March 30, 2020

Bruce Anderson, Director
Hawai‘i Department of Health
Kinau Hale
1250 Punchbowl Street
Honolulu, Hawai‘i  96813

Dear Mr. Anderson,

I am writing to withdraw specific aspects of EPA’s August 16, 2018 approval of the State of Hawai‘i 2018 Section 303(d) List of Impaired Waters, submitted to the United States Environmental Protection Agency (EPA) on July 17, 2018. EPA has reevaluated the State’s submission and determined that it is incomplete and thus not fully consistent with the requirements of Section 303(d) of the Clean Water Act and EPA regulations. Specifically, the State’s submission does not demonstrate that it has satisfied its statutory and regulatory obligation to assemble and evaluate all existing and readily available data and information related to plastics. Therefore, by this letter, EPA is withdrawing its August 16, 2018 approval specifically with respect to the consideration of plastics in Hawai‘i waterbodies for which Hawai‘i received data and information. EPA is not modifying any other aspect of its August 16, 2018 approval.

As you know, section 303(d) of the Clean Water Act requires each State to “identify those waters within its boundaries for which the effluent limitations required … are not stringent enough to implement any water quality standard applicable to such waters.” This process results in the generation of a Section 303(d) List. Section 303(d)(2) requires that each state submit its list to EPA for approval or disapproval. EPA’s regulations at 40 C.F.R. § 130.7(d)(2) provide that EPA “shall approve a list developed under § 130.7(b) … only if it meets the requirements of § 130.7(b).” One of those requirements directs states to “assemble and evaluate all existing and readily available water quality related data and information.” 40 C.F.R. § 130.7(b)(5). Section 130.7(b)(6)(iii) provides that a state may decide not to rely on particular sources of data or information in determining whether to include a particular water on the Section 303(d) List, subject to EPA approval. However, a state’s decision not to rely on such data or information is separate from its threshold obligation to assemble and evaluate all existing and readily available water quality-related data and information. If the State decides not to rely on certain data, it must provide a rationale for that decision. 40 CFR § 130.7(b)(6)(iii).

EPA acknowledges that it previously approved the Hawai‘i 2018 Section 303(d) List of Impaired Waters in full. EPA, however, is now exercising its inherent authority to reconsider prior decisions in order to ensure conformity of this action with the applicable statutory and regulatory requirements with respect to the waterbodies within Hawai‘i state boundaries for which the State received data.
and information related to plastics.

Section 101(b) of the Clean Water Act explains that one of the Act’s foundational principles is “to recognize, preserve, and protect the primary responsibilities and rights of States.” In recognition of that principle and the broader structure of cooperative federalism that the Act embodies, EPA strongly prefers that the State take the lead in the first instance to assemble and evaluate the readily available data and information regarding plastics for its jurisdictional waters. Accordingly, EPA requests that the State, consistent with its responsibilities and obligations under Section 303(d)(1)(A) of the Clean Water Act and 40 C.F.R. § 130.7(b)(5), assemble and evaluate all existing and readily available water quality-related data and information related to plastics in Hawai’i waterbodies for which the State received data and information, and submit the results of that evaluation to EPA, including any supporting documentation and, if appropriate, an assessment of whether the waters are meeting the applicable water quality standards, by May 29, 2020, for EPA’s consideration.

I look forward to our continued partnership in addressing the challenges of water quality in Hawai’i. Thank you for your attention to this matter. If you have any questions, please contact Tomás Torres at (415) 972-3337.

Sincerely,

Busterud, John
John W. Busterud
Regional Administrator

cc: Keith Kawaoka, Deputy Director, Environmental Health Administration