



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
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BOSTON, MASSACHUSETTS 02109-3912**

March 9, 2022

Sue Kiernan, Deputy Administrator
Rhode Island Department of Environmental Management
Office of Water Resources
235 Promenade Street
Providence, RI 02908-5767

Dear Ms. Kiernan:

Thank you for your submission of the State of Rhode Island's 2022 Clean Water Act (CWA) Section 303(d) list of impaired waters. In accordance with Section 303(d) and 40 CFR §130.7, the U.S. Environmental Protection Agency, Region 1 (EPA) conducted a complete review of Rhode Island's 2022 Section 303(d) list and supporting documentation. Based on this review, EPA has determined that Rhode Island's 2022 Section 303(d) list meets the requirements of Section 303(d) of the CWA and EPA's implementing regulations. Therefore, by this letter, EPA hereby approves the State's Section 303(d) list, submitted to EPA on March 7, 2022.

Rhode Island's submission includes a list of water bodies 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. As required, this list includes a priority ranking for each listed water body and specifically identifies waters targeted for total maximum daily load (TMDL) development in the next two years. A long-term schedule for developing TMDLs for all waters on the State's list was also provided. The statutory and regulatory requirements, and EPA's review of the State's compliance with these requirements, are described in detail in the enclosed approval document.

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Assessments of state waters conducted under Sections 305(b) and 303(d) of the CWA should be prepared in a manner to support their submission to EPA by April 1, of even numbered years in accordance with those sections of the CWA and 40 CFR §130.7. In addition, waters should be assessed using Water Quality Standards that are approved and in effect at the time of the assessment. #

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The Rhode Island Department of Environmental Management (RI DEM) has successfully completed a public participation process that provided the public an opportunity to review and comment on the State's 2022 Section 303(d) list. We understand that RI DEM received three

emailed comments from individuals and organizations, in addition to those submitted by EPA. Thank you for your responses to our comments. EPA reviewed the RI DEM's responses to the public comments it received and determined that the State satisfactorily responded to all of the comments.

EPA appreciates the advance coordination between the two agencies and the opportunity to review pre-submittal drafts, which allowed us to expedite the formal approval. My staff and I look forward to continued cooperation with RI DEM in implementing the requirements of Section 303(d) of the CWA. If you have any questions regarding EPA's review or this approval, please contact Jackie LeClair at (617) 918-1549 or have your staff contact Steven Winnett at (617) 918-1687.

Sincerely,

/s/

Ken Moraff, Director
Water Division

Enclosure

cc: Heidi Travers, RI DEM
Jane Sawyers, RI DEM
Al Basile, EPA
Jackie LeClair, EPA
Mel Cote, EPA
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EPA NEW ENGLAND’S REVIEW OF RHODE ISLAND’S 2022 CWA SECTION 303(d) LIST

I. INTRODUCTION

EPA has conducted a complete review of Rhode Island’s (RI) 2022 Section 303(d) list and supporting documentation and information. Based on this review, EPA has determined that Rhode Island’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, EPA hereby approves Rhode Island’s 2022 final CWA Section 303(d) list, submitted on March 7, 2022. The Section 303(d) list is a component of the State’s 2022 *Integrated Water Quality Report to Congress submitted pursuant to the Federal Clean Water Act Sections 305(b) and 303(d)* (the “Integrated Report” or “IR”). The statutory and regulatory requirements, and EPA’s review of Rhode Island’s compliance with each requirement, are described in detail below.

The purpose of this review document is to describe the rationale for EPA’s approval of Rhode Island’s 2022 Section 303(d) list. The following sections identify key elements to be included in the Section 303(d) list submittal based on the CWA and EPA regulations. See 40 CFR Section 130.7. The content of this review is based upon EPA’s 2006 Integrated Report Guidance, which describes categories of water quality related data and information that may be existing and readily available. See EPA’s August 13, 2015, memorandum on *Information Concerning 2016 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*, (available at https://www.epa.gov/sites/production/files/2015-10/documents/2016-ir-memo-and-cover-memo-8_13_2015.pdf). This document recommended that the states’ 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), issued July 29, 2005, (available at <https://www.epa.gov/sites/production/files/2015-10/documents/2006irg-report.pdf>) as supplemented by an October 12, 2006, memo and attachments, the May 5, 2009, memo and attachments, the November 15, 2010, memorandum, the March 21, 2011, memo and attachments, and the September 3, 2013, memorandum and attachments. All guidance, memoranda and attachments may be found at <https://www.epa.gov/tmdl/integrated-reporting-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.

EPA reviewed Rhode Island’s 2022 *Consolidated Assessment & Listing Methodology for 305(b) and 303(d) Integrated Water Quality Monitoring and Assessment Reporting* (CALM), which was used to develop the Section 303(d) list and the State’s description of the data and information it considered during preparation of the list. EPA’s review of Rhode Island’s Section 303(d) list is based on an analysis of whether the State reasonably considered all existing and readily available water quality related data and information, and reasonably identified waters required to be listed. EPA also closely examined all the requests made by the State to remove water bodies from the 2022 Section 303(d) list that had

appeared on the previous, combined 2018-2020 list, to ensure that only those which had the proper justification were allowed to be removed. The paragraphs below are arranged to reflect the organization of guidance from EPA, titled, *Recommended Framework for EPA Approval Decisions on 2002 State Section 303(d) List Submissions*, (available at https://www.epa.gov/sites/production/files/2015-10/documents/2002_06_04_tmdl_guidance_listapproval.pdf), transmitted in a memorandum from EPA Headquarters dated May 20, 2002.

II. STATUTORY AND REGULATORY BACKGROUND

Identification of WQLSs for Inclusion on Section 303(d) List

Section 303(d)(1) of the CWA directs states to identify those waters within their 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 (WQS) 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 non-attainment 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 Section 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 guidance (U.S. EPA 2005) 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 CFR Section 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.

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 Section 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 guidance (U.S. EPA 2005).

III. REVIEW OF RHODE ISLAND'S SECTION 303(d) SUBMISSION

Rhode Island's Department of Environmental Management (RI DEM) submitted a final combined 2022 Section 303(d) list to EPA on March 7, 2022. The 2022 Section 303(d) list includes all waters that have been assigned to EPA Category 5 in accordance with the CALM.¹ The Section 303(d) list contains a schedule prioritizing EPA Category 5 water bodies for TMDL development from 2022 through 2040.

RI DEM released the draft 2022 Section 303(d) list to the public on January 11, 2022, via emails to its list of interested individuals and organizations. On January 24, 2022, the State held a virtual workshop via Zoom to introduce the draft list to the public. Over 50 people attended. RI DEM closed the comment period on February 18, 2022. EPA provided comments to the State on its draft delisting document on December 20, 2021, which RI DEM and EPA discussed in a phone call on December 29, 2021. In addition to EPA's comments, RI DEM received comments from three (3) other individuals and organizations.

Rhode Island has included all waters known or suspected not to be meeting water quality standards on the Section 303(d) list, or in EPA Category 4, as discussed below. Under its current listing approach, Rhode Island keeps a water body 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 shown to be 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.

¹ The EPA categories 1-5 discussed herein refer to the listing categories described in EPA's listing guidance referenced in Section I above.

Waters for which there is insufficient information to make a listing or attainment determination are included in Category 3.

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

EPA Category 5, which corresponds to the Section 303(d) list, contains waters where available data and/or information indicate that the water is impaired or threatened by pollutants for one or more designated uses and a TMDL is required. The CWA and 40 CFR Section 130.7 require EPA to review and approve or disapprove the Section 303(d) list of impaired waters.

Public Participation

As noted above, the State released the public review draft version of its Section 303(d) list on January 11, 2022, along with supporting documentation, to the public and began its public notice period at the same time, with notice posted on RI DEM’s website and emails to their list of interested individuals and organizations. RI DEM held a remote public workshop to present the 2022 303(d) list on January 24, 2022, which was attended by more than 50 people. RI DEM received emailed comments from three individuals and organizations, in addition to those received from EPA (see above).

EPA reviewed RI DEM’s responses to the comments it received and determined that RI DEM satisfactorily responded to all of them.

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 assessment methodology used by Rhode Island is described in the CALM.

For the 2022 assessment cycle, RI DEM used the Single Category Reporting format which assigns an individual assessment unit to one IR Category.

As noted in the CALM, RI DEM strives to consider all readily available water quality data and related information in developing the Integrated Report. In determining if data are appropriate, RI DEM considers quality assurance/quality control, data quality objectives, monitoring design, age of data,

accuracy of sampling location information, data documentation, and data format (hard copy versus electronic).

The primary source of data generated for assessments is developed from programs consistent with the Water Monitoring Strategy (<http://dem.ri.gov/programs/benviron/water/quality/surfwq/pdfs/ri-water-monitoring-strategy-19.pdf>). There are a variety of data generated by programs outside of the Water Monitoring Strategy framework. This includes data generated by special projects, research, volunteer efforts, and the federal government. RI DEM reports that it is interested in and considers all such data, but the applicability to the assessment process may be limited by the sampling design and data quality objectives of those projects. Because such data generally have not been collected for assessment purposes, they may be of limited utility for application in assessments due to the frequency of sampling, indicators used, number of samples, etc. The data quality objectives outlined in the CALM are used to allow RI DEM to determine, in a consistent manner, whether these data can be used to make determinations about the water quality attainment status.

RI DEM also uses predictive models and dilution calculations in concert with ambient and discharge data to identify water quality limited segments. RI DEM discusses its monitoring approach and its partnerships with other data gathering organizations in its submission.

RI DEM solicited submittal of such data and information for consideration in developing the 2022 Integrated Report. It posted a notice to its website and sent out emails publicly requesting data for the preparation of the combined list on April 1, 2021, and closed the data request period on June 1, 2021. In addition, RI DEM used more recent data that was readily available in its assessment and listing decisions.

EPA has reviewed Rhode Island'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 and the Rhode Island 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).

Waters included in Category 5 of the 2022 Section 303(d) list were assessed using the CALM. Based upon that assessment, a total of 192 water body segments have been assigned to Category 5 of the impaired waters list, with a total of 297 water body segment–impairment cause combinations.

NEW IMPAIRMENTS

The three (3) water body segments identified in Table 1 are newly listed in the 2022 cycle with at least one impairment and with no previous listings.

Table 1 - Waters newly listed as impaired on the 2022 List

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Cause of Impairment Added</u>
Tarbox Pond	RI0006012L-02	Mercury in Fish Tissue*
Tarkiln Pond	RI0001002L-08	Mercury in Fish Tissue*
Spring Lake (Herring Pond)	RI0001002L-04	Mercury in Fish Tissue*

Two (2) water body segments identified in Table 2 remain on the list from the 2018-2020 cycle and have had one new impairment added in the 2022 list.

Table 2 - Waters listed as impaired on the combined 2018-2020 list with a new impairment added in 2022

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Cause of Impairment Added</u>
Pawtuxet River Main Stem	RI0006017R-03	Lead*
Chapman Pond	RI0006016L-02	Mercury in Fish Tissue*

In addition, the State added impairments for two (2) water bodies (Table 3, below) where at least one of the other previously listed impairments has been moved to Category 4A (impaired but has an approved TMDL).

Table 3 - Waters with existing listing(s) in Category 4A (has an approved TMDL), with a new impairment(s) added in 2022

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Cause of Impairment Added</u>
Ten Mile River & Tribs, segment B	RI0006017R-03	Enterococcus*
J.L. Curran Reservoir (Fiskeville Reservoir)	RI0006016L-02	Phosphorus, Total

* These water bodies also have previously listed impairments in Category 4C, with no TMDL required.

While EPA is not acting to approve or disapprove Rhode Island's listing methodology, we have reviewed the material and we conclude that the methodology RI DEM used to develop the impaired waters list is reasonable and consistent with Rhode Island's water quality standards, and with the CWA Section 303(d) regulations and EPA guidelines.

DELISTINGS

WATER BODIES/IMPAIRMENTS MOVED TO CATEGORY 2

For the 2022 Section 303(d) list, the State has, in its March 7, 2022, submittal, proposed to delist some or all of the impairments in six (6) water body segments included as impaired on the combined 2018-2020 Section 303(d) list. The following tables provide a summary of water body segments proposed for delisting for some or all of the impairments. RI DEM supplied data on these waters as part of this listing cycle.

Water Body Segments Proposed For Delisting For All Of Their Listed Impairments

Buckeye Brook and Trib (RI0007024R-01) previously listed for dissolved zinc, is proposed for delisting to Category 3 for insufficient information. In preparation for the Buckeye Brook metals TMDLs, approved on December 14, 2021 (<https://www.epa.gov/tmdl/tmdl-report-and-approval-documents-buckeye-brook-and-tributaries-warwick-pond-ri>), RI DEM reviewed the data used to list the impairment and found they did not meet data quality requirements of the Buckeye Brook Biodiversity Quality Assurance Project Plan (see Delisting document page 10). EPA therefore approves the impairment's delisting to Category 3 until sufficient data can be collected to make an assessment decision. The waterbody has approved TMDLs for cadmium, copper, iron, and lead, which cover the associated impairments for benthic macroinvertebrate assessments and dissolved oxygen, and for enterococcus and fecal coliform bacteria.

Table 4 - Waters proposed for delisting for all of their listed impairments

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Reason for Delisting</u>
Buckeye Brook and Tribs	RI0007024R-01	Zinc: Insufficient information to determine assessment status

Water Body Segments Proposed For Delisting For Some But Not All Of Their Impairments

Five (5) water body segments have been proposed for delisting for some but not all of their impairments (see Tables 5 and 6, below) and will remain listed in Category 5 for other impairments. These segments now meet water quality standards for one or more of their previously listed impairments, demonstrated by multi-year data sets. These impairments will be moved to Category 2.

Table 5 – Waters proposed for delisting for some, but not all of their listed impairments

<u>Waterbody Name</u>	<u>Water Segment ID #</u>	<u>Reason for Delisting</u>
Woonasquatucket River and Tribs	RI0002007R-10A	Meets WQS for dissolved zinc
Pawtuxet River Mainstem	RI0006017R-03	Meets WQS for total phosphorus

The Woonasquatucket River and Tribs segment A (RI0002007R-10A), previously listed for dissolved zinc, is now meeting criteria for that impairment and is proposed for delisting and placement in Category 2. EPA therefore approves its delisting to Category 2. It remains on the 303(d) list as impaired by enterococcus bacteria, for which there is an approved TMDL.

The Pawtuxet River Mainstem (RI0006017R-03), previously listed for a total phosphorus impairment, is proposed for delisting. As part of its interpretation of the State's narrative criteria for phosphorus in flowing waters, RI DEM presented phosphorus data from three wastewater treatment facilities (WWTF) discharging to the river that demonstrate compliance with new lower permit limits, and monitoring data from a USGS station showing increasingly lower ambient phosphorus concentrations over time (see Delisting document). In addition, RI DEM presented data on dissolved oxygen, a commonly used surrogate for nutrient pollution, showing compliance with the State's water quality criteria. EPA therefore approves its delisting to Category 2. It remains on the 303(d) list as impaired by enterococcus

bacteria, lead, and mercury in fish tissue, and has an impairment by non-native aquatic plants in Category 4C.

Table 6 – Waters proposed for delisting for some but not all impairments, and with approved TMDLs for other pollutants

<u>Waterbody Name</u>	<u>Water Segment ID #</u>	<u>Reason for Delisting</u>
Blackstone River, segment A	RI0001003R-01A	Meets WQS for dissolved lead
Blackstone River, segment B	RI0001003R-01B	Meets WQS for dissolved lead
Maidford River	RI0007035R-02A	Meets WQS for dissolved lead

Two water body segments of the Blackstone River (RI0001003R-01A and RI0001003R-01B), and one segment of the Maidford River (RI0007035R-02A), previously listed for dissolved lead, are now meeting criteria for that impairment and are proposed for delisting and placement in Category 2. EPA therefore approves their delisting to Category 2.

The two Blackstone segments remain listed on the 303(d) list as impaired by iron, mercury in fish tissue, and PCBs in fish tissue. Segment 01A has approved TMDLs for cadmium, enterococcus, and fecal coliform bacteria, and has an impairment by non-native aquatic plants in Category 4C (see below). Segment 01B has an approved TMDL for cadmium and continues to be listed as impaired by enterococcus and fecal coliform bacteria, awaiting the outcome of the implementation of a consent decree for CSO abatement.

The Maidford River has an approved TMDL for fecal coliform bacteria and remains on the 303(d) list for impairments related to benthic macroinvertebrate bioassessments, total phosphorus, and turbidity.

In summary, EPA recognizes that Rhode Island’s proposed delistings in the 2022 list have been evaluated in accordance with Rhode Island’s 2022 CALM and are consistent with Rhode Island’s water quality standards. As provided in 40 CFR Section 130.7(b)(6)(iv), EPA requested that the State demonstrate good cause for not including these waters on its Section 303(d) list.

EPA has examined in detail all the supporting information provided by RI DEM and finds that the State has reasonably concluded that the water body-impairment combinations described above should no longer be on the 303(d) list for the indicated impairments. EPA therefore approves the State’s Section 303(d) list without these water body-impairment combinations.

CATEGORY 4

The following tables show a summary of previously Section 303(d)-listed water bodies that have been moved to Category 4 in this listing cycle. These segments are impaired for one or more designated uses, but do not need a TMDL for one of three reasons specified. Water body segments in Category 4A already have a State-developed TMDL, which has been approved by EPA. Segments listed in Category 4B have other required and/or enforceable control measures that are expected to result in attainment of an applicable water quality standard in a reasonable period of time. Category 4C contains water body

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 (Table 8, below).

Category 4A

For the water bodies/impairments moved to Category 4A for this listing cycle, TMDLs for the pollutant of concern have been completed, and are approved by EPA. In all, 15 water body-pollutant combinations were placed in Category 4A during the 2022 listing cycle. The 15 approved TMDLs, covering 11 water body segments, are identified in Table 7. EPA approves the State’s Section 303(d) list without these waterbody-pollutant combinations because the removal of these listings is consistent with EPA’s regulations and EPA’s Guidance for Assessment, Listing and Reporting Requirements.

Table 7 - Waters fully or partially moved to Category 4A – TMDL completed				
<u>Water Body Name</u>	<u>Water Body Segment ID</u>	<u>Water Body Towns</u>	<u>EPA Approved</u>	<u>TMDL Parameter(s)</u>
Gardiner Pond	RI0007035L- 01	Middletown	11/15/2021	Phosphorus (Total)
Paradise Pond	RI0007035L- 02	Middletown	11/15/2021	Phosphorus (Total)
North Easton Pond	RI0007035L- 03	Middletown, Newport	11/15/2021	Phosphorus (Total)
South Easton Pond	RI0007035L- 04	Newport	11/15/2021	Phosphorus (Total)
St. Marys Pond	RI0007035L- 05	Portsmouth	11/15/2021	Phosphorus (Total)
Lawton Valley Reservoir	RI0007035L- 06	Portsmouth	11/15/2021	Phosphorus (Total)
Watson Reservoir	RI0007035L- 07	Little Compton	11/15/2021	Phosphorus (Total)
Nonquit Pond	RI0007035L- 08	Tiverton	11/15/2021	Phosphorus (Total)
Sisson Pond	RI0007035L- 10	Portsmouth	11/15/2021	Phosphorus (Total)
Buckeye Brook & Unnamed Tribs	RI0007024R -01	Warwick	12/14/2021	Cadmium, copper, iron, lead
Tributaries to Warwick Pond	RI0007024R -05	Warwick	12/14/2021	Cadmium, iron

Category 4B

EPA re-evaluates the continued listing of any impairments in Category 4B in every listing cycle. The State's decision to include waters in Category 4B rather than on its Section 303(d) list is consistent with

EPA regulations at 40 CFR Section 130.7(b)(1). Under 40 CFR Section 130.7(b)(1), states are not required to list impaired waters where effluent limitations required by the CWA, more stringent effluent limitations required by state or local authority, or other pollution control requirements required by state, local, or federal authority, are stringent enough to implement applicable water quality standards. The regulation does not specify the time frame in which these various requirements must implement applicable water quality standards to support a state's decision not to list particular waters. EPA guidance states that water quality standards must be attained within the near future (U.S. EPA, 2005).

Monitoring should continue for any waters currently in Category 4B to verify that the water quality standard is attained as expected in a reasonable time frame. Where standards will not be attained through implementation of the requirements listed in 40 CFR Section 130.7(b)(1) in a reasonable time, it is appropriate for the water to be placed on the Section 303(d) list to ensure that implementation of the required controls and progress towards compliance with applicable standards is tracked. If it is determined that the water is meeting applicable standards when the next Section 303(d) list is developed, it would be appropriate for the state to remove the water from the list at that time.

Currently, no waters are listed in Category 4B and Rhode Island is not proposing to add new waters into Category 4B in this listing cycle.

Category 4C

The State has demonstrated that the water body segments moved into Category 4C are not attaining water quality standards as the result of pollution rather than the presence of a pollutant. The CWA defines pollution as “the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” The text of the 2022 list, and the data that RI DEM enters into EPA’s ATTAINS database present good cause for the State to include these waters in Category 4C of its 2022 Integrated Report.

RI DEM identified new impairments not caused by a pollutant loading to both water bodies already on the 303(d) list or with an approved TMDL for other causes, and to water bodies not previously listed for any impairment (Table 8, below).

EPA concurs that the placement of these water bodies into Category 4C is appropriate and has been done in accordance with Rhode Island’s 2022 CALM and is consistent with Rhode Island’s water quality standards.

Table 8 – Waterbody-impairment combinations newly placed into Category 4C – not impaired by a pollutant

<u>Water Body Name</u>	<u>Water Segment ID #</u>	<u>Cause of impairment</u>
Asa Pond	RI0010045L-02	Non-native aquatic plants*
Beach Pond	RI0005010L-01	Non-native aquatic plants
Boone Lake	RI0008040L-14	Non-native aquatic plants
Carls Pond	RI0001006L-08	Non-native aquatic plants*
Coventry Reservoir (Stump Pond)	RI0006013L-03	Non-native aquatic plants*
Hawkins Pond	RI0005047L-09	Non-native aquatic plants*
Lower Sprague Reservoir	RI0002007L-06	Non-native aquatic plants
Omega Pond	RI0004009L-03	Non-native aquatic plants
Peace Dale Reservoir	RI0010045L-03	Non-native aquatic plants*
Print Works Pond	RI0006018L-05	Non-native aquatic plants
Shippee Saw Mill Pond	RI0006015L-05	Non-native aquatic plants*
Sucker Pond	RI0001002L-05	Non-native aquatic plants*
Ten Mile River & Tribs	RI0004009R-01B	Non-native aquatic plants
Upper Dam Pond	RI0006014L-04	Non-native aquatic plants

*These waters are newly assigned to Category 4C with no previous/current impairment listings or TMDLs.

Priority Ranking

EPA also reviewed the State’s priority ranking of listed waters for TMDL development. RI DEM has prioritized its list through its establishment of a schedule from 2022 to 2040 for completing TMDLs for waters on the list. According to the State’s 2022 CALM, this schedule reflects the high consideration the State has given to shellfishing waters, drinking water supplies, and other areas identified by the public as high priority areas, with special attention to the nutrient conditions in the Tidal Pawcatuck River and Little Narragansett Bay, in cooperation with Connecticut’s Department of Energy and Environmental Protection. 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.

Combinations of water body segments and impairments are given a priority for TMDL development based on their place in RI DEM’s schedule. There are 192 water body segments in Category 5 with 297 (water body segment × impairment cause) combinations. RI DEM’s TMDL development schedule is as follows, with the number of water body segment-impairment combinations due for development of TMDLs by the date shown:

2022: 1
 2023: 12
 2024: 8
 2025: 25
 2026: 34
 2027: 36

2028: 40
2029: 10
2030: 83
2031: 8
2032: 12
2035: 27
2040: 1

RI DEM recognizes that changes in priorities may take place as new waters are added to the list and as other information becomes available. Overall, Rhode Island is committed to completing TMDL development for all currently listed waters by the year 2040.

EPA concludes that Rhode Island's water body prioritization and identification of waters targeted for TMDL study and/or development is reasonable and sufficient for the purposes of Section 303(d). RI DEM 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. Further, EPA has determined that RI DEM'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 RI DEM 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 Rhode Island'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.

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 CWA authorizes EPA to identify and establish TMDLs 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 were appropriately considered for inclusion on Rhode Island's 2022 Section 303(d) list. Rhode Island properly listed waters with nonpoint sources causing or expected to cause impairment, consistent with Section 303(d) regulations and EPA guidance.

EPA concludes that RI DEM 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 2022 Section 303(d) list.