



**REGION 10**  
SEATTLE, WA 98101

February 6, 2025

Mr. Gene McCabe  
Director  
Division of Water  
Alaska Department of Environmental Conservation  
P.O. Box 111800  
Juneau, Alaska 99811

Dear Mr. McCabe:

The U.S. Environmental Protection Agency has completed its review of Alaska's 2024 Integrated Water Quality Monitoring and Assessment Report (Integrated Report), including the Clean Water Act section 303(d) list of impaired waters, a priority ranking for impaired waters still requiring a Total Maximum Daily Load, and the associated supporting documentation and information. The EPA initially received the 2024 Integrated Report and 303(d) list from the Alaska Department of Environmental Conservation on September 18, 2024 through ATTAINS.<sup>1</sup> ADEC subsequently withdrew the Integrated Report on October 25, 2024, added eight additional waters to Category 3, and resubmitted the Integrated Report to the EPA on November 19, 2024.

Pursuant to the EPA's authorities under section 303(d) of the CWA, 33 U.S.C. § 1313(d), and the implementing regulations at 40 C.F.R Part 130, the EPA is approving the 303(d) list contained in Alaska's 2024 Integrated Report. Although the Integrated Report describes the status of all of Alaska's waters, the EPA only has approval authority for the waters proposed to be listed in Category 5, which constitutes the 303(d) list applicable to the waters within the jurisdiction of the state of Alaska. In taking this action on Alaska's 2024 303(d) list, the EPA considered the information in the project record, including but not limited to, Alaska's Category 5 data and the narrative supporting documents. A summary of the EPA's review of Alaska's compliance with each statutory and regulatory requirement pertaining to the 2024 303(d) list is described in the enclosure to this letter.

The EPA notes that ADEC included the "TMDL and Watershed Plan Schedule" document in its 2024 Integrated Report submittal. Consistent with 40 C.F.R. § 130.7(d)(1), the TMDL priority ranking and submission schedule identifies dates by which the State anticipates completing TMDLs for submittal to the EPA. As recognized in EPA guidance, TMDL submission schedules are intended to help the public

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<sup>1</sup>The Assessment, Total Maximum Daily Load (TMDL) Tracking and Implementation System (ATTAINS) is the EPA's electronic system to accept and track CWA section 303(d) submissions and Agency actions.

and the EPA understand the State's priorities and assist in work planning.<sup>2</sup> The EPA acknowledges Alaska's TMDL priority ranking and submission schedule and finds it satisfies these purposes.

We recognize the hard work of Terri Lomax, Amber Crawford, Jenny Petitt and other ADEC staff in developing the 2024 303(d) list. The EPA also acknowledges that ADEC met its 2024 Vision Priorities for Red Devil Creek and Kuskokwim River, which were submitted in ATTAINS. Because the EPA's approval action was not completed by the end of the 2024 Vision Priority period, credit for completion of these priorities will be given during the next cycle. ADEC's prioritization process is described in Alaska's Prioritization Framework 2022-2032 Clean Water Act Vision for Section 303(d), January 2024.<sup>3</sup>

If you have any questions, please feel free to call me at (206) 553-0171 or have your staff contact Jill Fullagar, the EPA Assessment Program Coordinator, at (206) 553-2582.

Sincerely,

Hanh Shaw  
Manager, Standards, Assessment and Watershed  
Management Branch  
Water Division

#### ENCLOSURE

1. U.S. EPA Clean Water Act Review and Decision Rationale for Approval of Alaska's 2024 303(d) List

cc (e-Copy): Ms. Terri Lomax, Statewide Program Manager, [terri.lomax@alaska.gov](mailto:terri.lomax@alaska.gov)  
Ms. Amber Crawford, Section Manager, [amber.crawford@alaska.gov](mailto:amber.crawford@alaska.gov)  
Ms. Jenny Petitt, Environmental Program Specialist, [jenny.petitt@alaska.gov](mailto:jenny.petitt@alaska.gov)

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<sup>2</sup>EPA, Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act, at 63 (July 29, 2005).

<sup>3</sup>Available at <https://dec.alaska.gov/media/y3sffjzb/alaskas-prioritization-framework-2022-2032-final-jan2024.pdf>

# U.S. EPA Clean Water Act Review and Decision Rationale for Approval of Alaska's 2024 303(d) List

February 6, 2025

## 1. Introduction

This document sets forth the U.S. Environmental Protection Agency's reasoning for approving Alaska's 2024 Clean Water Act (CWA) Section 303(d) list (303(d) list). The EPA received Alaska's 2024 303(d) list on September 18, 2024, through ATTAINS.<sup>1</sup> The Integrated Report (IR) was initially submitted to the EPA through ATTAINS using the "sharing" option due to a technical issue that prevented the IR from being promoted to the Organizational Final stage. On October 25, 2024, as a result of information received through the EPA's engagement with a Tribe during government-to-government consultations, Alaska withdrew the IR to add eight waters to Category 3. Alaska resubmitted the IR on November 19, 2024.

The EPA has conducted a complete review of the state's 2024 303(d) list and supporting documentation and information, including changes from the previous 303(d) list. Based on this review, the EPA has determined that the state's 303(d) list of water quality-limited segments (WQLSs)<sup>2</sup> still requiring TMDLs (i.e., Category 5 of the state's IR) satisfies the requirements of Section 303(d) of the CWA and the EPA's implementing regulations. Therefore, the EPA hereby approves Alaska's 2024 303(d) list.

The EPA's action regarding Alaska's 303(d) list does not extend to any waterbodies, or portions of waterbodies, that are within Indian country, as defined in 18 USC Section 1151. The EPA is taking no action to approve or disapprove the state's 303(d) list with respect to those waters. The EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under Section 303(d) for those waters. Additionally, the EPA's action regarding Alaska's 303(d) list does not extend to any waterbodies that are within exclusive federal jurisdiction. The EPA is taking no action to approve or disapprove the state's 303(d) list with respect to those waters.

## 2. The EPA's Analysis of Alaska's Submission

Section 303(d)(1) of the CWA and the EPA's implementing regulations at 40 CFR 130.7 require states, territories, and authorized Tribes (herein referred to as "states") to identify waters for

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<sup>1</sup>The Assessment, Total Maximum Daily Load (TMDL) Tracking and Implementation System (ATTAINS) is the EPA's electronic system to accept and track CWA section 303(d) submissions and Agency actions

<sup>2</sup>The EPA uses this term to reflect the combination of a water segment and an applicable WQS that is not attained or is threatened. For example, if a segment is not meeting three applicable WQS then there are three WQLS for that segment.

which effluent limitations required by CWA Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard (WQS). States need not identify on their lists 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. 40 CFR 130.7(b)(1) and (2). CWA Section 303(d) lists must identify WQLSs still requiring TMDLs. 40 CFR 130.7(b)). The definition of “water quality limited segment” in 40 CFR 130.2(j) includes any segment where it is known that water quality does not meet applicable water quality standards (referred to as “impaired waters”) and any segment that is not expected to meet applicable water quality standards (referred to as “threatened waters”). The term “applicable water quality standards” refers to those water quality standards established under Section 303 of the Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements. 40 CFR 130.7(b)(3). A WQLS must be on the 303(d) list and requires a TMDL unless the state can demonstrate that no pollutant(s) causes or contributes to the impairment.<sup>3</sup> In addition, in developing their CWA 303(d) lists, states must meet several procedural, submission, and content requirements as described in this decision document.

States must submit their 303(d) lists to the EPA on April 1 of every even-numbered year. 40 CFR 130.7(d)(1). The EPA must approve or disapprove the 303(d) list not later than 30 days after submission. The EPA approves a list only if it meets the requirements of 40 CFR 130.7(b). 40 CFR 130.7(d)(2). If the EPA approves the listing(s), the state must incorporate the listing(s) into its current Water Quality Management (WQM) plan. If the EPA disapproves a listing decision(s), the EPA must, not later than 30 days after the date of such disapproval, identify waters for inclusion on the 303(d) list (i.e., add the waters to the list). The EPA then must promptly issue a public notice seeking comment on the listing(s). After considering public comment and making any revisions the EPA deems appropriate, the EPA must transmit the listing(s) to the state, which must incorporate the listing(s) into its WQM plan. 40 CFR 130.7(d)(2).

The statutory and regulatory requirements, and the EPA’s review of the state’s compliance with the requirements, are described in detail in this document. To the extent that any EPA-approved listing decisions are unchanged from prior approved Section 303(d) list actions, the EPA incorporates the reasoning of those previous list actions unless otherwise noted.

#### A. Supporting documentation for making listing determinations

The EPA regulations at 40 CFR 130.7(b)(6) require states to include, as part of their submissions to the EPA, documentation to support the state’s determination to list or not to list its waters.

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<sup>3</sup>See CWA Sections 303(d)(1)(A) and 303(d)(1)(C); 40 CFR § 130.7(b)(4); 2006 Integrated Reporting Memorandum, page 60; 2024 Integrated Reporting Memorandum, pages 18-19. The EPA Integrated Reporting Memoranda may be found at <https://www.epa.gov/tmdl/integrated-reporting-guidance-under-cwa-sections-303d-305b-and-314>.

Such documentation must include, at a minimum, the information discussed in subsections i through iv, immediately below.

i. **Description of the methodology used to develop the 303(d) list.** 40 CFR 130.7(b)(6)(i). The EPA regulations at 40 CFR 130.7(b)(6) require states to include a description of the methodology used to develop the 303(d) list.<sup>4</sup> The EPA does not approve or disapprove assessment methodologies. Instead, in acting on CWA 303(d) lists, the EPA evaluates whether the state, territory, or authorized Tribe met listing requirements in determining whether applicable WQS are met and included waters requiring TMDLs on its 303(d) list. 2024 Integrated Reporting Memorandum (IR Memo) at 15.

The EPA finds that Alaska has provided a description of its methodologies used for determining whether its waters are achieving the state's WQS, satisfying the regulatory requirement to provide a "description of the methodology used to develop the list." 40 CFR 130.7(b)(6)(i). The EPA has considered the state's methodology as part of its review of the state's 303(d) list.

ii. **Description of the data and information used to identify waters.** 40 CFR 130.7(b)(6)(ii). The EPA regulations at 40 CFR 130.7(b)(6)(ii) require states to provide a description of the data and information used to identify waters, including a description of the data and information used by the state as required by 40 CFR 130.7(b)(5). The EPA finds that Alaska has provided a description of the data and information that it assembled and evaluated. 40 CFR 130.7(b)(6)(ii). The EPA has considered the state's description as part of its review of the state's 303(d) list.

iii. **A rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in 40 CFR 130.7(b)(5).** 40 CFR 130.7(b)(6)(iii). The EPA regulations at 40 CFR 130.7(b)(6)(iii) require states to provide a rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters as described in 40 CFR 130.7(b)(5). 40 CFR 130.7(b)(6)(iii). The EPA evaluates whether a state provides a technical, science-based rationale for decisions not to use data or information in developing the list.<sup>5</sup> The EPA finds Alaska provided a rationale for not using the data it assembled and evaluated to develop its list. 40 CFR 130.7(b)(6)(iii). The EPA has considered the state's rationale as part of its review of the state's 303(d) list.

iv. **Other reasonable information requested by the Region.** 40 CFR 130.7(b)(6)(iv). The EPA regulations at 40 CFR 130.7(b)(6)(iv) require states to provide any other reasonable information requested by EPA. Upon request by the EPA, each state must demonstrate good cause for not including a water or waters on the list. Consistent with 40 CFR 130.7(b)(6)(iv), good cause includes, but is not limited to:

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<sup>4</sup>The EPA's Integrated Reporting Memoranda provide more information on assessment methods. See 2006 Integrated Reporting Memorandum at 29.

<sup>5</sup>2024 IR Memo at FN 15 (citing court cases); 2006 IR Memo at 37 (The EPA evaluates whether there is a "reasonable technical rationale").

- assessment and interpretation of more recent or accurate data in the record demonstrate that the applicable WQS is met;
- more sophisticated water quality modeling;
- flaws in the original analysis that led to the water being listed;
- changes in conditions.

Good cause may also include, for example (see, e.g., 2006 IR Memo at 58-59):

- EPA approved or established TMDL;
- demonstration that the impairment is being addressed through more stringent effluent limits or other pollution control requirements; or
- demonstration that the impairment is not caused by a pollutant.

The EPA finds Alaska provided additional reasonable information requested by the EPA. Due to concerns expressed by an Alaskan Native Village during government-to-government consultations relating to water quality data near the village and a nearby proposed mine development project, the EPA requested additional information pertaining to the use of mining permit data in the water quality assessment. The Alaska Department of Environmental Conservation (ADEC) provided the EPA with an explanation of the review that was conducted by program staff as well as an additional assessment that concluded the mining data was collected from 2008-2016 and was no longer representative of current conditions. Therefore, these data were not used to make water quality status determinations. EPA has considered this information as part of its review of the state's 303(d) list.

#### B. Public participation

The EPA regulations require states to provide for public participation in the development of their 303(d) lists. 40 CFR 130.7(a). States are expected to demonstrate how they considered public comments in their final decisions. The EPA considers the public comments and state responses as appropriate in its actions on 303(d) lists in determining whether a state has provided reasoned support for its submission. See 2006 IR Memo at 25-26.

Alaska published the public notice of the draft 2024 IR for public comment on June 21, 2024, and accepted comments through July 22, 2024. Alaska hosted a virtual public information meeting on July 8, 2024, to present an overview of the IR process and information on the draft 2024 IR. No members of the public attended the meeting. The state's 2024 303(d) list submission to the EPA included a summary of public comments and the state's responses to comments.

The EPA concludes Alaska provided an opportunity for public comment on its 303(d) list consistent with 40 CFR 130.7(a). In addition, the state demonstrated how it considered public comments in its final decision.

## C. Assembling, evaluating, and using data and information

### i. Assemble and evaluate data and information

States must assemble and evaluate all existing and readily available water quality-related data and information to develop the CWA 303(d) list. 40 CFR 130.7(b)(5). In reviewing a state's 303(d) list submission, the EPA considers whether the state has satisfied the requirements under 40 CFR 130.7(b)(5) to assemble and evaluate all existing and readily available water quality-related data and information when developing their CWA 303(d) lists. This includes, at a minimum, all 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 CWA Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate non-attainment of applicable water quality standards; (3) waters for which water quality problems have been reported by local, state, and federal agencies; members of the public; academic institutions (these organizations and groups should be actively solicited for research they may be conducting or reporting); and (4) waters identified as impaired or threatened in any CWA Section 319 nonpoint source assessment submitted to the EPA. In addition to these minimum categories, states are required to assemble and evaluate any other water quality-related data and information that is existing and readily available. 40 CFR 130.7(b)(5).

Alaska published a Call for Data on October 20, 2022, which was open through February 1, 2023. Alaska also assessed data collected by state, federal, local and Tribal governments that were published through the Water Quality Portal. The state also considered data and information that were not submitted during the call for data or the public comment period but were shared with the EPA during government-to-government consultations. In late December 2024, the EPA shared with ADEC an additional report from Constantine Mining Company, LLC that was not previously submitted for inclusion in the 2024 assessment. As the data are not in a readily available format, ADEC agreed to assemble the data for assessment during the 2026 Integrated Report process, which is already underway. The EPA has reviewed the state's submission, including the state's description of the data and information that it assembled and evaluated and finds that the state satisfied the requirement to assemble and evaluate all existing and readily available water quality-related data and information to develop its list under 40 CFR 130.7(b)(5).

### ii. Use of data and information

States must use existing and readily available water quality-related data and information in developing the CWA 303(d) list, 40 CFR 130.7(b)(5), unless they provide a rationale not to use them, 40 CFR 130.7(b)(6)(iii). The EPA evaluates whether a state provides a technical, science-based rationale for decisions not to use data or information in developing the list.<sup>6</sup>

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<sup>6</sup>See FN 4.



The EPA evaluated whether Alaska provided a technical, science-based rationale for any decisions not to use existing and readily available water quality-related data or information to make a WQS attainment status determination and concluded the state provided such a rationale for the purposes of 40 CFR 130.7(b)(6)(iii). *See Section A iv above.*

#### D. Identification of waters for inclusion on the Section 303(d) list

As noted above, the EPA regulations at 40 CFR 130.7(b)(6) require states to provide documentation to support the state's determination to list or not to list its waters. The EPA has reviewed the state's submission, including its assessment methodology and additional supporting documentation for its listing determinations.

##### i. Approval of Identification of waters for inclusion on the 303(d) list

The EPA determined that Alaska's 2024 303(d) list encompasses waters consistent with the CWA 303(d) and 40 CFR 130.7 requirements, and the EPA is approving all waters the state included on the 303(d) list. The EPA's approval of the waters on the 303(d) list is based on the EPA's review of the state's submission including the description of the data and information concerning individual waters, documentation to support decisions to rely or not rely on particular data and information, and a description of how data and information were applied to make WQS attainment status determinations. The EPA also considered applicable public comments and responses. Alaska added two WQLSs to the 303(d) list as impaired due to *E. coli*, Little Campbell Creek and Chester Creek. Alaska's 303(d) list was submitted via ATTAINS.

##### ii. Approval of exclusion of waters identified on previous 303(d) lists

Alaska's 2024 303(d) list submission delists six WQLSs. In reviewing the state's 2024 303(d) list, the EPA carefully considered the state's decision to remove six WQLSs from the 303(d) list submission, its justification for those removals, any applicable comments and responses, and the methodology used in making those decisions. The EPA concludes that the decision to remove six WQLSs identified as part of the 303(d) list is reasonable, based on all existing and readily available water quality-related data and information, applicable WQS, and sound science, and the removal decisions are properly justified.

**Placement in Category 4b:** The state's decision to move certain WQLSs from its 303(d) list to Category 4b of the IR due to other pollution control requirements in place is consistent with the EPA's regulations at 40 CFR 130.7(b)(1). The EPA accepts the exclusion of Kuskokwim River (Red Devil) and Red Devil Creek from the 303(d) list for antimony, arsenic and mercury.

#### E. Identification of pollutants causing or expected to cause a violation of applicable WQS (130.7(b)(4))

As part of their CWA 303(d) lists, states are required to identify the pollutants causing or expected to cause violations of the applicable WQS. 40 CFR 130.7(b)(4). This includes a pollutant that by itself or in combination with other pollutants causes or is expected to cause violations of applicable WQS. States must identify in their 303(d) lists all pollutants that are



known to be causing or are expected to cause violations of the applicable WQS. 40 CFR 130.7(b)(4), see also, 2024 IR memo at 17-19. For listed waters, if the available data and information do not support identification of pollutants causing or expected to cause the exceedance, list submissions would identify the pollutant as “unknown.” Consistent with 40 CFR 130.7(b)(4), Alaska appropriately identified the pollutants that were causing or expected to cause a violation of the applicable WQS.

#### F. Priority ranking and two-year TMDL development (130.7(b)(4))

The CWA and the EPA’s regulations, require states to establish a priority ranking for the waters on their CWA 303(d) list “taking into account the severity of the pollution and the uses to be made of such waters.” CWA Section 303(d)(1)(A); 40 CFR 130.7(b)(4). The regulations at 40 CFR 130.7(b)(4) provide that this priority ranking must include “all listed water quality limited segments still requiring TMDLs” and further require that states submit their priority rankings to the EPA as a component of their biennial CWA 303(d) lists. Additionally, the regulations require that the priority ranking identify the waters targeted for TMDL development in the next two years. 40 CFR 130.7(b)(4).

Alaska’s description of how all listed WQLSs are prioritized for TMDL development, including identification of waters targeted for TMDL development in the next two years, is included within the state’s 303(d) list submission. In addition, Alaska described how its priority ranking took into account the severity of pollution and the uses to be made of such waters. *See Alaska’s Prioritization Framework 2022-2032 Clean Water Act Vision for Section 303(d)*.

The EPA’s review of Alaska’s submission finds that the state established a priority ranking for all waters on the CWA 303(d) list, taking into account the severity of the pollution and the uses to be made of such waters.<sup>7</sup> In addition, the state identified the waters targeted for TMDL development in the next two years.

#### G. Tribal Consultation by EPA

The EPA’s policy is to consult on a government-to-government basis with federally recognized Tribal governments when EPA actions and decisions may affect Tribes. To promote coordination and consultation, all Tribes that may be affected by EPA’s upcoming action on the state’s CWA 303(d) list were identified, notified of the upcoming state’s list submission for EPA action, and offered the opportunity to engage in consultation with EPA. On July 16, 2024, the EPA held an informational webinar for Alaska Tribes to provide background on the IR process and summarize the changes contained in Alaska’s 2024 IR. One Alaska Native Village participated in the webinar.

Tribal consultation and coordination were conducted consistent with the EPA’s policy on consultation and coordination with Indian Tribes.<sup>8</sup> The EPA coordinated with Tribes to be

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<sup>7</sup>In addition to these two statutory factors, states may also consider other factors when prioritizing TMDLs. See 57 Fed. Reg. 33040, 33,044-45 (July 24, 1992).

<sup>8</sup>[www.epa.gov/system/files/documents/2023-12/epa-policy-on-consultation-with-indian-tribes-2023.pdf](https://www.epa.gov/system/files/documents/2023-12/epa-policy-on-consultation-with-indian-tribes-2023.pdf)

responsive to requests for information, receive input, and discuss whether and how to engage in government-to-government consultation.

The EPA received a request for government-to-government consultation from Chilkat Indian Village-Klukwan. An initial consultation meeting was held on September 16, 2024, with a subsequent meeting occurring on October 15, 2024. Tribal consultation concluded on February 6, 2025 when the EPA sent a consultation summary letter to the Tribe. Based on input from Chilkat Indian Village-Klukwan, ADEC provided additional information as requested by the EPA and added eight waters to Category 3.

### **3. Summary of the EPA's decision on the 2024 CWA 303(d) list**

After careful review of Alaska's final CWA 303(d) list submission package, the EPA has determined that Alaska's 2024 303(d) list meets the requirements of Section 303(d) of the CWA and the EPA's implementing regulations. Therefore, the EPA approves Alaska's 2024 303(d) list.