



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

4/23/2021

Ref: 8WD-CWB

Galen Steffens, Water Quality Planning Bureau Chief
Montana Department of Environmental Quality
1520 E 6th Ave
Helena, MT 59620-0901

Re: Clean Water Act Section 303(d) Total Maximum Daily Load (TMDL) Waterbody List

Dear Ms. Steffens:

Thank you for your submittal of the Montana Department of Environmental Quality (MDEQ) 2020 Clean Water Act (CWA) 303(d) List / Integrated Report received April 7, 2021. The Environmental Protection Agency Region 8 (EPA) has conducted a complete review of the Clean Water Act (CWA) Section 303(d) waterbody list (Section 303(d) list) and supporting documentation and information. After careful review of Montana's final CWA Section 303(d) list submittal package, EPA approves Montana's 2020 CWA Section 303(d) list.

EPA's approval of Montana's submitted Section 303(d) list does not extend to Indian country as defined in 18 U.S.C. Section 1151. Indian country in Montana generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Montana: the Blackfeet Indian Reservation, the Crow Indian Reservation, the Flathead Reservation, the Fort Belknap Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Rocky Boy's Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. Today's action is not intended as an action to approve or disapprove the impaired waters list for waters within Indian country. EPA, or eligible Indian tribes, as appropriate, retain responsibilities under CWA § 303(d) for waters in Indian country.

The attachment describes the statutory and regulatory requirements of the CWA Section 303(d) list and a summary of EPA's review of Montana's submission. EPA appreciates MDEQ's work to produce Montana's 2020 CWA Section 303(d) list and the State's commitment to continue to improve assessment procedures. If you have questions, the most knowledgeable EPA staff person is Tina

Laidlaw, and she can be reached at: (406) 457-5016 or laidlaw.tina@epa.gov or Liz Rogers and she can be reached at: (303) 312-6974 or rogers.liz@epa.gov.

Sincerely,

Judy Bloom, Manager
Clean Water Branch, Water Division

Attachment

cc: Tina Laidlaw, EPA
Liz Rogers, EPA
Andrew Todd, EPA
Darrin Kron, MDEQ
Jane Madison, MDEQ

Review of Montana's 2020 Section 303(d) Waterbody List

Attachment to letter from Judy Bloom, Manager, Clean Water Branch, Water Division, US EPA, Region 8 to Galen Steffens, Water Quality Planning Bureau Chief, Montana Department of Environmental Quality

Date of Transmittal Letter from state: February 11, 2021
Date of Complete Submission from state: April 7, 2021
Date of Receipt by EPA: April 7, 2021

I. Introduction

The Montana Department of Environmental Quality (MDEQ), Division of Water Quality submitted its final 2020 Integrated Report (IR) to the Environmental Protection Agency (EPA) on April 7, 2021. Based on our review of the State's Clean Water Act (CWA) Section 303(d) water body list ("Section 303(d) list"), EPA is approving Montana's 2020 Section 303(d) list in its entirety.

EPA's approval of Montana's submitted Section 303(d) list does not extend to Indian country as defined in 18 U.S.C. Section 1151. Indian country in Montana generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Montana: the Blackfeet Indian Reservation, the Crow Indian Reservation, the Flathead Reservation, the Fort Belknap Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Rocky Boy's Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151. Today's action is not intended as an action to approve or disapprove the impaired waters list for waters within Indian country. EPA, or eligible Indian tribes, as appropriate, retain responsibilities under CWA § 303(d) for waters in Indian country.

In March 2011, EPA issued guidance for integrating the development and submission of 2012 CWA Section 305(b) water quality reports and CWA Section 303(d) lists of impaired waters.¹ This guidance, and previous EPA guidance, recommends that States develop an Integrated Report of the quality of their waters by placing all waters into one of five assessment categories. By following this guidance, Category 5 of the Integrated Report is the State's CWA Section 303(d) list. EPA's action in review and approval of this document is only on Category 5 that comprises the CWA Section 303(d) list within the Integrated Report.

EPA reviewed the methodology used by the State in developing the CWA Section 303(d) list and the State's description of the data and information it considered. The CWA Section 303(d) list that EPA is approving today is comprised of 399 assessment units (985 waterbody/pollutant combinations). States may add and remove waters as compared to previous CWA Section 303(d) lists based on several factors. For the 2020 cycle, Montana removed 29 waterbody/pollutant combinations from its year 2018 list.

II. Statutory and Regulatory Background

A. Identification of Water Quality Limited Segments (WQLSs) for Inclusion on Section 303(d) List

¹ https://www.epa.gov/sites/production/files/2015-10/documents/final_2012_memo_document.pdf

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

EPA regulations implementing CWA Section 303(d) require States to identify water quality limited segments (WQLSs) that need total maximum daily loads (TMDL). (40 C.F.R. § 130.7(b).) WQLSs² are defined in regulation as segments “where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.” (40 C.F.R. § 130.2(j).) Thus, States do not need 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. (40 C.F.R. § 130.7(b)(1).)

B. Existing and Readily Available Water Quality-Related Data and Information

In developing CWA Section 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, for the following categories of waters: (1) waters identified as 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 CWA Section 319 nonpoint assessment submitted to EPA. (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 for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act³ describes categories of water quality-related data and information that may be existing and readily available. While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate 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 include, as part of their submissions to EPA, documentation to support decisions using or excluding particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; (3) a rationale for any decision not to use any existing and readily available data and information 40 C.F.R. §130.7(b)(5), and (4) any other reasonable information requested by the Region.

C. Priority Ranking

² WQLSs may also be referred to as “impaired waterbodies” or “impairments” throughout this document.

³ Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act. Pages 30-32. <https://www.epa.gov/sites/production/files/2015-10/documents/2006irg-report.pdf>.

EPA regulations also codify and interpret the requirement in CWA Section 303(d)(1)(A) of the CWA that States establish a priority ranking for listed waters. The regulations at 40 C.F.R. § 130.7(b)(4) require States to prioritize waters on their CWA Section 303(d) lists for TMDL development, and also to identify those WQLSs targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at a minimum, consider the severity of the pollution and the uses to be made of such waters. (CWA Section 303(d)(1)(A)). As long as these factors are taken into account, the CWA provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs such as wasteload allocations for permits, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and State or national policies and priorities. (See 57 Fed. Reg. 33040, 33045 (July 24, 1992), and EPA's 1991 Guidance).

D. Applicable Water Quality Standards

For purposes of identifying waters for the CWA Section 303(d) list, the terms “water quality standard applicable to such waters” and “applicable water quality standards” refer to those water quality standards established under Section 303 of the Act. On April 27, 2000, EPA promulgated a rule under which the “applicable standard” for Clean Water Act purposes depends on when the relevant States or authorized Tribes promulgated that standard. Standards that States or authorized Tribes have promulgated before May 30, 2000 are effective upon promulgation by the States or authorized Tribes. Standards that States or authorized Tribes promulgated on or after May 30, 2000 become effective only upon EPA approval. (40 C.F.R § 131.21(c).) EPA interprets CWA Section 303(d) to require EPA establishment or approval of CWA Section 303(d) lists only for impairments of waters with Federally-approved water quality standards.

III. Analysis of Montana’s Submission

A. Background

In reviewing Montana’s submittal, EPA first reviewed the methodology used by the State to develop its 2020 CWA Section 303(d) list considering Montana’s approved water quality standards, and then reviewed the actual list of waters. The State’s Listing and Assessment Methodology was provided as a stand-alone document.

The State’s CWA Section 303(d) list, 2020 Integrated Report, CWA Section 303(d) Listing and Assessment Methodology, and geospatial coverage of assessment units was submitted electronically through ATTAINS to EPA Region 8. Correspondence confirming the electronic submission was received on April 8, 2021 from Darrin Kron, MDEQ Water Quality Monitoring and Assessment Supervisor.

The 2020 Integrated Report submitted to EPA from MDEQ included the following portions that are necessary for the CWA Section 303(d) waterbody list:

- **Waterbodies and corresponding pollutants that make up the State’s Section 303(d) list** (See Appendix A: Impaired Waters).
- **Prioritization of waterbodies for TMDL development** (Section 7.2, Page 37-38 of the State’s Integrated Report and Appendix B: Waters in need of TMDLs [303(d) list] and TMDL Priority).
- **Identification of waters targeted for TMDL development over the next biennium** (See Section 7.2, Page 36-38 of the State’s Integrated Report and Appendix B: Waters in need of TMDLs [303(d) list] and TMDL Priority).

EPA's approval action of Montana's 2020 CWA Section 303(d) list extends only to the items listed immediately above.

B. Identification of Waters and Existing and Readily Available Water Quality-Related Data and Information

EPA has reviewed Montana's description of the data and information it assembled and evaluated for identifying waters on the CWA Section 303(d) list. In particular, the State relied on information from the 2020 CWA Section 305(b) water quality assessments, assessments performed under the CWA Section 319 non-point source program, as well as data and information obtained through an extensive process to solicit information from State, federal and citizen sources. The State evaluated data and information in each of the following categories:

- *Waters identified by the State in its most recent section 305(b) report as "partially meeting" or "not meeting" designated uses or as "threatened" (40 C.F.R. § 130.7(b)(5)(i));*
- *Waters for which dilution calculations or predictive models indicate non-attainment of applicable water quality standards (40 C.F.R. § 130.7(b)(5)(ii));*
- *Waters for which water quality problems have been reported by local, State, or federal agencies; members of the public; or academic institutions (40 C.F.R. § 130.7(b)(5)(iii)); and*
- *Waters identified by the State as impaired or threatened in a nonpoint assessment submitted to EPA under Section 319 of the CWA or in any updates of the assessment (40 C.F.R. § 130.7(b)(5)(iv)).*

Based upon its review, EPA concludes the State's process for developing its 2020 CWA Section 303(d) list was reasonable and is approving the State's submission pursuant to Section 303(d) and the implementing regulations at 40 C.F.R. § 130.7.

C. Waters Removed from the CWA Section 303(d) List

In addition to adding WQLs that require TMDLs to its CWA Section 303(d) list, a State may also remove waters from its list when such removal is justified. Reasons for a State to remove a water from the CWA Section 303(d) list,⁴ includes, but is not limited to:

1. The State has prepared and EPA has approved a TMDL for the listed water.
2. The original basis for listing the water was incorrect.
3. New data or information indicates that the applicable water quality standard for the water is being met and its designated uses are fully supported.
4. The State has adopted and EPA has approved a site-specific water quality standard for the water, and the new water quality standard is being met.

A full accounting of waters removed from the State's 2020 CWA Section 303(d) list is provided for in Section 6.2.5.1: Category 5 Pollutant Listings and Delistings (page 34 of the Integrated Report). The State's removal decisions and stated justifications are summarized below:

⁴ <https://www.epa.gov/sites/production/files/2015-10/documents/2006irg-report.pdf>

| Number of Waterbody-Pollutant Combinations Removed from List | |
|--|-------------|
| Reason | 2020 |
| Applicable WQS attained, according to new assessment method | 1 |
| Applicable WQS attained, due to change in WQS | 2 |
| Applicable WQS attained, based on new data | 7 |
| Data and/or information lacking to determine WQ status; original basis for listing was incorrect | 3 |
| TMDL approved or established by EPA (4A) | 16 |
| Total | 29 |

In reviewing the State’s 2020 CWA Section 303(d) waterbody list, EPA carefully considered Montana’s decision to remove certain waterbody-pollutant combinations from the State’s 2018 CWA Section 303(d) list, its justification for those removals, and the methodology it used in making those decisions. EPA concludes that the removal decisions identified in the Integrated Report are properly justified under Section 303(d) and the implementing regulations.

D. Priority Ranking and Schedule for Development of TMDLS for Listed Waters and Pollutants

Pursuant to the 2020 Integrated Report, the State outlined its TMDL Prioritization Process in Section 7.3, pages 37-38 of the Integrated Report. Montana reviews the extent to which the factors outlined in State statute (MCA 75-5-702(7)) apply to each watershed or water quality-limited water body segment. Example prioritization considerations include the impacts to human health and aquatic life; the degree of public interest and support; immediate programmatic needs, etc. Then, Montana consults the Statewide TMDL Advisory Group (STAG), authorized under MCA 75-5-702(8) and (10), before assigning final TMDL development schedules.

EPA reviewed the State's priority ranking of listed waters for TMDL development and concluded the State met the statutory requirement to take into account the severity of pollution and the uses to be made of such waters, as required by 40 C.F.R. § 130.7(b)(4), as well as other relevant factors such as imminent human health problems or local support for water quality improvement. In addition, EPA concluded the State’s priority ranking included the identification of waters targeted for TMDL development in the next two years, as required by 40 C.F.R. § 130.7(b)(4).

IV. Final Recommendation on Montana’s 2020 CWA Section 303(d) List Submittal

After careful review of Montana’s final CWA Section 303(d) list submittal package, EPA approves Montana’s 2020 CWA Section 303(d) list.

V. References

The following list includes documents that were used directly or indirectly as a basis for EPA's review and approval of the State's CWA Section 303(d) waterbody list. This list is not meant to be an exhaustive list of all records, but to provide the primary documents the Region relied upon in making its decisions to approve the State's list.

40 C.F.R. Part 130 Water Quality Planning and Management

40 C.F.R. Part 131 Water Quality Standards

July 29, 2005, Memorandum from Diane Regas, Director, Office of Wetlands, Oceans, and Watersheds, US EPA to Water Division Directors transmitting EPA's "Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act"

October 12, 2006, Memorandum from Diane Regas, Director, Office of Oceans, Wetlands, and Watersheds entitled *Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*.

May 5, 2009, Memorandum from Suzanne Schwartz, Acting Director, Office of Wetlands, Oceans, and Watersheds, entitled *Information Concerning 2010 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*.

March 21, 2011, Memorandum from Denise Keehner, Director, Office of Wetlands, Oceans, and Watersheds, entitled *Information Concerning 2012 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*.

April 1991, "Guidance for Water Quality-Based Decisions: The TMDL Process," EPA 440/4-91-001.

July 24, 1992 Federal Register Notice, *40 C.F.R. Parts 122, 123, 130, Revision of Regulation*, 57 Fed. Reg. 33040 (July 24, 1992).

August 8, 1997, Memorandum from Robert Perciasepe, Assistant Administrator for Water, US EPA, regarding "New Policies for Establishing and Implementing TMDLs."

September 1997, Guidance from Office of Water, Headquarters, US EPA regarding "Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates" Supplement, EPA-841-B-97-002B.

November 5, 1997, Memorandum from Tudor Davies, Director, Office of Science and Technology to Water Management Division Directors entitled "Establishing Site Specific Aquatic Life Criteria Equal to Natural Background."

August 23, 1999, Federal Register Notice. *Proposed Revisions to the Water Quality Management and Planning Regulations*, 64 Fed. Reg. 46012 (Aug. 23, 1999).

April 27, 2000, Federal Register Notice, *EPA Review and Approval of State and Tribal Water Quality Standards*, 65 Fed. Reg. 24641 (April 27, 2000).

September 3, 2013, US EPA Memorandum, Information Concerning 2014 Clean Water Act 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions.

August 13, 2015, US EPA Memorandum, Information Concerning 2016 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions.

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

April 26, 2018, USEPA Action on Montana's 2018 Clean Water Act Section 303(d) Waterbody List.