



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

FRL-9724-6

Clean Water Act: Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces EPA's decision to identify certain water quality limited waters and the associated pollutant to be listed pursuant to the Clean Water Act Section 303(d)(2) on New York's list of impaired waters, and requests public comment. Section 303(d)(2) requires that States submit, and EPA approve or disapprove, lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On August 16, 2012, EPA disapproved New York's decision to exclude the Lower Esopus Creek from its 2012 303(d) list. EPA evaluated existing and readily available data and information and concluded that the applicable narrative water quality standard for turbidity is being exceeded in the Lower Esopus Creek. Based on this evaluation, EPA has determined that the Lower Esopus Creek is not fully attaining the water quality standards established by New York State and should be included on the State's 303(d) list of impaired waters.

EPA is providing the public the opportunity to review its decision to add this water to New York's 303(d) list, as required by 40 CFR 130.7(d)(2). EPA will consider public comments before transmitting its final listing decision to the State.

DATES: Comments must be submitted to EPA on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments on the proposed decision should be sent to Sheri Jewhurst, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007, email jewhurst.sheri@epa.gov, telephone (212)-637-3035, facsimile (212) 637-3889. Oral comments will not be considered. Copies of EPA's letter explaining the rationale for EPA's decision concerning New York's list can be obtained by calling or emailing Ms. Jewhurst at the address above. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Jewhurst to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Sheri Jewhurst at (212) 631-3035 or at jewhurst.sheri@epa.gov

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings, identify the pollutants causing the impairment, and identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, New York submitted its listing decisions under Section 303(d)(2) to EPA in correspondence dated March 30, 2012 and July 25, 2012. On August 16, 2012, EPA partially approved New York's submittal of the 303(d) list, and

disapproved New York's decision to exclude Lower Esopus Creek from the 2012 list. EPA is soliciting public comment on the addition of this water to the State's list, as required by 40 CFR 130.7(d)(2).

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 28, 2012.

George Pavlou,
Acting Regional Administrator,
Region 2.

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