

Listing the Lower Esopus Creek on New York State's 2012 303(d) List of Impaired Waters

Fact Sheet January 14, 2013

Section 303(d) of the Clean Water Act (CWA) requires states to identify all waters for which existing pollution controls or requirements are inadequate to attain and maintain water quality standards. States identify these waters on what is commonly referred to as a State's 303(d) List or list of impaired waters.

On July 25, 2012, New York State submitted its 2012 list of impaired waters to the U.S. Environmental Protection Agency (EPA) for approval or disapproval. EPA reviewed the State's 2012 list of impaired waters based on whether the State developed its list in compliance with Section 303(d) of the CWA and EPA's implementing regulations, including whether the State reasonably considered existing and readily available water quality-related data and information and identified waters required to be listed.

New York State's narrative water quality standard for turbidity is "no increase that will cause a substantial visible contrast to natural conditions." Turbidity (or "cloudiness") is caused by particles, such as silt or sediment, suspended in the water column. Available data and information during the State's 2012 data solicitation and public comment periods indicated an exceedance of the narrative water quality standard for turbidity in the Lower Esopus Creek, yet the State did not include this waterbody on its 303(d) List.

On August 16, 2012, EPA partially approved and partially disapproved the State's 2012 303(d) List. EPA published a notice in the Federal Register regarding the partial approval/partial disapproval and opened a public comment period (September 6 – October 9, 2012) on the proposed listing of the Lower Esopus Creek in order to inform a final decision on this issue.

After considering all comments submitted, EPA has concluded that current and available information indicate that New York State's narrative water quality standard for turbidity is exceeded in the Lower Esopus Creek. Human activities, such as release channel operations associated with the Ashokan Reservoir, have increased the duration of turbidity in the Lower Esopus Creek. These conditions cannot reasonably be considered natural.

303(d) listing of the Lower Esopus Creek is necessary. For further information on the comments submitted as well as EPA's response to those comments, please see the "Response Summary" found on EPA's website.