



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JUL 10 2018

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

Dear Mr. Klotz:

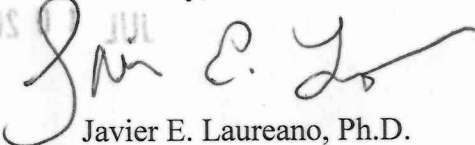
Thank you for your efforts and those of the Department in implementing the Clean Water Act (CWA) Section 303(d) program. The health of our waterbodies is of the utmost importance to all of us, and I appreciate working with you and your staff towards this common goal. In response to your submission of the New York State 2016 CWA Section 303(d) List of Impaired Waters Requiring a Total Maximum Daily Load (New York 2016 303(d) List), the enclosed documentation describes the waters the EPA identified for listing on the New York 2016 303(d) List and the EPA's Response to Comments received during the public notice period for EPA's decision to identify these waters on the list.

On July 21, 2017, the EPA partially approved and partially disapproved the New York 2016 CWA Section 303(d) List. On August 9, 2017, the EPA published a notice in the *Federal Register* (*Federal Register*, Vol. 82, No. 152, pp. 37214-37215) opening a public comment period on the EPA's decision to identify seventy-one (71) waterbody/pollutant combinations for addition to the New York 2016 303(d) List. On September 12, 2017, the EPA published another notice in the *Federal Register* (*Federal Register*, Vol. 82, No. 175, pp. 42808-42809) reopening the public comment period. The public comment period ended on October 12, 2017. After considering all submissions and in accordance with the CWA and the EPA's regulations and guidance, the EPA has concluded that Section 303(d) requires including the 71 waterbody/pollutant combinations on the New York 303(d) List.

As a result, the EPA is identifying the 71 waterbody/pollutant combinations on the New York 2016 303(d) List. Please see the attachment for a complete list of the 71 waterbody/pollutant combinations. For additional details on the EPA's rationale for this identification, 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 71 waterbody/pollutant combinations into its water quality management plan. As we work together to improve and implement the requirements of the CWA with respect to the New York 2018 303(d) List, I greatly appreciate

the continued dedication and collaboration of you and your staff. Please feel free to contact me at 212-637-4125, or your staff may contact Aimee Boucher at 212-637-3837 if you have any questions on this matter.

Sincerely,

8105 JUL  


Javier E. Laureano, Ph.D.  
Director  
Clean Water Division

Enclosure

**Additional 71 Waterbody/Pollutant Combinations to the New York 2016 303(d) List**

<i>Waterbody Name</i>	<i>Waterbody ID Number</i>	<i>Pollutant</i>
Bronx River, Lower	1702-0006	Dissolved Oxygen/Oxygen Demand
Hendrix Creek	1701-0006	Dissolved Oxygen/Oxygen Demand
Bergen Basin	1701-0009	Dissolved Oxygen/Oxygen Demand
Jamaica Bay, Eastern, and tribs (Queens)	1701-0005	Dissolved Oxygen/Oxygen Demand
Shellbank Basin	1701-0001	Dissolved Oxygen/Oxygen Demand
Hendrix Creek	1701-0006	Nitrogen
Bergen Basin	1701-0009	Nitrogen
Jamaica Bay, Eastern, and tribs (Queens)	1701-0005	Nitrogen
Shellbank Basin	1701-0001	Nitrogen
Eastchester Bay	1702-0007	Pathogens
Bronx River, Lower	1702-0006	Floatables
Bronx River, Middle, and tribs	1702-0106	Floatables
Hutchinson River, Lower, and tribs	1702-0003	Floatables
Westchester Creek	1702-0012	Floatables
Coney Island Creek	1701-0008	Floatables
Gowanus Canal	1701-0011	Floatables
Hendrix Creek	1701-0006	Floatables
Mill Basin and tidal tribs	1701-0178	Floatables
Paerdegat Basin	1701-0363	Floatables
East River, Lower	1702-0011	Floatables
Harlem River	1702-0004	Floatables
Bergen Basin	1701-0009	Floatables
East River, Upper	1702-0010	Floatables
East River, Upper	1702-0032	Floatables
Flushing Creek/Bay	1702-0005	Floatables
Jamaica Bay, Eastern, and tribs (Queens)	1701-0005	Floatables
Newtown Creek and tidal tribs	1702-0002	Floatables
Spring Creek and tribs	1701-0361	Floatables
Thurston Basin	1701-0152	Floatables
Hutchinson River, Lower, and tribs	1702-0003	Odors
Gowanus Canal	1701-0011	Odors
Hendrix Creek	1701-0006	Odors
Paerdegat Basin	1701-0363	Odors
Park Creek and tribs	0601-0031	Pathogens
Muscot River, Lower, and minor tribs	1302-0049	Ammonia
Muscot River, Lower, and minor tribs	1302-0049	Dissolved Oxygen/Oxygen Demand
Minor Tribs to Croton Falls Reservoir	1301-0001	Dissolved Oxygen/Oxygen Demand
Minor Tribs to Croton Falls Reservoir	1301-0001	Phosphorus
Peach Lake	1302-0004	Pathogens

**Additional 71 Waterbody/Pollutant Combinations to the New York 2016 303(d) List**

New Rochelle Harbor	1702-0259	Floatables
Glen Cove Creek, Lower, and Tribs	1702-0146	Silt/Sediment
Cuba Lake	0201-0016	Oxygen Demand
Fort Pond	1701-0122	Oxygen Demand
Laurel Pond	1701-0128	Oxygen Demand
Upper Cassadaga Lake	0202-0001	Oxygen Demand
Ballou, Nail Creeks and tribs	1201-0203	Oxygen Demand
Beeman Creek and tribs	0102-0030	Oxygen Demand
Bowen Brook and tribs	0102-0036	Oxygen Demand
Conesus Lake	0402-0004	Oxygen Demand
Great Brook and minor tribs	0704-0034	Oxygen Demand
Honeoye Lake	0402-0032	Oxygen Demand
Mattituck or Marratooka Pond	1701-0129	Oxygen Demand
Mill Creek and tribs	0302-0025	Oxygen Demand
Millers Pond	1702-0013	Oxygen Demand
Minor Tribs to Irondequoit Bay	0302-0038	Oxygen Demand
Murder Creek, Lower, and tribs	0102-0031	Oxygen Demand
Saw Mill River	1301-0007	Oxygen Demand
Saw Mill River, Middle, and tribs	1301-0100	Oxygen Demand
Scajaquada Creek, Lower, and tribs	0101-0023	Oxygen Demand
Scajaquada Creek, Middle, and tribs	0101-0033	Oxygen Demand
Scajaquada Creek, Upper, and tribs	0101-0034	Oxygen Demand
Shipbuilders Creek and tribs	0302-0026	Oxygen Demand
Tidal Tribs to West Moriches Bay	1701-0312	Oxygen Demand
Tribs to Lake Lonely	1101-0001	Oxygen Demand
Wood Cr/Champlain Canal and tribs	1005-0036	Oxygen Demand
Quantuck Bay	1701-0042	Nitrogen
Moriches Bay, East	1701-0305	Nitrogen
Moriches Bay, West	1701-0038	Nitrogen
Great South Bay, East	1701-0039	Nitrogen
Great South Bay, Middle	1701-0040	Nitrogen
Great South Bay, West	1701-0173	Nitrogen

**Response to Comments on EPA's Identification of 71 Waterbody/Pollutant Combinations on the New York 2016 CWA Section 303(d) List**

Contact: Aimee Boucher / 212-637-3837 / [boucher.aimee@epa.gov](mailto:boucher.aimee@epa.gov)

Section 303(d) of the Clean Water Act, 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, on December 21, 2016, the New York State Department of Environmental Conservation submitted the New York 2016 list of impaired waters to the U.S. Environmental Protection Agency for approval or disapproval. The EPA reviewed the list of impaired waters and supporting documentation. The EPA evaluated the New York State 303(d) submittal for compliance with section 303(d) of the CWA and the EPA's implementing regulations, including whether the State assembled and evaluated all existing and readily available water quality-related data and information and properly identified waters required to be listed.

On July 21, 2017, the EPA partially approved and partially disapproved the New York 2016 303(d) list. Specifically, the EPA approved the New York 2016 303(d) list with respect to the 792 waterbody/pollutant combinations New York included on its list as requiring Total Maximum Daily Loads. The EPA disapproved the New York 2016 303(d) list because EPA determined that the New York list does not include seventy-one (71) waterbody/pollutant combinations that meet 303(d) listing requirements. These 71 waterbody/pollutant combinations comprise: (1) thirty-eight waterbody/pollutant combinations in Integrated Report Category 4b (i.e., impaired waters where a TMDL is not necessary because other required controls will result in attainment of water quality standards within a reasonable period of time) without adequate justification; (2) one waterbody/pollutant combination delisted from the 2014 303(d) list and moved to Integrated Report Category 4b without adequate justification; (3) four waterbody/pollutant combinations delisted from the 2014 303(d) list without data or information that indicate that New York's water quality standard for dissolved oxygen is met; (4) twenty-six waterbody/pollutant combinations delisted from the 2014 303(d) list without data or information that indicate that New York's narrative nutrients standard is met; and (5) two waterbody/pollutant combinations omitted from on the 2016 303(d) list where data or information indicate that New York's water quality standard for dissolved oxygen is not met.

Pursuant to CWA section 303(d)(2), after disapproving a State 303(d) list for failure to list a water not meeting applicable water quality standards, the EPA is required to identify that water on the State 303(d) list. The CWA implementing regulations require EPA to seek public comment on those identifications and, after considering any comments received, make any appropriate revisions to the list. On August 9, 2017, the EPA published a notice in the *Federal Register* (*Federal Register*, Vol. 82, No. 152, pp. 37214-37215) opening a public comment period (August 9 – September 8, 2017) to solicit comments on its identification of the 71 waterbody/pollutant combinations on the New York 2016 303(d) list. On September 12, 2017, the EPA published

another notice in the *Federal Register* (*Federal Register*, Vol. 82, No. 175, pp. 42808-42809) reopening the public comment period (September 12 – October 12, 2017).

The EPA received comments during the public comment period supporting the identification of the 71 waterbody/pollutant combinations, as well as comments outside the scope of the EPA's request for comments. The EPA has provided all comments received through the *Federal Register* notices to NYSDEC. The EPA carefully reviewed all of the public comments, and the EPA's response to these comments is provided below. The EPA finds that section 303(d) requires the identification of the 71 waterbody/pollutant combinations on the New York 303(d) list. Therefore, EPA is identifying these 71 waterbody/pollutant combinations on the New York 2016 303(d) 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 these 71 waterbody/pollutant combinations into its water quality management plan. New York must also include the 71 waterbody/pollutant combinations on subsequent 303(d) lists. New York may remove waters if, 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, and EPA approves a subsequent submission.

#### **New York City Department of Environmental Protection Comments Summary**

Submitted by: Marcella R. Eckels, Deputy General Counsel, Bureau of Legal Affairs  
William Mirrer, Assistant Counsel, Bureau of Legal Affairs  
59-17 Junction Blvd., Flushing, NY 11373

#### **NYCDEP Comment #1:**

- Little Neck Bay should be delisted from the 2016 303(d) list for pathogens.
- NYCDEP indicated that Little Neck Bay should not be included on the list for pathogens in its comments on both the 2014 and 2016 Draft 303(d) lists.
- NYSDEC approved NYCDEP's Long Term Control Plan (LTCP) for Alley Creek and Little Neck Bay on March 7, 2017. The required control measures in this LTCP are expected to result in attainment of water quality standards for pathogens.

#### **EPA Response:**

Little Neck Bay's impairment for pathogens is not one of the 71 waterbody/pollutant combinations that the EPA has identified for inclusion on the New York 2016 303(d) list. The NYSDEC's decision to list Little Neck Bay for pathogens is therefore outside the scope of EPA's identification of 71 waterbody/pollutant combination for inclusion on the New York 2016 303(d) list and the EPA's request for public comments on that identification.

The NYSDEC's decision to approve NYCDEP's Long Term Control Plans for Alley Creek and Little Neck Bay are outside the scope of EPA's identification of 71 waterbody/pollutant combinations for inclusion on the New York 2016 303(d) list and the EPA's request for public comments on the that identification.

#### **NYCDEP Comment #2:**

- The EPA should clarify why certain waterbodies are proposed to be added to the 2016 303(d) list.

- New additions on the Draft 2016 303(d) list include the Lake in Central Park and Harlem Meer in New York County, Meadow Lake, Willow Lake and Kissena Lake in Queens County, and Prospect Park in Kings County all due to phosphorus.
- The NYSDEC should clarify the basis for these new listings and the data sets for the assessments that support these listings.

**EPA Response:**

The Lake in Central Park and Harlem Meer in New York County, Meadow Lake, Willow Lake and Kissena Lake in Queens County, and Prospect Park in Kings County listed by the NYSDEC on the 2016 303(d) list as impaired for phosphorus are not included in the 71 waterbody/pollutant combinations that the EPA has identified for inclusion on the New York 2016 303(d) list. The NYSDEC's basis to list these waterbody/pollutant combinations are outside the scope of the EPA's identification of 71 waterbody/pollutant combinations for inclusion on the New York 2016 303(d) list and the EPA's request for public comments on the that identification.

**NYCDEP Comment #3:**

- The correct date for the Consent Order referenced with respect to the delisting of Alley Creek/Little Neck Bay Tributary is 2005, not 2015. The NYCDEP requests that the reference be changed from "2015 Consent Order" to "2005 CSO Consent Order as modified."

**EPA Response:**

The EPA did not reference a consent order in its proposed decision document, this comment is therefore outside the scope of the EPA's identification of 71 waterbody/pollutant combinations for inclusion on the New York 2016 303(d) list and the EPA's request for public comments on that identification.

**NYCDEP Comment #4:**

- Reservoir No.1/Lake Isle should be removed from the 2016 303(d) list because it is incorrectly listed on the NYCDEP's Municipal Separate Storm Sewer System Permit.
- Reservoir No.1/Lake Isle is erroneously listed on the NYCDEP's MS4 Permit as located in the Bronx. Reservoir No. 1/Lake Isle is located in Westchester County.
- "As this waterbody is outside the scope of DEP's MS4 Permit, and as DEP has no discharges into it, DEP should not have any obligations with respect to this waterbody under DEP's MS4 Permit."

**EPA Response:**

Reservoir No.1/Lake Isle's impairment for phosphorus is not one of the 71 waterbody/pollutant combinations that the EPA has identified for inclusion on the New York 2016 303(d) list. This comment is therefore outside the scope of the EPA's identification of 71 waterbody/pollutant combinations for inclusion on the New York 2016 303(d) list and EPA's request for public comment on the that identification.

**Pace Environmental Litigation Clinic for Riverkeeper. Inc., Save the Sound, and the Natural Resources Defense Council (Pace) Comments Summary**

Submitted by: Todd D. Ommen, Esq., Managing Attorney  
James K. Ward, Legal Intern  
Pace Environmental Litigation Clinic Elisabeth Haub School of Law  
78 North Broadway, White Plains, NY 10603

**Pace Comment #1:**

- The EPA properly disapproved the New York 2016 303(d) list due to the NYSDEC's failure to include on its list certain waterbody/pollutant combinations previously placed in Integrated Report (IR) Category 4b. The EPA properly recognized that the NYSDEC did not provide sufficient support for its decision not to list specific waterbody/pollutant combinations impacted by New York City combined sewer overflows.
- A State's decision not to list impaired waters and include them in IR Category 4b is only appropriate if the State demonstrates that a TMDL is not necessary because other required control measures are expected to result in restoration in a reasonable period of time.

**EPA Response:**

Comments noted.

**Pace Comment #2:**

- Waterbody/pollutant combinations impacted by NYC combined sewer overflows should not be delisted in the future without a sufficient demonstration for omitting them from the 303(d) list. The NYSDEC, in its Proposed Final List, expressed its intention to delist certain waterbody/pollutant combinations impacted by NYC combined sewer overflows once LTCPs are approved. The LTCPs do not and will not constitute a sufficient demonstration to omit these waters. The EPA should disapprove of the NYSDEC's proposal to delist these waters in the future.

**EPA Response:**

The NYSDEC's expressed intention in its 2016 303(d) list to delist waterbody/pollutant combinations in the future is outside the scope of the EPA's identification of 71 waterbody/pollutant combinations for inclusion on the New York 2016 303(d) list and EPA's request for public comment on that identification.

**Pace Comment #3 & #4:**

- TMDLs should not be deferred for certain waterbody/pollutant combinations including the Upper Hudson River for Polychlorinated Biphenyls, Esopus Creek for turbidity, and Orange Lake for Phosphorus. These waterbody/pollutant combinations should be moved to Part 1 of the New York 2016 303(d) list from Part 3c of the New York 2016 303(d) list.

**EPA Response:**

The Upper Hudson River's impairment for PCBs, the Esopus Creek's impairment for turbidity, and Orange Lake's impairment for Phosphorus are not included in the 71 waterbody/pollutant combinations that the EPA has identified for inclusion on the New York 2016 303(d) list. The NYSDEC's decision to include these waterbody/pollutant combinations on Part 3c of the 2016 303(d) list is therefore outside the scope of the EPA's identification of 71 waterbody/pollutant



combinations for inclusion on the New York 2016 303(d) list and the EPA's request for public comment on that identification.

**Comments submitted via Regulations.gov Comment Summary:**

The EPA received 52 submissions online through regulations.gov that were comments on other *Federal Register* notices involving other regulations or agency actions.

**EPA Response:**

The EPA has reviewed these comments. Comments regarding the actions of other agencies or regulations are outside the scope of the EPA's identification of the 71 waterbody/pollutant combinations for inclusion on the New York 2016 303(d) list and the EPA's request for public comments. These comments can be found on regulations.gov under Docket ID EPA-R02-OW-2017-0622 and Docket ID EPA-R02-OW-2017-0632.

conditions for inclusion on the New York 2016 303(d) list and the EPA's review for public

comment on the 303(d) list.

EPA's process  
The EPA will review these comments and make a decision regarding the inclusion of each substance on the 303(d) list. The EPA will also consider any other information that may be relevant to the decision. The EPA's decision on the 303(d) list will be published in the Federal Register. The EPA's decision on the 303(d) list will be published in the Federal Register. The EPA's decision on the 303(d) list will be published in the Federal Register.