



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 1**  
**5 Post Office Square, Suite 100**  
**Boston, MA 02109-3912**

January 30, 2013

Betsey Wingfield, Chief  
Bureau of Water Protection and Land Reuse  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street  
Hartford, CT 06106

Dear Ms. Wingfield:

Thank you for your submittal of the 2012 Clean Water Act (“CWA”) Section 303(d) list, Connecticut’s 2012 List of Water Bodies Not Meeting Water Quality Standards. In accordance with Section 303(d) of the CWA and 40 CFR §130.7, the U.S. Environmental Protection Agency, Region 1 (EPA) conducted a complete review of Connecticut’s 2012 Section 303(d) list and supporting documentation. Based on this review, EPA has determined that Connecticut’s list of water quality limited segments still requiring total maximum daily loads meets the requirements of Section 303(d) of the CWA and EPA’s implementing regulations. Therefore, by this letter, EPA hereby approves Connecticut’s 2012 Section 303(d) list.

The Section 303(d) list was submitted as Table 3-4 of the Connecticut’s 2012 Integrated Water Quality Report. Chapter 3 of the report includes a list of those waters for which technology based and other required controls for point and nonpoint sources are not stringent enough to attain or maintain compliance with the State’s Water Quality Standards. The submittal also presents Connecticut’s total maximum daily load strategy which describes the priority setting approach and identifies those waters for which total maximum daily loads will be completed and submitted during the next two years and beyond. The statutory and regulatory requirements, and EPA’s review of Connecticut’s compliance with each requirement, are described in detail in the enclosed approval document.

The Connecticut Department of Energy and Environmental Protection (“CT DEEP”) has also successfully completed a public participation process during which the public was given the opportunity to review and comment on the 2012 Section 303(d) list. As a result of this effort, Connecticut has considered public comments in the development of the final list. The public comments and CT DEEP’s responses to those comments were included in the State’s final submittal.

We are pleased with the quality of your submittal and appreciate the level of effort that CT DEEP has devoted to preparing the 2012 Section 303(d) list. Your staff has prepared a comprehensive and informative list, and has also provided EPA with supporting

documentation and assistance to aid us in our review and approval. My staff and I look forward to continued cooperation with CT DEEP in implementing the requirements under Section 303(d) of the CWA.

Please feel free to contact Mary Garren at 617-918-1322 if you have any questions about or comments on our review.

Sincerely,

/s/

Stephen S. Perkins

Enclosure

cc: Chris Bellucci, CT DEEP  
Traci Iott, CT DEEP  
Rob Hust, CT DEEP  
Denise Rudzicka, CT DEEP  
Gregory Dain, EPA  
Mary Garren, EPA

# **EPA NEW ENGLAND'S REVIEW OF CONNECTICUT'S 2012 CWA SECTION 303(d) LIST**

## **I. INTRODUCTION**

EPA has conducted a complete review of Connecticut's (CT) 2012 Section 303(d) list and supporting documentation and information and, based on this review, EPA has determined that Connecticut's list of water quality limited segments (WQLSs) still requiring total maximum daily loads (TMDLs) meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA implementing regulations. Therefore, by this order, EPA hereby approves Connecticut's 2012 final Section 303(d) list, included as part of the *2012 State of Connecticut Integrated Water Quality Report pursuant to Sections 305(b) and 303(d) of the Federal Clean Water Act (IR)* dated December 17, 2012. The final IR was received by on EPA on December 31, 2012. The statutory and regulatory requirements, and EPA's review of Connecticut's compliance with each requirement, are described in detail below.

## **II. STATUTORY AND REGULATORY BACKGROUND**

### **Identification of WQLSs for Inclusion on 303(d) List**

Section 303(d)(1) of the Act directs States 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 Section 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 Integrated Report Guidance describes categories of water quality related data and information that may be existing and readily available. See EPA's March 21st, 2011 memorandum on *Information Concerning 2012 Clean Water Act Sections 303(d), 305 (b), and 314 Integrated Reporting and Listing Decisions*, which recommended that the 2012 integrated water quality reports follow the Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act (2006 Integrated Report Guidance (IRG) issued July 29, 2005 (available at [http://www.epa.gov/owow/tmdl/2006\\_IRG/](http://www.epa.gov/owow/tmdl/2006_IRG/)) as supplemented by an October 12, 2006 memo and attachments, a May 5, 2009 memo and attachments, and the March 21, 2011 memo and attachments. All guidance, memoranda and attachments may be found at: <http://www.epa.gov/owow/tmdl/guidance.html>. 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 submissions 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.

### **III. REVIEW OF CONNECTICUT'S SECTION 303(d) SUBMISSION**

The Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a final 2012 Section 303(d) list to EPA, along with responses to comments, dated December 17, 2012 (as explained later in this memorandum, CT DEEP's specific responses to comments submitted by the Center for Biological Diversity (CBD) relating to ocean acidification were provided within the 2012 IR itself). The integrated listing format (i.e., a combination of the State's 305(b) report and the State's 303(d) list) allows states to provide the status of all assessed waters in a single multi-part list or document.

Chapter 1 of Connecticut's IR, *Consolidated Assessment and Listing Methodology* (CT CALM), describes the procedure used by the CT DEEP to assess the quality of the State's waters relative to attainment of Connecticut Water Quality Standards (CT WQS). Chapter 2, *305(b) Assessment Results*, provides a series of tables presenting the results of CT DEEP's assessment of all readily available data relating to designated use attainment in Connecticut waters. Chapter 3, *List of Connecticut Waterbodies Not Meeting Water Quality Standards*, provides additional information concerning those assessed waters that do not currently meet water quality standards and includes the State's Section 303(d) list.

States may include each water body or segment thereof into one or more of the following five categories as part of its IR; however, only water bodies or segments placed in Category 5 (impaired by a pollutant and for which a TMDL is needed) constitute a state's Section 303(d) list:

- 1) *All designated uses are supported, no use is threatened;*
- 2) *Available data and/or information indicate that some, but not all of the designated uses are supported;*
- 3) *There is insufficient available data and/or information to make a use support determination;*
- 4) *Available data and/or information indicate that at least one designated use is not being supported or is threatened, but a TMDL is not needed;*
  - 4-A) *A state-developed TMDL has been approved by EPA or a TMDL has been established by EPA for any segment-pollutant combination*
  - 4-B) *Other required control measures are expected to result in the attainment of an applicable water quality standard in a reasonable period of time*
  - 4-C) *The non-attainment of any applicable water quality standard for the segment is the result of pollution and is not caused by a pollutant); and*
- 5) *Available data and/or information indicate that at least one designated use is not being supported or is threatened, and a TMDL is needed.*

The Section 303(d) list under review here is included in Chapter 3 of Connecticut's 2012 IR. The 2012 Section 303(d) list includes all waters that have been assigned to EPA Category 5. The IR contains decision ranking criteria for prioritizing TMDL development for EPA Category 5 water bodies and segments and their associated impairments. Waters listed by Connecticut in Table 3-4 of the State's 2012 IR represent the State's §303(d) list, which the State is required to submit to EPA for review and approval or disapproval.

#### 1.) Final 2012 State of Connecticut Integrated Water Quality Report to Congress

Connecticut's 2012 IR includes extensive information. Connecticut has included all waters known or suspected not to be meeting water quality standards on the Section 303(d) list. Under its current listing approach, Connecticut keeps a water on its impaired waters list until it is shown that water quality standards are being attained, criteria are met for its placement in EPA Category 4, or the initial listing is confirmed as having been incorrect. TMDLs for listed waters will be completed in accordance with the schedule established for its specific group, which reflect priority rankings and other relevant factors.

EPA Category 4 includes waters that are currently not meeting water quality standards but do not need a TMDL completed due to one of three reasons. Waters for which TMDLs have already been approved are listed in Category 4-A. Category 4-B includes waters for which a "functionally equivalent" control action has been developed, i.e., an impairment caused by a pollutant is being addressed through other pollution control requirements. Waters in Category 4-C are not attaining water quality standards but the cause is not associated with a pollutant. EPA reviews the Category 4 list to insure that the waters are categorized appropriately and do not belong in Category 5.

As noted above, EPA Category 5 contains waters where available data and/or other information indicate that at least one designated use is not being supported or is threatened, and a TMDL is

needed. Federal Regulations in 40 CFR Section 130.7 require EPA to review and approve or disapprove the Category 5 list of impaired waters.

## 2.) Response to Public Comments

CT DEEP published a draft *2012 Integrated Water Quality Report* on September 19, 2012. The State's *List of Connecticut Waterbodies Not Meeting Water Quality Standards* was included as Chapter 3 of the draft report. Stakeholders were notified by mail and by public notice in local newspapers. The public notice was sent directly to 385 interested parties and published in five newspapers throughout Connecticut. A public informational meeting was held on October 11, 2012. Comments were accepted from the public until October 29, 2012. Five parties submitted comments during the public comment period. The State published a detailed Responsiveness Summary along the final impaired waters list dated December 17, 2012. CT DEEP provided EPA with a copy of each comment letter attached to the Responsiveness Summary. The text of the Responsiveness Summary grouped the public comments and provided the State's responses to each question or issue raised. One party submitted comments during the data solicitation period that preceded the public comment period. The IR itself contained information addressing that August 1, 2011 comment letter since it was received prior to the public notice of the draft 2012 IR.

CT DEEP received comments during the public comment period from the State of Rhode Island Department of Environmental Management (RI DEM), South Central Connecticut Regional Water Authority, the Town of Westport, US EPA New England, and the Eastern Connecticut Conservation District, Inc. CT DEEP agreed in certain cases to review information provided by the commenter and consider any necessary revisions to the 2014 Integrated Report. The State also revised or added certain language in the 2012 IR in response to comments received. CT DEEP also provided guidance to the public for obtaining other sources of relevant information. The State agreed to target certain data collection activities as resources permit in the future. The State affirmed its commitment to continue to work with RI DEM on its shared waterways. Finally, Connecticut provided answers to the questions raised by the public that were responsive and clarified why the State made decisions regarding listing or delisting of certain water impairments.

CT DEEP received a letter, dated August 1, 2011, from the Center for Biological Diversity (CBD). CT DEEP received CBD's comments during the State's data solicitation period, in advance of the public comment period provided for the State's draft Section 303(d) list. CBD asserted that Connecticut should list all ocean assessment units (AUs) within the State's coastal waters as impaired or threatened for ocean acidification.

Connecticut's Final 2012 IR submittal to EPA included a detailed written response to CBD's comments within the State's explanation of data and/or other information that is used for estuary assessments (pages 13-14, IR). CT DEEP, in cooperation with many parties including the State of Connecticut Department of Agriculture/Bureau of Aquaculture, has an extensive monitoring program for its coastal waters. CT DEEP began routinely monitoring pH in its coastal waters in August of 2010. Samples are taken monthly at 17 monitoring stations and biweekly during the summer months at 48 stations. CT DEEP states that there has been no evidence that the waters

of Long Island Sound do not attain the State's marine pH criteria. The State's monitoring of many other analytical parameters are consistent with this finding. CBD did not provide to CT DEEP any data or other information specifically relating to Connecticut's coastal waters and its uses that would justify listing those waters as impaired.

EPA has reviewed CT DEEP's response to CBD's comments and has concluded that the State adequately and appropriately responded to those comments. CBD did not submit or reference any data or other information demonstrating that Connecticut's coastal waters are not meeting the applicable designated uses, narrative criteria, marine pH criteria or the State's anti-degradation requirements. EPA finds that CT DEEP's decision not to include the State's coastal waters on the Section 303(d) list is appropriate.

As discussed in EPA's November 15, 2010 guidance entitled "Integrated Reporting and Listing Decisions Related to Ocean Acidification" at:

[http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/oa\\_memo\\_nov2010.cfm](http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/oa_memo_nov2010.cfm) EPA recommends that for future lists, States (such as Connecticut) with marine waters include, as part of their routine IR data solicitation process, a request for existing and readily available water quality related data and information, including modeling and other non-site-specific data, relevant to marine pH (including natural background conditions). As also stated in the guidance, EPA believes that not enough information is available currently to develop ocean acidification-related carbon dioxide TMDLs, and is deferring development of TMDL guidance related to ocean acidification listings until more information becomes available in the future. EPA encourages CBD to submit data and other information that is relevant to Connecticut's marine waters during CT DEEP's data solicitations for future CWA Section 303(d) lists.

In its comment letter, CBD also asserted that Connecticut should revise its pH criterion in light of the most recent information on ocean acidification. Currently, Connecticut's pH criterion is approved by EPA. As indicated in EPA's November 15, 2010 guidance, EPA decided against revising the national marine pH criterion for aquatic life due to insufficient data, after EPA reviewed a wide range of information received in response to a Notice of Data Availability (NODA) on Ocean Acidification and Marine pH Water Quality Criteria. EPA also stated in that guidance that States will need to continue to use their current marine pH criteria as a basis for 303(d) listing until additional ocean acidification related criteria are adopted. Therefore, EPA also supports CT DEEP's decision to use the state-adopted and EPA approved marine pH criterion for assessments and 303(d) list decisions in 2012. EPA also notes that the 303(d) listing process is not the appropriate context for submitting proposals to revise the States' water quality criteria, and suggests that such proposals be submitted during States' triennial reviews of their water quality standards.

EPA has reviewed the language within CT DEEP's IR addressing areas of public concern as well as CT DEEP's responses to public comments, including those made by CBD. EPA concludes that Connecticut has appropriately and adequately responded to the public comments and concerns.

#### **IV. IDENTIFICATION OF WATERS AND CONSIDERATION OF EXISTING AND READILY AVAILABLE WATER QUALITY-RELATED DATA AND INFORMATION**

EPA has reviewed the State's submission, and has concluded that the State developed its Section 303(d) list in compliance with Section 303(d) of the Act and 40 CFR Section 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.

The State of Connecticut uses sources of data and information consistent with EPA regulations and guidance (U.S. EPA, 2005) when conducting the State's water quality assessments. These data include:

- Results from recent ambient monitoring;
- Recent Sections 305(b) reports, 303(d) lists, and 319(a) nonpoint assessments;
- Reports of water quality problems provided by local, state, territorial or federal agencies, volunteer monitoring networks, members of the public or academic institutions;
- Fish and shellfish advisories, restrictions on water sports or recreational contact;
- Reports of fish kills;
- Safe Drinking Water Act source water assessments;
- Superfund and Resource Conservation and Recovery Act reports; and
- Results from predictive modeling, dilution calculations or landscape analysis.

The primary sources of assessment information for rivers are ambient monitoring data collected by CT DEEP monitoring staff, and physical, chemical and bacteria data collected at fixed sites by the United States Geological Survey (USGS). Lake assessments and trophic status are generally determined from studies conducted by CT DEEP, the Connecticut Agricultural Experiment Station, USGS and Connecticut College since 1979 (Frink and Norvell 1984, Canavan and Siver 1995, Healy and Kulp 1995, CT DEEP 1998) as well as recent studies by professional contractors. For estuaries, use assessments are based primarily on physical, chemical and biological monitoring by the CT DEEP for the Long Island Sound Study and National Coastal Assessment (Strobel 2000), bacterial monitoring for shellfish sanitation by the CT Department of Agriculture, Bureau of Aquaculture (CT DA-BA), and beach monitoring by state and local authorities. Reasonable efforts are also made to incorporate data from other state and federal agencies, municipalities, utilities, consultants, academia, and volunteer monitoring groups. (Page 7 of the Integrated Report)

Connecticut relies upon data and/or other information from many sources to assess whether a water is meeting water quality standards and maintaining the water's designated uses. These sources are outlined above. The types of data used to assess the status of a water may include, but are not limited to: ambient physical and chemical, benthic invertebrate and fish community, indicator bacteria, aquatic toxicity, tissue contaminant, sediment chemistry/toxicity and effluent analysis. The data and/or other information must meet the threshold of being "sufficient and credible," meaning that they are scientifically defensible by an experienced professional. Data and/or other information that meet that requirement are then used to assess the status of the water body.

In order to prepare the 2012 Section 303(d) list, the State established a date by which data would be considered for this listing cycle. Data available to CT DEEP as of October 1, 2011 are relied upon for these assessments. Connecticut permits data from catastrophic events, such as fish kills and chemical spills, to be used in the assessment even if collected after October 1, 2011. Assessment data are maintained by the State in the EPA Section 305(b) Assessment Database (ADB) version 2.3.0, as well as a number of databases designed for CT DEEP use.

EPA has reviewed Connecticut’s description of the data and information considered in development of the Section 303(d) list, including but not limited to the State’s methodology for identifying waters, data in ADB, and the Connecticut water quality standards. EPA concludes that the State 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 Section 130.7(b)(5).

The State provided its rationale for not relying on particular existing and readily available water quality related data and information as a basis for listing waters. Details as to why certain waters were not listed are provided in CT DEEP’s Response to Comments. Waters included in Category 5 of the 2012 Section 303(d) list were assessed as impaired based upon failure of the water to attain its designated uses and attain water quality standards. Table 2-1 of the 2012 Integrated Report summarizes the status of Connecticut’s rivers, lakes, and estuarine waters.

**Water Body Segment Impairments not listed on Connecticut’s 2010 §303(d) list, but which are being newly listed on Connecticut’s 2012 §303(d) list.**

The State added sixty-six new freshwater water body segment impairments to Category 5 for the 2012 impaired waters list. Each newly-listed water body segment impairment in the following table is for habitat for fish, other aquatic life and wildlife or for recreation.

**Table 1:** New water body segment impairments added to Connecticut’s 2012 Section 303(d) list (Category 5 of the Integrated Report)

<b>Segment ID#</b>	<b>Waterbody Name</b>	<b>Impaired Use Added</b>
CT3006-00_01	Hunts Brook	Habitat for Fish, Other Aquatic Life and Wildlife
CT3100-00_05	Willimantic River	Habitat for Fish, Other Aquatic Life and Wildlife
CT5105-00_04	Chatfield Hollow Brook	Habitat for Fish, Other Aquatic Life and Wildlife
CT5206-02_01	Willow Brook	Habitat for Fish, Other Aquatic Life and Wildlife
CT5207-01_01	Wharton Brook, tributary to	Habitat for Fish, Other Aquatic Life and Wildlife
CT2206-00_02	Bride Brook	Recreation
CT2206-03_01	Bride Brook, unnamed Tributary to	Recreation

CT3100-00_06	Willimantic River	Recreation
CT3100-17_03	Cedar Swamp Brook	Recreation
CT3102-00_01	Middle River	Recreation
CT3102-00_02	Middle River	Recreation
CT3103-00_02	Furnace Brook	Recreation
CT3110-00_01	Tenmile River	Recreation
CT3300-02_01	Long Branch Brook	Recreation
CT3700-17_01	Durkee Brook	Recreation
CT3708-08_01	Peckham Brook	Recreation
CT3709-00_01	Wappoquia Brook	Recreation
CT3709-02_01	Day Brook	Recreation
CT3710-00_01	Mashamoquet Brook	Recreation
CT3710-11_01	Abington Brook	Recreation
CT3710-13_01	Sap Tree Run	Recreation
CT3710-18_01	White Brook	Recreation
CT3800-02_01	Obwebetuck Brook	Recreation
CT4200-00_01	Scantic River	Recreation
CT4200-00_02	Scantic River	Recreation
CT4200-00_03	Scantic River	Recreation
CT4200-15_01	Thrasher Brook	Recreation
CT4200-28_01	Dry Brook	Recreation
CT4202-00_01	Gillettes Brook	Recreation
CT4203-00_01	Gulf Stream	Recreation
CT4204-00_01	Abbey Brook	Recreation
CT4303-00_04	Still River	Recreation
CT5206-01_01	Spoonshop Brook	Recreation
CT5208-00_02a	Muddy River	Recreation
CT5301-00_01	Willow Brook (Hamden)-01	Recreation
CT5302-06_01	Shepard Brook	Recreation
CT5304-00_01	Wintergreen Brook	Recreation
CT5306-00_02	Indian River	Recreation
CT5306-01_01	Silver Brook	Recreation
CT5306-01_02	Silver Brook	Recreation
CT5307-00_03	Wepawaug River	Recreation
CT5307-00_04	Wepawaug River	Recreation
CT5307-00_05	Wepawaug River	Recreation
CT6000-73_01	Curtiss Brook	Recreation
CT6014-00_01	Bog Hollow Brook	Recreation
CT6026-03_01	Cemetery Pond Brook	Recreation
CT6402-00_01	Ball Pond Brook	Recreation
CT6700-20_01	Walker Brook	Recreation
CT6705-00_01	Bantam River	Recreation
CT6800-00_01	Pomperaug River	Recreation
CT6804-00_01	Weekeepeemee River	Recreation
CT6914-06_01	Lily Brook	Recreation
CT6919-00_01	Bladdens River	Recreation

CT7105-00_02	Pequonnock River	Recreation
CT7105-00_03	Pequonnock River	Recreation
CT7105-00_04	Pequonnock River	Recreation
CT7105-01_01	West Branch Pequonnock River	Recreation
CT7107-00_01	Cricker Brook	Recreation
CT7109-02_01	Unnamed Tributary, Sasco Brook (Fairfield)-01	Recreation
CT7109-06_02	Great Brook (Fairfield)-02	Recreation
CT7201-00_01	Little River	Recreation
CT7301-00_01	Comstock Brook	Recreation
CT7401-00_01	Fivemile River	Recreation
CT7401-00_03	Five Mile River	Recreation
CT7401-02_01	Fivemile River, Tributary to	Recreation
CT7401-05_01	Holy Ghost Fathers Brook	Recreation
CT7401-06_01	Keelers Brook	Recreation
CT7401-07_01	Unnamed tributary to Keelers Brook-01	Recreation

The water body segment impairments noted above were identified by new assessments during this listing cycle and were thus newly placed in Category 5, the Section 303(d) list.

Additionally, EPA notes that while it is not acting to approve or disapprove Connecticut's listing methodology set forth in its CALM, EPA has reviewed all of the relevant material and concludes that the methodology CT DEEP used to develop the impaired waters list is reasonable and consistent with Connecticut's water quality standards, and with the Clean Water Act and EPA Section 303(d) regulations and guidelines.

**Water Body Segment Impairments not listed on Connecticut's 2012 §303(d) list, but which were listed on Connecticut's 2010 §303(d) list.**

EPA requested that Connecticut provide a rationale for its decision not to include on its 2012 Section 303(d) list previously listed waters. As discussed below, the State has demonstrated to EPA's satisfaction good cause for not listing those waters, consistent with 40 C.F.R. §130.7(b)(6)(iv).

Category 5 in 2010 to Category 2 in 2012

For the 2012 Section 303(d) list cycle, the State has delisted thirty-two water body segment impairments included on the State's 2010 Section 303(d) list, because monitoring data show they are now meeting water quality standards. These water body segment impairments were listed in Category 5 in 2010 and are being delisted in this 2012 assessment cycle. CT DEEP supplied to EPA up-to-date information on all the State's waters as part of the 2012 assessment cycle and it can be found in the State's 2012 IR. Information supporting the delistings is also available for review in the EPA ADB at <http://www.epa.gov/waters/adb/>.

**Table 2:** Water body segment impairments in Category 5 in 2010 (i.e., on the 2010 Section 303(d) list) that are being delisted in 2012. As a result of the delistings, these water body

segments are being placed into Category 2 (see “Note” below) in 2012 (i.e., available data and/or other information indicate that some, but not all of the designated uses are supported).

<b>Segment ID#</b>	<b>Waterbody Name</b>	<b>Impaired Use Restored</b>
CT3100-19_01	Eagleville Brook	Habitat for Fish, Other Aquatic Life and Wildlife
CT3708-10_01	North Running Brook	Habitat for Fish, Other Aquatic Life and Wildlife
CT3716-00_01	Broad Brook *	Habitat for Fish, Other Aquatic Life and Wildlife
CT4302-00_01	Mad River *	Habitat for Fish, Other Aquatic Life and Wildlife
CT4303-00_02	Still River *	Habitat for Fish, Other Aquatic Life and Wildlife
CT4703-01_01b	Cabin Brook **	Habitat for Fish, Other Aquatic Life and Wildlife
CT7300-00_03a	Norwalk River	Habitat for Fish, Other Aquatic Life and Wildlife
CT2202-00_01	Latimer Brook	Recreation
CT2203-00_01	Oil Mill Brook	Recreation
CT2204-03_01	Stony Brook	Recreation
CT3100-00_02	Willimantic River	Recreation
CT3100-00_03	Willimantic River	Recreation
CT3106-00_01a	Skungamaug River	Recreation
CT3108-00_01a	Hop River	Recreation
CT3300-00_01	French River	Recreation
CT3700-00_04	Quinebaug River ***	Recreation
CT4009-00_01	Roaring Brook	Recreation
CT4013-00_01	Sumner Brook	Recreation
CT4013-08_01	Long Hill Brook	Recreation
CT4201-00_01	Watchaug Brook	Recreation
CT4312-00_01	Roaring Brook ***	Recreation
CT4501-00_01	Charters Brook	Recreation
CT4700-00_01	Salmon River	Recreation
CT6000-00-5+L4_01	Housatonic Lake (Shelton/ Derby/ Seymour/ Oxford/ Monroe)	Recreation
CT6700-00_01	Shepaug River	Recreation
CT6900-00_05	Naugatuck River	Recreation
CT7200-00_03	Saugatuck River	Recreation
CT7202-00_01	Aspetuck River	Recreation
CT7203-00_01	West Branch Saugatuck River	Recreation
CT7300-00_03a	Norwalk River	Recreation
CT7300-00_05	Norwalk River	Recreation



Resegmented CT4703-01\_01b Cabin Brook, as already noted above, will not appear on the Section 303(d) list because it is not impaired. And the impairment of habitat for fish, other aquatic life and wildlife of Cabin Brook, CT4703-01\_01a (the remainder of the previously defined water body segment), remains in Category 5.

As with all of the State's waters, if any designated use is determined to be impaired in the next listing cycle it will be fully or partially returned to Category 5 (the Section 303(d) list).

#### Water Segment Correctly Defined

One water segment listing was corrected on the 2012 Integrated Report. The segment size and location of CT-E1\_001-SB, LIS EB Inner - Pawcatuck River (01), Stonington were corrected. There was no change made in designated use assessments, nor was the segment delisted. It does not count among the thirty-two water segments being fully or partially delisted. The water segment remains in Category 5 for impairments of commercial shellfish harvesting where authorized and for habitat for marine fish, other aquatic life and wildlife.

#### EPA's conclusion regarding review of the CT DEEP's delistings.

Table 3-8 of the 2012 Integrated Report provides a full detailed reconciliation of all the changes made between the 2010 and 2012 Section 303(d) lists. For each of the water body segment impairments delisted from Category 5, EPA agrees that the State has reasonably concluded that the identified water body segment impairments no longer need to be on the Section 303(d) list because the segments are now meeting WQS for the identified impairments, the reason for the original listing has been addressed, or the impairment did not originally require listing.

#### Category 5 in 2010 to Category 4A in 2012

As discussed earlier, Category 4 contains segments that remain impaired for one or more designated uses, but do not need a TMDL for one of three reasons specified. Water body segment impairments in Category 4-A have a State developed TMDL which has been approved by EPA. Segments with specified impairments listed in Category 4-A in prior listing cycles remain in that category unless TMDL implementation has resulted in attainment of the appropriate WQS.

Thirty-three water body segment impairments are being delisted from the impaired waters list for bacterial impairment and placed in Category 4-A due to EPA's approval of TMDLs for bacteria during the 2012 listing cycle. Implementation of the TMDLs is expected to result in full attainment of the water quality standards. Standards attainment will be verified through follow-up monitoring. EPA approves the State's Section 303(d) list without these water segment-pollutant combinations because the delistings are consistent with EPA's regulations and EPA's Guidance for Assessment, Listing and Reporting Requirements.

**Table 4:** Water body segment impairments delisted to Category 4-A because of an approved TMDL during this listing cycle

<b>Segment ID#</b>	<b>Waterbody Name</b>	<b>Impaired Use addressed by TMDL</b>
CT4500-00_01	Hockanum River-01	Recreation
CT4500-00_02	Hockanum River-02	Recreation
CT4500-00_03	Hockanum River-03	Recreation
CT4500-00_04a	Hockanum River-04a	Recreation
CT4500-00_04b	Hockanum River-04b	Recreation
CT4500-00_05	Hockanum River-05	Recreation
CT4500-00_06a	Hockanum River-06a	Recreation
CT4500-00_06b	Hockanum River-06b	Recreation
CT4500-00_07	Hockanum River-07 *	Recreation
CT4500-00_08	Hockanum River-08	Recreation
CT4501-00_01	Charters Brook-01 *	Recreation
CT4320-00_01	Salmon Brook (East Granby)-01 *	Recreation
CT4320-19_01	Mountain Brook (Suffield)-01 *	Recreation
CT6600-00_01	Still River (New Milford /Brookfield)-01	Recreation
CT6600-00_02	Still River (Brookfield / Danbury)-02	Recreation
CT6600-00_03	Still River (Danbury)-03	Recreation
CT6600-00_04	Still River (Danbury)-04	Recreation
CT6600-00_05	Still River (Danbury)-05	Recreation
CT6601-00_01	Miry Brook (Danbury)-01 *	Recreation
CT6602-00_01	Kohanza Brook (Danbury)-01 *	Recreation
CT6603-00_01	Padanaram Brook-01	Recreation
CT6604-00_01	Sympaug Brook-01	Recreation
CT6605-00_01	East Swamp Brook (Bethel)-01 *	Recreation
CT6606-00_01	Limekiln Brook-01 *	Recreation
CT6606-00_03	Limekiln Brook-03 *	Recreation

\*Denotes waters that also remain in Category 5 due to impairments of habitat for fish, other aquatic life and wildlife

In summary, EPA recognizes that Connecticut's delisting in 2012 of these previously listed water body segment/impairments has been done in accordance with 40 CFR Section 130.7(b) and EPA's guidance referenced above. For each of the water body segment impairments delisted from Category 5 to Category 4-A, EPA agrees that the State has reasonably concluded that the identified impairments no longer need to be on the Section 303(d) list because the impairment is now the subject of an EPA-approved TMDL.

## Category 5 in 2010 to Category 4-B or Category 4-C

Segments listed in Category 4-B have other required control measures which are expected to result in attainment of an applicable water quality standard in a reasonable period of time. Category 4-C contains water segments for which the State has demonstrated that the failure to meet water quality standards is not caused by a pollutant, but rather by other types of pollution. The 2012 Integrated Report does not include any water impairments that are being delisted from Category 5 to Category 4-B or Category 4-C. (Nor has CT DEEP newly added any water segment impairments to either of those two categories in 2012.)

### **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 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 habitats, 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 Integrated Report Guidance and the 2006, 2009, and 2011 memoranda and attachments.

EPA reviewed Connecticut's priority ranking of listed waters for TMDL development, and concludes that the State properly took into account the severity of pollution and the uses to be made of such waters, as well as other relevant factors such as the complexity of the impairment and availability of quality information on it, and the likelihood that a remedy might be implemented before a TMDL could be developed. In addition, EPA reviewed the State's identification of WQLSs targeted for TMDL development in the next two years, and concludes that the targeted waters are appropriate for TMDL development in this time frame.

Connecticut generally bases the development of its priority ranking on the severity of the pollution and the uses to be made of such waters, and the factors listed in EPA guidance (U.S. EPA, 2005), especially waters ranked as high priority ("H", see below).

Connecticut includes other factors such as the availability and quality of data identifying the causes for non-attainment of WQS, and the extent of the water quality problems. Connecticut also bases its ranking in part on the likelihood that a water body's impairment may be resolved before a TMDL is developed.

There are 462 water body segments in Category 5 on the 2012 303(d) list, impaired for one or more designated uses. The State assigns a priority for TMDL development to each (water segment × impaired designated use) combination. Connecticut has prioritized those waters still requiring the development of TMDLs as high, medium, or low.

### High Priority Waters

Waterbodies and impairments that are assigned a high priority when it is determined that a TMDL may be needed to restore uses and solve the impairment. Waterbodies and impairments designated as high priority are targeted for TMDL development within 3 years.

40 C.F.R. §130.7(b)(4) requires that “the priority ranking shall specifically include the identification of waters targeted for TMDL development in the next two years.” While the CT DEEP identifies their priority waters for the next three years, CT DEEP makes a yearly commitment to EPA, as part of their Performance Partnership Agreement, as to the number of TMDLs the State will submit during the coming year. CT DEEP shares with EPA the specific TMDLs that they are and will be working on in a tracking report submitted during the year. Table 3-9 of the 2012 Integrated Report details the priority ranking of waters for TMDL development. Their agreement to commit to a 3-year priority ranking system in the next listing cycle and their yearly specific commitments provide the basis for EPA’s acceptance of their priority ranking system this year. Table 3-9 of the 2012 Integrated Report outlines the priority list for TMDL development.

### Medium Priority Waters

Waterbodies and impairments assigned medium priority may have insufficient information to assess whether a pollutant is causing the impairment to these water bodies, and other programs may remedy the water quality impairment. Waters and impairments designated as medium priority are targeted for TMDL development within 3-7 years.

### Low Priority Waters

Waterbodies and impairments assigned low priority for TMDL development because other programs are likely to remedy the water quality impairment. Waters and impairments designated as low priority are targeted for TMDL development within 7-11 years.

Connecticut employs a five year rotating basin monitoring cycle. As additional data are compiled, Connecticut is committed to re-prioritizing waters based on factors such as, but not limited to, the nature/severity of the impact, importance of unsupported use, the availability of data or models required for TMDL development, etc.

EPA concludes that Connecticut’s prioritization and identification of waters targeted for TMDL study and/or development during the next 3 years is reasonable and sufficient for the purposes of Section 303(d). CT DEEP properly examined and considered the severity of pollution and uses of the listed waters, as well as other relevant factors identified in EPA’s regulations. EPA has determined that CT DEEP properly ranked those waters listed for TMDL development within the next 3 years by considering the complexity of each TMDL. Further, EPA has determined that CT DEEP’s priority ranking ensures reasonable progress in addressing high priority waters with challenging water quality problems (Memo from Geoffrey H. Grubbs, Supplemental Guidance

on Section 303(d) Implementation, August 13, 1992). EPA and CT DEEP assess yearly the pace of TMDL development versus the universe of impaired waters in the State.

### **Water bodies on tribal lands**

EPA's approval of Connecticut's Section 303(d) list extends to all water bodies on the list with the exception of those waters, if any, that are within Indian Country, as defined in 18 U.S.C. Section 1151. EPA is taking no action to approve or disapprove the State's list with respect to waters within Indian country at this time. EPA, or any eligible Indian Tribe, as appropriate, will retain responsibilities under Section 303(d) for those waters. There are two Federally-recognized Indian Tribes in Connecticut. They are the Mashantucket Pequot Tribal Nation and the Mohegan Tribe.

### **Waters impaired by nonpoint sources of pollution**

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 Northern District of California held that Section 303(d) of the Clean Water Act authorizes EPA to identify and establish total maximum daily loads for waters impaired by nonpoint sources. Pronsolino v. Marcus, 91 F. Supp. 2d 1337, 1347 (N.D.CA. 2000). This decision was affirmed by the 9th Circuit court of appeals in Pronsolino v. Nastri, 291 F.3d 1123 (9th Cir. 2002). See also EPA guidance (U.S. EPA, 2005). Waters identified by the State as impaired or threatened by nonpoint sources of pollution (NPS) were appropriately considered for inclusion on Connecticut's 2012 Section 303(d) list. Connecticut properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with Section 303(d) regulations and EPA guidance.

EPA concludes that CT DEEP properly considered waters identified by the State as impaired or threatened in nonpoint assessments under Section 319 of the CWA in the development of the 2012 Section 303(d) list.