



WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION

515 W. Main St.
P.O. Box 1310
Bridgeport, West Virginia 26330
304-842-8231

June 11, 2012

BOARD MEMBERS

David C. Sago
President

Ronald Dodson
Vice President

Tom Brown
Secretary/Treasurer

A. King Campbell
Eric Bennett
Tom Brown
Stephen Knipe
Larry Roller
Michael E. Saffel

By First Class and Electronic Mail (Stephen.A.Young@wv.gov)

Department of Environmental Protection
DWWM
Attn: Stephen Young - 2nd floor, 303(d)
601 57th Street
Charleston, WV 25304

RE: WVMWQA Comments on Draft 2012 303(d) List

MEMBER AGENCIES

Beckley Sanitary Board
Berkley County
Bluefield Sanitary Board
Bluewell Public Service District
Boone County PSD
Bridgeport, City of
Charleston Sanitary Board
Clarksburg Sanitary Board
Claywood Park PSD
Elk Valley PSD
Fairmont, City of
Follansbee, City of
Greater Harrison County PSD
Hinton, City of
Huntington Sanitary Board
Lubeck Public Service District
Martinsburg, City of
Moundsville Sanitary Board
New Haven, Town of
New Martinsville, City of
Oak Hill, City of
Parkersburg Utility Board
Philippi, City of
Pocahontas County
Princeton Sanitary Board
Ripley, City of
Union Public Service District
Vienna, City of
Wellsburg, City of
Weston, City of
Wheeling WPCD
Williamstown Public Works

Dear Mr. Young,

Attached, please find the comments of the WV Municipal Water Quality Association ("MWQA"), regarding the draft 2012 303(d) list proposed by the WV Department of Environmental Protection.

The MWQA is an organization comprised of public water, sewer, and storm water utilities statewide serving a significant majority of the sewered population in the State.

Thank you for considering our comments on the draft 2012 303(d) list. We are available to meet with you should you have any questions.

Sincerely,

David Sago
MWQA President

CONSULTANT MEMBERS

Brown & Caldwell
Burgess & Niple
Geosyntec Consultants
Greenhorne & O'Mara, Inc.
Hatch Mott MacDonald
O'Brien & Gere Engineers, Inc.
Potesta & Associates
Strand Associates, Inc.
Thrasher Engineering, Inc.

GENERAL COUNSEL

Paul Calamita, AQUALAW

Attachment.

cc: MWQA Members
Mr. Scott Mandirola

WV MUNICIPAL WATER QUALITY ASSOCIATION

COMMENTS ON THE DRAFT 2012 303(D) LIST

June 11, 2012

Thirty days is not enough time to review and comment on 303(d) lists. DEP should allow at least sixty days, in conjunction with the procedural changes we request below.

We support the use of the 10 percent data threshold for making impairment determinations. We strongly believe that no listing should be based upon a single data point.

DEP should provide a link to its QAPP in the assessment methodology document. While DEP provides a link to EPA QA/QC guidance, we do not see the QAPP used by DEP to ensure data quality for the 303(d) list.

DEP should provide a link to an explanation of which data were used from third parties and any data which were rejected, with an explanation as to why. While Table 2 identifies the outside sources who submitted data, it does not indicate whether these data followed appropriate QA/QC procedures and whether they were used in the development of the 2012 list.

DEP should post the data for each biannual listing as the data are validated for use in the 303(d) list so that affected entities will have a meaningful amount of time to review the data and decide whether to collect additional data. A link to the data should be included on the website and in the assessment methodology document. It is imperative that these data be made available online as they are collected, rather waiting for a 30-day comment period every two years.

DEP's listing methodology should be put out for public comment every odd-numbered year so that the public can comment on the methodology in advance of the preparation of the even-numbered year list development.

We believe the WV Stream Condition Index should be promulgated as a rule.

Biological integrity listings should be based upon a minimum of two surveys, especially where the impairment is "fair"/borderline. Again, no listing should be based upon a single data point or evaluation, even a benthic or fish survey. Also, we do not see the data collection year for the biological impairments. Further, we believe the QA/QC information should also be posted with the benthic/fish survey results.

We disagree with the approach of listing the entire stream length if one monitoring station indicates an impairment. We believe a lesser section should be listed and other stream reaches identified for subsequent monitoring.

We question the number of turbidity and fecal coliform listings. As to turbidity, where the data of concern were collected during periods when the stream in question was materially influenced by wet weather, we believe such data should be discounted unless the State's standard was truly developed to be applicable to dry and wet weather instream conditions. We wonder whether turbidity listings should be based upon a minimum number of dry weather samples—such as 10. Regardless, we believe turbidity listings should be given the lowest TMDL development priority.

We have the same concern for fecal coliform, given extensive natural sources and natural variability instream. We believe a higher number of samples should be required before making fecal coliform listings. For example a minimum data set of 20 fecal coliform samples would be more appropriate. We read the assessment methodology to allow just five samples in a 30-day period to drive a listing if only two samples out of the five exceeded 400 counts. We believe this is inconsistent with the longer term (90-days) implementation of bacteria criteria which US EPA recently announced in December 2011 (76 Federal Register 79176, Dec. 21, 2011) as being appropriate for making bacteria use attainment decisions.

We believe that DEP should modify its bacteria impairment assessment methodology so that the geometric mean will be used to evaluate all fecal data on a rolling basis and so that the stream will only be found impaired where the daily maximum is exceeded more than 25 percent during a rolling 90-day period. This approach should avoid listings which are attributable to natural conditions (wildlife). Moreover, we believe this approach is technically more accurate in that the science underlying the criteria was developed for the geometric mean and not the 400 value. In fact, the 400 limitation is inconsistent with the geometric mean in that compliance with the 400 daily maximum requires a geometric mean substantially below 200 (on the order of 10 or less) in order to ensure no data point exceeds 400.

We believe that DEP should suspend any fecal listings using the 400 daily maximum given EPA's forthcoming E. coli criteria this October. Those criteria would allow 25% of daily samples to exceed the Statistical Threshold Value over a 90-day period as opposed to DEP's approach of only allowing 10 percent in any 30-day period. EPA's most recent proposal is technically more appropriate as it better correlates the monthly geometric mean and the statistical threshold value and will result in far fewer listings. The WV 400 daily maximum value is completely infeasible and, with sampling over time, will likely result in virtually every stream in the State being labeled as impaired due to wildlife sources alone.

We support the DEP's decision not to make any listings based upon the State's 2011 nutrient criteria for lakes (phosphorous and chlorophyll a) given US EPA's partial disapproval of the criteria. We believe that disapproval was legally erroneous in that the criteria meet the federal Clean Water Act requirements. Moreover, we do not believe EPA can disapprove part of a linked criterion as they purported to do. Nevertheless, given the legal uncertainty over the criteria at this time; DEP has made the correct decision not to use the criteria given EPA's partial disapproval.

Mr. Stephen Young

6/11/2012

Page 4

We urge DEP to embrace and advance ORSANCO's proposed "weight-of-the-evidence" approach for assessing water quality standards compliance. Rather than continuing the "independent applicability" approach which clearly misses the mark, DEP should propose listings using both approaches and force USEPA to disapprove the "weight-of-the-evidence" approach if it disagrees with the approach. DEP's proposed listings of the Ohio River for iron make no sense to us because the aquatic community is not impaired for this naturally occurring metal. ORSANCO appears to be correct on this issue, and DEP should support it.

####