

⁵¹ Total Maximum Daily Load (TMDL) for Phosphorus in Honeoye Lake, Ontario County, NY (dated August 2019)

⁵² Alternative Restoration Plan for Suffolk County Nitrogen Impaired Waters (ARP)” (no date), submitted to EPA on April 20, 2021. Accepted by EPA under the 303(d) Program Vision on June 10, 2021.

⁵³ Alternative Restoration Plan for Suffolk County Nitrogen Impaired Waters (ARP) (no date), submitted to EPA on April 20, 2021. Accepted by EPA under the 303(d) Program Vision on June 10, 2021.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

According to NYSDEC's Listing Methodology documents, the State has satisfied the Section 303(d) requirement to take into account the severity of the pollution and the uses to be made of such waters in establishing its priority ranking.⁵⁹ The State's identification of high priority waters is also based on factors such as the current understanding of the water quality problem and sources, the availability of the necessary data to develop a TMDL and the value (i.e., presumed effectiveness) of a TMDL toward addressing the problem, and other factors.⁶⁰ To provide a more general sense of these factors and their impact on priorities, and the timing of TMDL development, the waters on the 303(d) list are segregated into sub-parts, as described on page 5 of this document. These sub-parts allow for clarification of widely differing conditions, limitations and other circumstances that affect the scheduling and development of TMDLs or other strategies.

Consistent with EPA's Vision for the 303(d) program⁶¹, EPA also welcomes the identification of any specific waterbody/pollutant combinations targeted for alternative restoration strategies. While a TMDL will remain the most dominant program analytic and informational tool to address impairments, EPA recognizes that other tools or alternative strategies may be more immediately beneficial or practicable to achieve water quality standards under certain circumstances. Should New York proceed to address an impairment through an alternative restoration strategy that does not meet the threshold for delisting to Integrated Report Category 4b, that waterbody/pollutant combination must remain on the 303(d) list until water quality standards are attained. If water quality standards are not fully attained through the alternative approach, development of the TMDL would remain necessary. In addition, the State identified waters for potential TMDL development over the next two years.

Public Participation

The NYSDEC public participation process for developing its 2018 303(d) list included public solicitation of data, requests for comment on the methods document and requests for comments on the draft New York 2018 303(d) list. NYSDEC announced the availability of the draft New York 2018 303(d) list in the State's June 20, 2018 Environmental Notice Bulletin (ENB) and provided a public comment period, which ended on August 6, 2018. Following the conclusion of the comment period, the State provided copies of all comments and responses received during the data solicitation and public comment periods to EPA.

⁵⁹ The New York State Consolidated Assessment and Listing Methodology- Section 305(b) Assessment Methodology (March 2017); The New York State Consolidated Assessment and Listing Methodology - Section 303(d) Listing Methodology (March 2015); VISION APPROACH to implement the Clean Water Act 303(d) Program and Clean Water Planning (December 2015)- https://www.dec.ny.gov/docs/water_pdf/dowvision.pdf

⁶⁰ Id.

⁶¹ *A Long-Term Vision for Assessment, Restoration, and Protection under the Clean Water Act Section 303(d) Program* (December 5, 2013).

As part of its action on a state's 303(d) list, EPA reviews a state's responses to public comments but does not take legal action on the responses directly and considers them only insofar as they provide a record for the state's listing determinations. EPA has reviewed the public comments received and NYSDEC's responses, and concludes that—except for those issues related to EPA's disapproval and further action pending decisions discussed above—the State adequately addressed the issues that commenters raised about the State's listing obligations under section 303(d) and EPA's implementing regulations. In addition, please refer to the section above regarding "Additional EPA Comments on New York's Submission," for further EPA reactions to the State's response to comments.

Appendix A: Impaired waters on Integrated Report Category 4c for which further action is pending by EPA (72)

<u>NYS index number</u>	<u>Waterbody (Assessment Unit)</u>	<u>Pollutant/Cause</u>
Ont 158..E-23-P152	Java Lake (0104-0004)	Algal/Weed Growth
Pa-63-13- 4-P122 (portion 1)	Chautauqua Lake, South (0202-0020)	Algal/Weed Growth
Pa-63-13- 4-P122 (portion 2)	Chautauqua Lake, North (0202-0072)	Algal/Weed Growth
Pa-63-13-23-P131	Bear Lake (0201-0003)	Algal/Weed Growth
Pa-63-13-P133	Lower Cassadaga Lake (0202-0003)	Algal/Weed Growth
Pa-63-13-P133-3-P134	Middle Cassadaga Lake (0202-0002)	Algal/Weed Growth
Pa-84- 2-P153	Findley Lake (0202-0004)	Algal/Weed Growth
Ont 74/P76	Little Sodus Bay (0302-0017)	Algal/Weed Growth
Ont 75/P77	Blind Sodus Bay (0302-0021)	Algal/Weed Growth
Ont 122-P153	Buck Pond (0301-0017)	Algal/Weed Growth
Ont 123-P154	Long Pond (0301-0015)	Algal/Weed Growth
Ont 123-P154-2-P155	Cranberry Pond (0301-0016)	Algal/Weed Growth
Ont 117- 27-P57	Honeoye Lake (0402-0032)	Algal/Weed Growth
Ont 117- 40-P67	Conesus Lake (0402-0004)	Algal/Weed Growth
Ont 117- 70-P115	Silver Lake (0403-0002)	Algal/Weed Growth
Pa 3-58-20-P51	Lake Salubria (0502-0011)	Algal/Weed Growth
Pa 3-58-31- 7-P66	Smith Pond (0502-0012)	Algal/Weed Growth
SR- 44-14-27 (portion 1)/P35a	Whitney Point Lake/Reservoir (0602-0004)	Algal/Weed Growth
Ont 66- 3-P9	Lake Neatahwanta (0701-0018)	Algal/Weed Growth
Ont 66-12-P296 (portion 4)	Cayuga Lake, Southern End (0705-0040)	Algal/Weed Growth
SL-25- 7/P1	Black Lake Outlet/Black Lake (0906-0001)	Algal/Weed Growth

C (portion 4)	Lake Champlain, South Lake (1000-0004)	Algal/Weed Growth
C (portion 5)	Lake Champlain, South Bay (1005-0014)	Algal/Weed Growth
H-301-17-P79	Cossayuna Lake (1103-0002)	Algal/Weed Growth
H-240- 11-P496/P498	Ann Lee (Shakers) Pond, Stump Pond (1201-0096)	Algal/Weed Growth
H-240- 22-P519	Collins Lake (1201-0077)	Algal/Weed Growth
H-240- 82- 63-19-9-P589	Engleville Pond (1202-0009)	Algal/Weed Growth
H-240- 82-104-P629	Summit Lake (1202-0014)	Algal/Weed Growth
H-240-187-	Steele Creek tribs (1201-0197)	Algal/Weed Growth
H- 31-P44-14-P50- 2- P50a	Lake Shenorock (1302-0083)	Algal/Weed Growth
H- 31-P44-17- 5-P57a	Lake Lincolndale (1302-0089)	Algal/Weed Growth
H-31-P44-23-P59-2-4-P59b	Lake Casse (1302-0100)	Algal/Weed Growth
H- 31-P44-23-P59- 6-P62..P62a	Lake Carmel (1302-0006)	Algal/Weed Growth
H- 31-P44-24- P89-10-P93	Peach Lake (1302-0004)	Algal/Weed Growth
H- 31-P44-35-P109- 6-13-P115a	Truesdale Lake (1302-0054)	Algal/Weed Growth
H- 31-P44-54-P128a	Teatown Lake (1302-0150)	Algal/Weed Growth
H- 49a-P160	Lake Meahagh (1301-0053)	Algal/Weed Growth
H- 55- 1-P165	Wallace Pond (1301-0140)	Algal/Weed Growth
H- 55- 8-P175	Oscawana Lake (1301-0035)	Algal/Weed Growth
H- 55-11-P179	Lake Mohegan (1301-0149)	Algal/Weed Growth
H-188-P902	Robinson Pond (1308-0003)	Algal/Weed Growth
H-193-29-P950a	Basic Creek Reservoir (1309-0001)	Algal/Weed Growth
H-202-P8f	Sleepy Hollow Lake (1301-0059)	Algal/Weed Growth
H-204- 2- 7-P24	Kinderhook Lake (1310-0002)	Algal/Weed Growth

H-204- 2- 7-P34	Nassau Lake (1310-0001)	Algal/Weed Growth
H-204- 3- 8-32-P108a	Copake Lake (1310-0014)	Algal/Weed Growth
H-221- 4-P270- 1- 9-P276a	Duane Lake (1311-0006)	Algal/Weed Growth
D-71-10- 6-P388,P389	Fly Pond, Deer Lake (1404-0038)	Algal/Weed Growth
NJ- 1/P977a-13- P984,P984a	Congers Lake, Swartout Lake (1501-0019)	Algal/Weed Growth
NJ-P1026	Greenwood Lake (1501-0001)	Algal/Weed Growth
Conn 15-12-21-P1134	Rudd Pond (1601-0001)	Algal/Weed Growth
(MW1.2) SI..P1039,P1051..1053	Grasmere, Arbutus and Wolfes Lakes (1701-0357)	Algal/Weed Growth
(MW5.3) LIS-62-P296	Millers Pond (1702-0013)	Algal/Weed Growth
(MW6.2) GB..FB-112 (port 1)	Peconic River, Lower, and tidal tribs (1701-0259)	Algal/Weed Growth
(MW6.3a) GB..FB-RB	Reeves Bay and tidal tribs (1701-0272)	Algal/Weed Growth
(MW7.1b) AO-SB	Shinnecock Bay (and Inlet) (1701-0033)	Algal/Weed Growth
(MW7.1c) AO-QB	Quantuck Bay (1701-0042)	Algal/Weed Growth
(MW7.2a) AO-MB (portion 1)	Moriches Bay, East (1701-0305)	Algal/Weed Growth
(MW7.2a) AO-MB (portion 2)	Moriches Bay, West (1701-0038)	Algal/Weed Growth
(MW7.3) AO-GSB (portion 1)	Great South Bay, East (1701-0039)	Algal/Weed Growth
(MW7.3) AO-GSB (portion 2)	Great South Bay, Middle (1701-0040)	Algal/Weed Growth
(MW7.3) AO-GSB (portion 3)	Great South Bay, West (1701-0173)	Algal/Weed Growth
(MW7.7) AO-GSB-193..P304	Lake Ronkonkoma (1701-0020)	Algal/Weed Growth
(MW8.3) MDB-RC (portion 1)	Reynolds Channel, East (1701-0215)	Algal/Weed Growth
(MW8.4) HB	Hempstead Bay (1701-0032)	Algal/Weed Growth
(MW8.4) HB (portion 4) HIC	Hog Island Channel (1701-0020)	Algal/Weed Growth
(MW8.4a) HB-232 thru 237	LI Tidal Tribs to Hempstead Bay (1701-0218)	Algal/Weed Growth

(MW8.4) HB-RC (portion 2)	Reynolds Channel, West (1701-0216)	Algal/Weed Growth
(MW8.4a) HB-236	Woodmere Channel (1701-0219)	Algal/Weed Growth
H- 95-10- 1b-P345g	Hillside Lake (1304-0001)	Aquatic vegetation
Ont 108/P113- 3-33-P143	Hundred Acre Pond (0302-0034)	Aquatic weeds
Ont 66-11-P26-37- 6- 2	Limestone Creek, Lower, and minor tribs (0703-0008)	Odors

Appendix B: Resegmented assessment units for which further action is pending by EPA (65)

<i>NYS index number</i>	<i>2016 Assessment Unit</i>	<i>2016 Pollutant/Cause</i>	<i>2018 Assessment Unit</i>
SLC-32-P 170a	Unnamed P #3-170 (0902-0009)	pH	Mud Pd, Long Pd, Little Clear Pd (0902-0005)*
--	Ridders Pond (1701-0176)	Chlordane	Lake Success (1702-0139)
Ont 19-94-1-P918	Doe Pond (0801-0161)	pH	Long Lake Outlet/Cummings Creek, and tribs (0801-0415)
Ont 19- 40-P449-2-P450.P453	Mirror Pond (0801-0146)	pH	Francis Lake segment (0801-0192)
Ont 19- 90-5-P909	Poplar Pond (0801-0078)	pH	Mile Brook and tribs (0801-0408)
Ont 19- 40- 3-P409	Unnamed P #4-409 (0801-0142)	pH	Murmur Creek and tribs (0801-0219)
Ont 19- 40-17-P437	Unnamed P #4-437 (0801-0143)	pH	Beaver River, Middle, and tribs (0801-0278)
SLC-29-13-P31	Owlshead Pond (0902-0016)	pH	Roaring Brook, Salmon River Trib (0902-0077)
SLC-29-13..P32	Childs Pond (0902-0013)	pH	Roaring Brook, Salmon River Trib (0902-0077)
SLC-29-21 -7-... P40a	Razorback Pond (0902-0017)	pH	Duck Pond (0902-0081)
SLC-29-P050-3-1 -P57	South Duck Pond (0902-0018)	pH	Mountain View Lake, Indian Lake (0902-0030)
SLC-32-52-1 5-P179a-5-7-P186	Ward Pond (0902-0020)	pH	South Star Mountain, Baker, McColloms Ponds (0902-0145)
SLC-32-69- 6-P226	Hidden Pond (0902-0022)	pH	Madawaska Pond, Quebec Pond (0902-0153)
SLC-32-86-P252	Unnamed P #3-252 (0902-0023)	pH	Black Pond, Long Pond (0905-0156)
SLC-32-P257a-P264-P265 .. P268a	Mikes Pond (0902-0024)	pH	Rolley. Little Long, Bear, Bickford Ponds (0902-0007)
SL-1- 58-1-P37	Unnamed P #6-037 (0903-0034)	pH	McCuen Pond, Duck Pond (0903-0102)
SL-1- 65-26-2-P52	Spring Pond (0903-0035)	pH	Minor Lakes Trib to Jordan River (0903-0107)
SL- 1- 65-26-3-P55	Unnamed P #6-055 (0903-0036)	pH	Minor Lakes Trib to Jordan River (0903-0107)
SL-1- 65-P60	Roberts Pond (0903-0030)	pH	Leonard Pond, Crooked Lake (0903-0109)
SL-1-74-1-P063 P64	Preston Pond (0903-0031)	pH	Leonard Pond, Crooked Lake (0903-0109)
SL-1- 77-P67	Unnamed P #6-067 (0903-0026)	pH	Chandler Pond (0903-0110)
SL- 1-109- 4-1-P80-2-P81	Buck Pond (0903-0037)	pH	Eagle Crag Lake (0903-0114)
SL-1-P089-1-2-P94	Unnamed P #6-094 (0903-0023)	pH	Lead Pond (0903-0118)
SL- 1-P089-1...P107	Unnamed P #6-107 (0903-0038)	pH	Heavens Pond (0903-0121)

SL- 1-P109-11-2-P118-3-P121	Hedgehog Pond (0903-0020)	pH	Bog Stream and tribs (0903-0215)
SL-1-P109-11-2-P118-P122	Unnamed P #6-122 (0903-0039)	pH	Bog Stream and tribs (0903-0215)
SL-1-P109-11-2-P118-P125a	Unnamed P #6-125a (0903-0040)	pH	Bog Stream and tribs (0903-0215)
SL-1-P109-11-2 ... P141	Unnamed P #6-141 (0903-0018)	pH	Otter Pond, Loon Ponds (0903-0141)
SL-1-162-P235-2-P238 .. P240	Hunter Pond (0903-0042)	pH	Lower, Upper Preston Ponds (0903-0178)
SL- 2-59-32-1-P353	Egg Pond (0904-0003)	pH	Sampson Pond (0904-0060)
SL- 2-59-32-2-1-P355	Cartridge Hills P (0904-0004)	pH	Jocks Pond (0904-0064)
SL-25-73-40-P235	Unnamed P #4-235 (0905-0076)	pH	Little Deer Pond (0905-0167)
SL-25-101-P279	Readway Pond (0905-0043)	pH	Star Lake (0905-0180)
SL-25-101-24-P282	Unnamed P #4-282 (0905-0077)	pH	Shingle Pond (0905-0175)
SL-25-101-34-2-P297	Unnamed P #4-297 (0905-0079)	pH	Heath Pond, Muskrat Pond (0905-0182)
SL-25-P309-9-P317	Little Dog Pond (0905-0039)	pH	Curtis Pond, Dog Pond (0905-0004)
SL-25-P309-11... P324	Unnamed P #4-324 (0905-0070)	pH	John Pond, Scott Pond, Colvin Pond (0905-0190)
C-15-18 .. P34	Dow Pond (1003-0022)	pH	True Brook and tribs (1003-0055)
C-15-18 .. P36	Unnamed P #2-036 (1003-0023)	pH	True Brook and tribs (1003-0055)
C-15-22 .. P46a	Line Pond (1003-0025)	pH	Loon Lake (1003-0060)
C-15-22-24-P48 .. P51	Bass Lake (1003-0011)	pH	Loon Lake (1003-0060)
C-15-22 .. P67	Unnamed P #2-067 (1003-0026)	pH	Minor Lakes Trib to Upper North Branch (1003-0064)
C-15-22 .. P68	Unnamed P 112-068 (1003-0017)	pH	Minor Lakes Trib to Upper North Branch (1003-0064)
C-15-P114 .. P120 .. P122	West Polliwog Pond (1003-0016)	pH	Polliwog Pond (1003-0090)
C-15-P114 .. P125 .. P127a	Little Egg Pond (1003-0031)	pH	Square Pond (1003-0093)
C-15-P114 .. P125 .. P132	SW Amphitheatre Pond (1003-0015)	pH	Square Pond (1003-0093)
C-15-P114 .. P125 .. P139	East Copperas Pond (1003-0004)	pH	Square Pond (1003-0093)
C-15-P114 .. P140 .. P141	North Whey Pond (1003-0013)	pH	Little Square Pond (1003-0094)
C-15-P114 .. P142 .. P145	Marsh Pond (1003-0029)	pH	Rock Pond (1003-0101)
C- 15-P114 .. P142 .. P166	Unnamed P #2-166 (1003-0032)	pH	Floodwood Pond (1003-0095)
C-15-P114 .. P189	Unnamed P #2- 189 (1003-0033)	pH	Minor Lakes Trib to Upper Saranac Lake (1003-0086)
C-15-P114 .. P191..P191a	McCaffery Pond (1003-0034)	pH	Little Clear Pond (1003-0107)

C-15-P114 .. P191..P196	Unnamed P #2-196 (1003-0035)	pH	Little Clear Pond (1003-0107)
C-15-P114 .. P191..P197	Sochia Pond (1003-0014)	pH	Little Clear Pond (1003-0107)
C-15-P114 .. P199 .. P200	Lindsey Pond (1003-0036)	pH	Lake Clear (1003-0109)
C- 25-26- 4-P222 .. P223	Unnamed P #2-223 (1004-0011)	pH	Fem Lake (1004-0060)
C- 25-26-39 .. P261	Scott Pond (1004-0008)	pH	Minor Lakes Trib to West Branch Ausable River, Upper (1004-0070)
C- 25-26-39 .. P263	Unnamed P #2-263 (1004-0009)	pH	Minor Lakes Trib to West Branch Ausable River, Upper (1004-0070)
C- 25-27-25 .. P269	Unnamed P #2-269 (1004-0010)	pH	Lower Cascade, Upper Cascade, Mud Lakes (1004-0075)
C- 25-27 .. P272	Lost Pond (1004-0007)	pH	East Branch Ausable River, Middle, and tribs (1004-0071)
C- 48-67-P327	Bullet Pond (1004-0017)	pH	Boquet River, Upper, and tribs (1004-0081)
C- 48 .. P332	Cranberry Pond (1004-0006)	pH	Boquet River, Upper, and tribs (1004-0081)
C- 96- 4- 4-P350	Snake Pond (1005-0001)	pH	Sherman Lake (Goosepuddle/Burris Pond) (1005-0016)
C- 96-P355 .. P359	Mud Pond (1004-0016)	pH	Putnam/North Ponds (1005-0018)
--	Cat Pond (0801-0036)	pH	Salmon Lake (0801-0054)**

* In DEC Response to Comment #44, DEC states that this waterbody was added to Part 2a of the 2018 list; this water was not listed on the submitted 2018 list.

** listed as IR 4a water in 2018 list, covered by the 2006 Acid Lakes TMDL. DEC intended to update the title of the segment to include Cat Pond, and expects to do so in the next cycle. According to DEC, both lakes are in the Forest Preserve, or Class FP, superseding any classification assigned in regulations.