



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

October 26, 2022

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

Dear Ms. Lamb-Lafay:

Thank you for your efforts and those of the Department in implementing the Clean Water Act (CWA) Section 303(d) program. The health of our waterbodies is of the utmost importance to all of us, particularly environmental justice communities seeing the impacts of climate change. I appreciate working with you and your staff towards conserving, protecting, and restoring water resources. In response to your submission of the New York State 2018 CWA Section 303(d) List of Impaired Waters Requiring a Total Maximum Daily Load (New York 2018 303(d) List), the enclosed documentation describes the 22 waterbody/pollutant combinations the U.S. Environmental Protection Agency (EPA) identified on the New York 2018 303(d) list and EPA's Response to Comments received during the public notice period for this action.


On March 10, 2022, EPA partially approved, partially disapproved, and has further action pending on the New York 2018 Section 303(d) list. EPA approved the New York 2018 303(d) list with respect to the eight hundred and thirty-five (835) waterbody/pollutant combinations New York identified on the list as requiring a total maximum daily load (TMDL). EPA disapproved the New York 2018 303(d) list because EPA determined that New York did not identify twenty-two (22) waterbody/pollutant combinations on the New York 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. Pursuant to EPA's disapproval of the New York 2018 303(d) list and consistent with Section 303(d)(2) of the CWA, EPA identified these 22 waterbody/pollutant combinations on the New York 2018 303(d) list. On July 18, 2022, EPA published a notice in the *Federal Register* (*Federal Register*, Vol. 87, No. 136, pp. 42721-42722) opening a public comment period on this action and comments were received using the Federal Register Notice Docket: EPA-R02-OW-2022-0598. The public comment period ended on September 16, 2022. After considering the comments received and in accordance with the CWA and EPA's regulations and guidance, EPA concluded that no revisions to its identification of these 22 waterbody/pollutant combinations on the New York 2018 303(d) list are appropriate.

Please see the attachment for a complete list of the 22 waterbody/pollutant combinations. For additional details on EPA's rationale for this listing, please see the enclosed Response to Comments. Pursuant to Section 303(d)(2) of the CWA and 40 C.F.R. § 130.7(d)(2), New York is

required to incorporate these 22 waterbody/pollutant combinations into its water quality management plan. New York must also include these 22 waterbody/pollutant combinations, along with all waterbody/pollutant combinations EPA identified on previous New York 303(d) lists, on all subsequent New York 303(d) lists, until New York demonstrates good cause for not including a waterbody/pollutant combination(s) on the list (40 CFR § 130.7(b)). Please feel free to contact me at 212-637-4125, or your staff may contact Ryan Van Manen at 212-637-3819 if you have any further questions on this matter.

Sincerely,

JAVIER
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PEREZ

 Digitally signed by JAVIER
LAUREANO PEREZ
Date: 2022.10.26 17:02:48
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Javier E. Laureano, Ph.D.
Director
Water Division

Enclosure

Twenty-two Waterbody/Pollutant Combinations EPA Identified on the New York 2018 303(d) List

<i>Waterbody (Assessment Unit)</i>	<i>Pollutant/Cause</i>
Cazenovia Lake (0703-0021)	HABs/ Algal
Canandaigua Lake (0704-0001)	HABs/ Algal
Lake Como (0705-0029)	HABs/ Algal
Owasco Lake (0706-0009)	HABs/ Algal
Mohawk River, Main Stem (1201-0010)	Floatables
Mohawk River, Main Stem (1201-0094)	Floatables
Utica Harbor (1201-0228)	Floatables
Saw Mill River (1301-0007)	Floatables
Roaring Brook Lake (1301-0037)	HABs/ Algal
Hendrix Creek (1701-0006)	Odors
Gowanus Canal (1701-0011)	Odors
Milburn Pond (1701-0053)	Low dissolved oxygen
Spring Creek (1701-0361)	Oxygen Demand
Paerdegat Basin (1701-0363)	Oxygen Demand
Paerdegat Basin (1701-0363)	Odors
Jones Inlet/Jones Bay (1701-0373)	Nutrients
Hutchinson River, Lower, and tribs (1702-0003)	Odors
Milton Harbor/Lower Blind Brook (1702-0063)	Floatables
Larchmont Harbor (1702-0116)	Floatables
Mamaroneck Harbor (1702-0125)	Floatables
New Rochelle Harbor (1702-0259)	Floatables
Port Chester Harbor (1702-0260)	Floatables

Response to Comments on EPA's Addition of 22 Waterbody/Pollutant Combinations to the New York 2018 CWA Section 303(d) List

Contact: Ryan Van Manen / 212-637-3819 / Vanmanen.ryan@epa.gov

Section 303(d) of the Clean Water Act (CWA), 33 U.S.C. § 1251 *et. seq.*, requires each State to “identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters.” The means by which a State identifies these waters has been commonly referred to as the State 303(d) list or list of impaired waters.

Pursuant to section 303(d) of the Clean Water Act, the New York State Department of Environmental Conservation (NYSDEC) submitted to the U.S. Environmental Protection Agency (EPA) the New York 2018 Clean Water Act (CWA) Section 303(d) list on November 13, 2020, a revised submission on December 07, 2020, and a supplement to the submission on February 10, 2022 (together referred to herein as, the New York 2018 303(d) list). EPA reviewed the New York 2018 303(d) list, and all supporting documentation, for compliance with Section 303(d) of the CWA and EPA's implementing regulations, including whether the State assembled and evaluated all existing and readily available water quality-related data and information and identified waters required to be listed.

On March 10, 2022, EPA partially approved, partially disapproved, and has further action pending on the New York 2018 Section 303(d) list. EPA approved the New York 2018 303(d) list with respect to the eight hundred and thirty-five (835) waterbody/pollutant combinations New York identified on the list as requiring a total maximum daily load (TMDL). EPA disapproved the New York 2018 303(d) list because EPA determined that New York did not identify twenty-two (22) waterbody/pollutant combinations on the New York 2018 303(d) list that meet CWA 303(d) listing requirements. EPA has further action pending with regard to one hundred and fifty-six (156) waterbody/pollutant combinations. The 22 waterbody/pollutant combinations that New York did not identify on the New York 2018 303(d) list that meet CWA 303(d) listing requirements comprise: (1) four 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; (2) nine 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; (3) two 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; (4) one 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; (5) one 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; (6) one 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; (7) three 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; and (8) one 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.

Pursuant to EPA's disapproval of the New York 2018 303(d) list and consistent with Section 303(d)(2) of the CWA, EPA identified these 22 waterbody/pollutant combinations on the New York 2018 303(d) list. Pursuant to 40 C.F.R. § 130.7(d)(2), EPA sought public comment on the identification of these 22 waterbody/pollutant combinations on the New York 2018 303(d) list by publishing a notice of this action in the *Federal Register* (*Federal Register*, Vol. 87, No. 136, pp. 42721-42722) on July 18, 2022, and opening a public comment period (July 18, 2022 – September 16, 2022). Comments were received using the Federal Register Notice Docket: EPA-R02-OW-2022-0598.

EPA received one comment and EPA's response to this comment is provided below. Because this comment is beyond the scope of EPA's action identifying these 22 waterbody/pollutant combinations on the New York 2018 303(d) list, no revisions to this identification are necessary. Pursuant to Section 303(d)(2) of the CWA and 40 C.F.R. § 130.7(d)(2), New York is required to incorporate these 22 waterbody/pollutant combinations into its water quality management plan. New York must also include these 22 waterbody/pollutant combinations, along with all waterbody/pollutant combinations EPA identified on previous New York 303(d) lists, on all subsequent New York 303(d) lists, until New York demonstrates good cause for not including a waterbody/pollutant combination(s) on the list (40 CFR § 130.7(b)).

Comment submitted via Regulations.gov Comment Summary:

EPA received one comment submitted online through regulations.gov asking EPA to consider the risks of chemical pollutants derived from prescription medications and illicit substances in wastewater and their reintroduction into the environment. This comment can be found on regulations.gov under Docket ID: EPA-R02-OW-2022-0598.

EPA Response:

EPA appreciates and shares the concerns raised in this comment, however, this comment is not related to the New York 2018 303(d) list and is therefore outside of the scope of the subject of the Federal Register Notice: EPA's action on the New York 2018 303(d) list.