UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

September 30, 2014

David Mears, Commissioner
Vermont Department of Environmental Conservation
103 South Main Street
Waterbury VT 05671-0408

Re: Section 303(d) list approval

Dear Commissioner Mears:

Thank you for your final submittal of the 2014 Clean Water Act Section 303(d) list, **State of Vermont 303(d) List of Waters**, dated May 2014 and your submittal letter dated June 19, 2014. In accordance with Section 303(d) of the Clean Water Act and 40 CFR §130.7, the U.S. Environmental Protection Agency (EPA) conducted a complete review of Vermont's 2014 Section 303(d) list and supporting documentation. Based on this review, EPA has determined that Vermont's list of water quality limited segments still requiring Total Maximum Daily Loads (TMDLs) meets the requirements of Section 303(d) of the Clean Water Act (CWA) and EPA's implementing regulations. Therefore, by this order, EPA hereby approves Vermont's Section 303(d) list.

The submittal 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 presents Vermont's TMDL strategy which describes a priority setting approach and identifies those waters for which TMDLs will be completed and submitted during the next two years. The statutory and regulatory requirements, and EPA's review of Vermont's compliance with each requirement, are described in detail in the enclosed approval document.

The Vermont Department of Environmental Conservation (VTDEC) has also successfully completed a public participation process during which the public was given the opportunity to review and comment on the Section 303(d) list. As a result of this effort, Vermont has considered public comments in the development of the final list. A summary of the public comments and VTDEC's response to comments was included in the submittal.

Your staff has done an excellent job of preparing a comprehensive and informative list, and providing EPA with thorough supporting documentation. My staff and I look forward to continued cooperation with VTDEC in implementing the requirements under Section 303(d) of the CWA. Please feel free to contact me or Eric Perkins at 617-918-1602, if you have any questions or comments on our review.

Sincerely,

Ken Moraff, Director
Office of Ecosystem Protection

Enclosure

cc: Tim Clear, VTDEC

VT §303(d) Approval Documentation
September 30, 2014

I. INTRODUCTION

EPA has conducted a complete review of Vermont's 2014 Section 303(d) list and supporting documentation and information and, based on this review, EPA has determined that Vermont's list of water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of Section 303(d) of the Clean Water Act ("CWA" or "the Act") and EPA's implementing regulations. Therefore, by this order, EPA hereby approves Vermont's 2014 Section 303(d) list. The statutory and regulatory requirements, and EPA's review of Vermont'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/) as supplemented by an October 12, 2006 memo and attachments, a May 5, 2009 memo and attachments, a March 21, 2011 memo and attachments and the September 3, 2013 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.

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, 2011 and 2013 memoranda and attachments.

III. REVIEW OF VERMONT'S §303(d) SUBMISSION

Waters listed by Vermont in Part A of the State's 2014 Integrated Report (which corresponds to EPA's Category 5 (as defined below)) represent the State's §303(d) list, which the State is required to submit to EPA for review and approval or disapproval. The water segments Vermont placed into one of Parts B through F of the State's 2014 Integrated Report (which correspond to EPA's Categories 3 through 4 (as defined below)) fulfill the requirements of §305(b) of the CWA and are not a part of Vermont's §303(d) list. Such integrated listing format allows states to provide the status of all assessed waters in a single multi-part list. States may list each water body or segment thereof into one or more of the following five categories, as appropriate:

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 (VT Part C);
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;
    - 4a) A state-developed TMDL has been approved by EPA or a TMDL has been established by EPA for any segment-pollutant combination (VT Part D);
    - 4b) Other required control measures are expected to result in the attainment of an applicable water quality standard in a reasonable period of time (VT Part B);
    - 4c) The non-attainment of any applicable water quality standard for the segment is the result of pollution and is not caused by a pollutant (VT Parts E and F); 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 (VT Part A).

EPA reviewed and commented on Vermont's draft 2014 Section 303(d) list, dated March 2014. The Vermont Department of Environmental Conservation (VTDEC) then revised the list based on comments received during the public comment period. Vermont submitted its final 2014 §303(d) list (dated May, 2014) to EPA-New England on June 19, 2014. VTDEC also supplemented its June 19, 2014 submission with additional information submitted in September 2014 relating to the West Branch Ompompanoosuc River and Tributary 1 to the North Branch Ball Mountain Brook, along with a revised version of Vermont's Part B list (EPA's Part 4b) with a change to the status of North Branch Ball Mountain Brook. These topics are discussed in detail later in this memorandum in the sections entitled "Water Impairments Not Listed on Vermont's 2014 §303(d) List Because of Delisting", "Water Impairments Placed into EPA Category 4b, Vermont's Part B", and "Water Impairment Removed from EPA Category 4a and Vermont's Part D (Impaired surface waters with approved TMDLs". EPA considered the supplemental information as part of its review of VTDEC's overall submittal. The submittal package included the following components:

1. State of Vermont 2014 §303(d) List of Waters (May, 2014). This submission included "Part A," the list of impaired surface waters needing total maximum daily loads (TMDLs).

2. State of Vermont 2014 List of Priority Surface Waters Outside the Scope of Clean Water Act Section 303(d). This submission included: Part B, impaired surface waters – no TMDL required; Part C, surface waters in need of further assessment; Part D, surface waters with completed and approved TMDLs; Part E, surface waters altered by exotic species; and Part F, surface waters altered by flow regulation.

3. VT DEC's Response to Public Comments on Vermont's March 2012 draft §303(d) list.

VTDEC conducted a public participation process, in which it provided the public the opportunity to review and comment on the State's 2014 draft §303(d) list. A public comment period was opened on March 28, 2014 and was closed on April 25, 2014. Comments were solicited from the public both through regional newspapers and the VTDEC website. EPA concludes that Vermont's public participation process was consistent with its Continuing Planning Process (CPP), and that Vermont provided sufficient public notice and opportunities for public involvement.

Vermont's final submittal took into account suggested changes to the State's draft 2014 §303(d) list from interested parties. VTDEC prepared a "Response to Comments" document which lists each comment and the State's response. EPA reviewed VTDEC's responses and concludes that Vermont adequately responded to the comments. See the later section of this memorandum entitled "Water Impairments Placed into EPA Category 4b, Vermont's Part B", for additional relevant discussion of some of the public comment and VTDEC's response.

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 §303(d) list in compliance with §303(d) of the Act and 40 CFR §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.

Vermont used the VTDEC Water Quality Division assessment databases to develop its 2014 §303(d) list. The same databases are used to assist in the preparation of the biennial §305(b) report. These databases contain all reported water quality information. In the development of the 2014 §303(d) list, Vermont began with its existing EPA approved 2012 §303(d) list and relied on new water quality assessments (i.e., post-2012) to update the list accordingly. All data sources used to develop previous §303(d) lists were carefully reviewed. Where valid monitoring data, including recent data as well as data older than 5 years, and/or evaluative information were collected and determined to be sufficient to make §303(d) listing judgments, waterbodies that

were assessed as impaired for one or more uses due to pollutants were added to the 2014 §303(d) list. Vermont believes that information pertaining to impairment status must be well substantiated, preferably with actual monitoring data, for it to be used for §303(d) listing.

EPA has reviewed Vermont's description of the data and information it considered, and its methodology for identifying waters. 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 §130.7(b)(5).

In addition, the State provided a rationale for not relying on particular and readily available water quality-related data and information as a basis for listing waters. Beginning with the 1998 list and continuing through the 2014 listing process, Vermont chose not to list waters where the only information regarding water quality was unsubstantiated anecdotal information (e.g., citizen complaint). Vermont analyzed relevant data and information for each water body in the State in deciding whether there was sufficient, reliable data to support listing. The State's use of this listing methodology is reasonable and consistent with EPA's regulations. The regulations require states to "assemble and evaluate" all relevant water quality related data and information, and Vermont did so for each of its waterbodies. The regulations permit states to decide not to use any particular data and information as a basis for listing, provided they have a reasonable rationale in doing so. Vermont's decision not to use unsubstantiated anecdotal information is reasonable in light of the uncertainty about the reliability of such information. Moreover, it is reasonable for Vermont to decide to focus its listing and TMDL development resources on waters where water quality impairments are well-documented, rather than on waters with only unreliable water quality information. As additional waters are assessed, EPA expects Vermont would add waters to its list where such assessments show water quality standards are not being met.

Vermont did in certain cases include waters on the 2014 §303(d) list based solely on evaluative information, i.e., information the evaluation of which requires the use of judgment, in contrast to information consisting of straightforward numerical sampling results. Vermont based a listing decision on evaluative information when the State had confidence that an impairment existed. For example, most critically and chronically acidified waters, for which only limited measurements of pH and alkalinity exist, are listed based on the "evaluative" relationship between aquatic biota, pH and alkalinity, rather than on actual measurements of biological integrity.

Another example of Vermont's use of evaluative information includes waters based on data older than 5 years of age (i.e., "evaluated" waters under EPA's §305(b) guidance) where such data showed exceedences of one or more criteria of Vermont water quality standards. Although data older than 5 years is considered "evaluative" information under EPA's Section 305(b) guidance, Vermont chose to use such data as a basis for listing. The State concluded that the use of such data is reasonable because, without specific information to the contrary, there is no reason to believe that data older than 5 years are no longer representative of the water quality of the waterbody in question. EPA believes this conclusion is reasonable, and it is consistent with EPA regulations for states to decide to list waters based on data older than 5 years. The regulations

require states to consider all available data and to use it unless the state provides a reasonable rationale for not doing so.

Vermont does not add waters to the §303(d) list where the limited information available might indicate a possible impairment but the information was determined by VTDEC to be insufficient for the purpose of listing. For example, there have been instances in the past in which Vermont has not listed water segments for pathogens, where questionable volunteer monitoring data (e.g., situations with few samples and data absent a QA/QC plan) indicated potential exceedences of the bacteria criterion. Instead, Vermont included those water segments on a separate list of priority waters in need of further assessment. In those and similar cases, Vermont believes the information is too limited (for reasons discussed above), creating considerable uncertainty with respect to the assessment and whether uses are truly impaired.

In summary, Vermont considered the most recent §305(b) assessments, as required by EPA's regulations, and evaluated all existing and readily available water quality-related data and information, obtained primarily through monitoring, as the basis for adding water quality impairments to the 2014 §303(d) list. The State added two new impaired waters to the 2014 §303(d) list. EPA concludes that Vermont appropriately considered all relevant and appropriate information during the State's development of the 2014 §303(d) list.

Priority Ranking

As described in its methodology, Vermont established a priority ranking for listed waters by considering: 1) the presence of health issues, 2) the nature, extent, and severity of the pollutant(s) causing the impairment, 3) the use or uses that are impaired, 4) the availability of resources, and 5) the amount or degree of public interest in problem abatement. Additionally, Vermont also considered the merits of addressing – on a regional or statewide basis – waters with similar problems (e.g., pH impaired waters due to acid rain). Individual priority rankings for listed waters are reflected in the list with indications of low, medium or high priority for TMDL development. Vermont defines its priorities in the following manner: H = high, 1-3 years; M = medium, 4-8 years; L = low, 8+ years.

EPA finds that the waterbody prioritization and targeting method used by Vermont is reasonable and sufficient for purposes of Section 303(d). The State properly took into account the severity of pollution and the uses to be made of listed waters, as well as other relevant factors described above. EPA acknowledges that the schedule of TMDL completion establishes a meaningful priority ranking system.

Water impairments Not Listed on Vermont's 2014 §303(d) List Because of Delisting

Vermont did not include on its 2014 §303(d) list 8 (eight) water impairments included on the State's 2012 §303(d) list, and EPA asked the State to provide rationales for its decisions to "delist" these previously listed waters. The State has demonstrated, to EPA's satisfaction, good cause for not listing these waters on its 2014 §303(d) list, consistent with 40 CFR §130.7(b)(6)(iv).

Of the 8 water impairments removed from the §303(d) list, 6 impairments were removed because new monitoring data indicate applicable water quality standards are no longer exceeded. The specific bases for delisting the 6 water impairments are described below. The remaining 2 water impairments are no longer listed because TMDLs have been completed for them since the State's 2012 §303(d) list was prepared.

Stephens Brook, approximately 1 mile segment below the Central Vermont Rail Yard (VT05-07) was impaired for aesthetics, aquatic life, and contact recreation support due to oil, grease and hydrocarbons from an adjacent hazardous waste site at the rail yard. A multi-year clean-up of the waste site resulted in groundwater discharges no longer having elevated hydrocarbons by 2011. There was also no longer any evidence of hydrocarbons in the stream.
This segment has since been listed as impaired again for aquatic life support due to other pollutants (metals) from a new source, but VTDEC has determined that the aesthetics and contact recreation impairments (which were based primarily on field observations) caused by oil, grease, and hydrocarbons are no longer present. Based on this information, EPA approves this delisting for aesthetics and contact recreation. As indicated in Part A of Vermont's list, this segment is still listed as impaired for aquatic life support due to metals from another nearby waste site.

Chester Brook (VT06-05) was listed as impaired for aquatic life support back in 1994, due to agricultural runoff (with nutrients and sediments the suspected causes). Some improvements to agricultural practices have occurred in the watershed, and biological monitoring has found the stream to be "good" to "excellent" for four monitoring cycles in a row (2007, 2010, 2011 and 2013), indicating compliance with Vermont's water quality standards. Based on this information, EPA approves this delisting.

Muddy Brook, mouth to seven miles upstream (VT08-02) was listed as impaired for aquatic life support in 1996 due to nutrient and temperature impacts associated with developed land and lack of buffers. While the extent of restoration work in the watershed is not fully known at this time, biological monitoring rated the stream as "good" for three monitoring periods in a row (2003, 2010, and 2011) indicating compliance with Vermont's water quality standards. Based on this information, EPA approves this delisting.

Mill Brook Tributary #6 (VT11-16) was listed in 2010 as impaired for aquatic life support due to stormwater impacts. While the extent of restoration work in the watershed is not fully known, biological monitoring in 2012 and 2013 rated the stream as "good" and "very good", indicating compliance with Vermont's water quality standards. Based on this information, EPA approves this delisting.

Lords Brook, river mile 0.5 to 3.3 (VT14-02) was listed for aquatic life support in 2000 due to metals and acid runoff from the abandoned Elizabeth Mine. The mine was placed on EPA's Superfund list in 2001, and a major part of the remediation work was conducted from 2003 through 2009. Biological monitoring rated the brook "very good" or "excellent" in 2010, 2012

and 2013 – the most recent three monitoring years – indicating compliance with Vermont's water quality standards. Based on this information, EPA approves this delisting.

The West Branch of the Ompompanoosuc River (VT14-02) was listed for aquatic life support and aesthetics in 2000 due to metals and acid runoff from the abandoned Elizabeth Mine. The aesthetics impairment was caused by the presence of a thick iron precipitate cover on the substrate. The mine was placed on EPA's Superfund list in 2001, and a major part of the remediation work was conducted from 2003 through 2009. Biological monitoring rated the brook "good" or better in 2009, 2010, and 2012 – the most recent three monitoring years for this segment – indicating compliance with Vermont's water quality standards. In addition, the iron precipitate cover on the substrate has been reduced to levels found in non-impacted upstream reference waters, per letter from VTDEC dated September 15, 2014. Based on this information, EPA approves the delisting of this segment for both aquatic life support and aesthetics.

Consistent with EPA's regulations and EPA's Guidance for Assessment, Listing and Reporting Requirements, Vermont did not include on the §303(d) list, two water impairments for which TMDLs have been approved by EPA. These two were both TMDLs for an acid impairment, and address the following two waters: Lily Pond (Londonderry) and Lily Pond (Vernon). EPA approves these delistings for the specified impairment cause (acid).

Water Impairment Removed from EPA Category 4a and Vermont's Part D (Impaired surface waters with approved TMDLs).

Tributary 1 to the North Branch of Ball Mountain Brook (VT11-15), was previously listed on Part D of Vermont's list (EPA's category 4a) because a TMDL was approved for this water in 2002. The segment was impaired for aquatic life support and the cause was listed as sediment. Extensive remediation work has occurred in this watershed, and for the 2014 listing cycle, VTDEC proposed that this stream be removed from Part D based on the biological monitoring results from the three most recent monitoring years -- 2009, 2010 and 2012. The stream was rated as at least "good" for all three years, indicating compliance with Vermont's water quality standards (the monitoring information was not included in Vermont's submittal, but was provided to EPA via email memo dated September 29, 2014). Based on this information, EPA approves the removal of this segment from Part D of Vermont's list.

Water Impairments Removed from EPA Category 4b and Vermont's Part B (Impaired by no TMDL needed).

VTDEC did not remove any waters from this listing category in 2014, but in the March 2014 draft list of waters, the State proposed removing the North Branch of Ball Mountain Brook (VT11-15), impaired for aesthetics due to rock stains caused by manganese. However, VTDEC ultimately decided to keep this water in Category 4b (Vermont's Part B) for the final submittal, per letter from VTDEC dated September 15, 2014. The letter indicates that subsequent to completion of the draft list, VTDEC concluded the segment was, in fact, still impaired for aesthetics (the rock stains remain even though the source of the manganese has been eliminated

for many years) and should remain on the list. EPA concurs with this decision.

Water Impairment Placed into EPA Category 4b, Vermont's Part B (impaired but no TMDL needed).

Under 40 CFR §130.7(b)(1), States are not required to list water quality limited segments still requiring TMDLs 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. In past listing cycles, when other pollution control requirements were in place, EPA approved the placement of a number of impaired waters on Part B of Vermont's list.

During this listing cycle, VTDEC did not place any new waters in EPA's category 4b (Vermont's Part B). However, VTDEC received public comment on two streams placed in this category in 2010 – requesting that the streams be placed back on Part A (waters requiring TMDLs) – and a discussion of this issue and VTDEC's decision is included here.

VTDEC placed two streams at Jay Peak Resort, Jay Branch (VT06-08) and Jay Branch-Tributary #9 (VT06-08) on Part B of Vermont's list in 2010 for aquatic life support impairments caused by sediment runoff from land development activities. The basis for EPA's approval of this listing decision was a State 1272 Order that required Jay Peak Resort (the landowner of both watersheds) to address a variety of sources of sediment stemming from poor compliance with stormwater permits. The Resort has now addressed these sources but the streams remain impaired. The Vermont Natural Resources Council, in its comments to VTDEC on the 2014 list, requested that these streams be placed back on Part A of Vermont's list because the implementation mechanism (the 1272 Order) did not restore the streams in the rapid fashion intended. VTDEC subsequently evaluated the site and found that while the sediment sources identified in the 1272 Order were now controlled, there were a number of additional major sources (not addressed in the original 1272 Order) that were believed to be causing the continued impairments. In March of 2014, VTDEC issued a new 1272 Order requiring rapid control of these additional sources. VTDEC believes that control of these additional sources will result in the restoration of the streams in a reasonable period of time, and that this enforcement/compliance approach to remediation will achieve compliance with Vermont's water quality standards much more expediently than the TMDL approach in cases such as this where the sources of the impairment are well understood and there is one landowner responsible for all sources. VTDEC also notes in its response to comments that this approach has worked well at a number of other ski resorts with similar sources of impairment – a number of similarly impaired Vermont segments have now been fully restored with such 1272 orders within a reasonable time. Additionally, the State notes that the implementation activities required by the 1272 Order are almost unquestionably the same activities that would be required as part of an implementation plan following preparation of TMDLs for these streams. Given that TMDL preparation is challenging and could take several years to complete for these types of mountainous streams, the

State makes a strong case for the efficiency and expediency of proceeding directly to implementation using the new 1272 Order. Based on this information, including especially the issuance of the new 1272 Order (demonstrating that there are other pollution control requirements required by the State), EPA approves the continued placement of these streams on Vermont's Part B list, but will review the status of these streams carefully in future listing cycles to evaluate progress towards restoration.

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's Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act – EPA Office of Water-- July 29, 2005.