

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

OCT 22 2014

Mr. Gary Gill
Deputy Director
Hawaii Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801

Subject: Approval of Hawaii's 2014 Section 303(d) List

Dear Mr. Gill:

Thank you for submitting Hawaii's 2014 Integrated Water Quality Monitoring and Assessment Report containing the Clean Water Act (CWA) Section 303(d) list of water quality-limited water bodies and the Section 305(b) report. The Environmental Protection Agency (EPA) received the submittal on September 5, 2014. Based on review of the final submittal, EPA has determined that Hawaii's 2014 list of water quality-limited segments still requiring TMDLs meets the requirements of Section 303(d) of the CWA and EPA's implementing regulations; therefore, EPA hereby approves Hawaii's 2014 CWA Section 303(d) list.

Hawaii's 2014 303(d) list submittal includes a total of 262 impaired marine water segments and 89 impaired stream segments. The listings are based on an assessment methodology described in the submittal. Priority rankings for all listed waters are established as required by Section 303(d) of the CWA and its implementing regulations (40 CFR §130.7). Seventeen high priority waterbodies are targeted for TMDL development.

The public participation process sponsored by the Hawaii Department of Health (HDOH) included a solicitation of public comment through its website and newspaper advertisements. The comment period ended on May 14, 2014. HDOH responded to all comments received on the 2014 CWA Section 303(d) list.

If you have questions concerning EPA's decision, feel free to call me at (415) 972-3275 or contact Sara Roser at (415) 972-3513. We look forward to working with you on the 2016 Integrated Water Quality Monitoring and Assessment Report.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond".

Jane Diamond
Director, Water Division

cc: Alec Wong, HDOH

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MEMORANDUM

Subject: Review of Hawaii's 2014 CWA Section 303(d) List of Impaired Waters

From: Sara Roser
Water Quality Assessment Section, WTR-2-1

Through: Janet Hashimoto, Manager
Water Quality Assessment Section, WTR-2-1

To: Administrative Record

Date: October 20, 2014

Date of Transmittal Letter from State: September 2, 2014
Date Transmittal Received by EPA: September 5, 2014

Purpose

The purpose of this review document is to describe the rationale for EPA's approval of Hawaii's 2014 Clean Water Act (CWA) Section 303(d) list of impaired waters. The following sections below identify those key elements to be included in the list submittal based on the Clean Water Act and EPA regulations. See 40 CFR §130.7. EPA reviewed the methodology used by the Hawaii Department of Health (HDOH) in developing the 303(d) list and HDOH's description of the data and information it considered. EPA's review of Hawaii's 303(d) list is based on EPA's analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

Statutory and Regulatory Background

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

Section 303(d)(1) of the Act directs each State to identify those waters within its jurisdiction for which effluent limitations required by 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 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 provide that 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 Act, (2) more stringent effluent limitations required by State or local authority, and (3) other pollution control requirements required by State, local, or Federal authority. See 40 CFR §130.7(b)(1).

Consideration of Existing and Readily Available Water Quality-Related Data and Information

In developing 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, 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 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 CFR §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 2006 Guidance describes categories of water quality-related data and information that may be existing and readily available. See Guidance for 2006 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the CWA, EPA Office of Water, 2005, Section V ("EPA's 2006 Guidance"). EPA's 2006 Guidance is supplemented by EPA's informational memorandums from 2008, 2010, 2012, and 2014, which reiterate and clarify previous guidance. 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 CFR §130.7(b)(6) require States to include, as part of their submittals to EPA, documentation to support decisions to rely or not rely on 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; and (3) any other reasonable information requested by the Region.

Priority Ranking

EPA regulations also codify and interpret the requirement in Section 303(d)(1)(A) of the Act that States establish a priority ranking for listed waters. The regulations at 40 CFR §130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those water quality-limited segments (WQLSs) targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Act provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitat, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and State or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992) and EPA's 2006 Guidance with subsequent supplements in 2008, 2010, 2012, and 2014.

Analysis of Hawaii's Submittal

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

EPA has reviewed HDOH's submittal and has concluded that the State developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR §130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed. HDOH assembled data and information from the State's water quality monitoring. The State considered the data and information sources identified in 40 CFR §130.7(b)(5). Data sources are shown in Appendix B of HDOH's report. The State applied a straightforward set of listing criteria that closely follow EPA's 1997 and 2002 assessment methods recommendations (Integrated Report, pp. 15-16). EPA concludes HDOH followed EPA's 2006 Integrated Report guidance and 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 CFR §130.7(b)(5). EPA also finds that the listing criteria are consistent with federal listing requirements and that those criteria were applied in a consistent and reasonable manner in compiling the list.

The State properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with Section 303(d) and EPA guidance. Section 303(d) lists are to include all WQLSs still needing TMDLs, regardless of whether the source of the impairment is a point and/or nonpoint source. EPA's long-standing interpretation is that Section 303(d) applies to waters impacted by point and/or nonpoint sources. In *Pronsolino v. Marcus*, the District Court for the Northern District of California held that section 303(d) of the Clean Water Act (CWA) authorizes EPA to identify and establish total maximum daily loads (TMDLs) for waters impaired by nonpoint sources. See *Pronsolino et al. v. Marcus et al.*, 91 F.Supp.2d 1337, 1347 (N.D.Ca. 2000), *Pronsolino v. Nastri*, 291 F.3d 1123 (9th Cir 2006). See also EPA's 2006 Guidance and National Clarifying Guidance for 1998 Section 303(d) Lists, Aug. 27, 1997.

Priority Ranking and Targeting

EPA also reviewed the State's priority ranking of listed waters for TMDL development, and concludes that the HDOH properly took into account the severity of pollution and the uses to be made of such waters, as well as other relevant factors. In addition, EPA reviewed the State's identification of high priority WQLSs targeted for TMDL development, and concludes that the targeted water segments are appropriate for TMDL development in the near future (Chapter 3).

Good Cause for Delisting

In its 2014 Section 303(d) list, HDOH delisted five waterbodies which now meet water quality criteria. The delisted water bodies are shown in Table 4 of Chapter 1. HDOH has demonstrated, to EPA's satisfaction, good cause for not listing these waters, as provided in 40 CFR 130.7(b)(6)(iv).

Administrative Record Supporting This Action

In support of this decision to approve the State's listing decisions, EPA carefully reviewed the materials submitted by HDOH with its 303(d) listing decision. The administrative record supporting EPA's decision is comprised of the integrated assessment report and supporting documentation submitted by the State, associated federal regulations, EPA guidance concerning preparation of Section 303(d) lists, and the decision letter and supporting staff report. EPA determined that the materials provided by HDOH with its submittal provided sufficient documentation to support our analysis and findings that the State listing decisions meet the requirements of the Clean Water Act and associated federal regulations. We are aware that the State compiled and considered additional materials (e.g. raw data and water quality analysis reports) as part of its list development process that were not included in the materials submitted to EPA. EPA did not consider these additional materials as part of its review of the listing submittal. It was unnecessary for EPA to consider all of the materials considered by the State in order to determine that, based on the materials submitted to EPA by HDOH, the State complied with the applicable federal listing requirements. Moreover, federal regulations do not require the State to submit all data and information considered as part of the listing submittal.

References

The following documents were used directly or indirectly as a basis for EPA's review of Hawaii's 303(d) water body list. This list is not meant to be an exhaustive list of all records reviewed, but the primary documents the Region relied upon in making its decisions to approve the State's list.

Gill, G. August 15, 2013. Letter to J. Diamond, Director, Water Division, U.S. EPA Region 9. Deputy Director for Environmental Health, Hawaii Department of Health, Honolulu, HI.

Hawaii Department of Health. Hawaii Administrative Rules. Title 11, Chapter 54. Water quality standards.

U.S. Environmental Protection Agency. 1978. December 28, 1978 Federal Register Notice, Total Maximum Daily Loads under Clean Water Act, finalizing EPA's identification of pollutants suitable for TMDL calculations. 43 Federal Register 60662.

U.S. Environmental Protection Agency. 1985. January 11, 1985 Federal Register Notice, 40 CFR Parts 35 and 130, Water Quality Planning and Management: Final Rule, 50 Federal Register 1774.

U.S. Environmental Protection Agency. 1991. Guidance for Water Quality-Based Decisions: The TMDL Process. Office of Water. EPA 440/4-91-001.

U.S. Environmental Protection Agency. 1992. July 24, 1992 Federal Register Notice, 40 CFR Parts 122, 123, 130, revision of regulation, 57 Fed. Reg. 33040.

U.S. Environmental Protection Agency. 1997. Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Supplement. Office of Water, Washington, DC. EPA 841-B-97-002B.

U.S. Environmental Protection Agency. 2002. Consolidated Assessment and Listing Methodology. Office of Wetlands, Oceans, and Watersheds, Washington, DC.

U.S. Environmental Protection Agency. 2003. Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act, Diane Regas, Office of Wetlands, Oceans, and Watersheds, Washington, DC.

U.S. Environmental Protection Agency. 2005. Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act, Diane Regas, EPA Office of Wetlands, Oceans, and Watersheds, Washington, DC.

U.S. Environmental Protection Agency. 2006. Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, Diane Regas, EPA Office of Wetlands, Oceans, and Watersheds, Washington, DC.

U.S. Environmental Protection Agency. 2009. Information Concerning 2010 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, Suzanne Schwartz, Office of Wetlands, Oceans, and Watersheds, Washington, DC.

U.S. Environmental Protection Agency. 2011. Information Concerning 2012 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, Denise Keehner, Office of Wetlands, Oceans, and Watersheds, Washington, DC.

U.S. Environmental Protection Agency. 2013. Information Concerning 2014 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions, Denise Keehner, Office of Wetlands, Oceans, and Watersheds, September 3, 2013.

Water Quality Planning and Management, 40 Code of Federal Regulations Part 130.