

Plastics/Section 303(d): U.S. Environmental Protection Agency Orders Two Hawaiian Waterbodies Listed as Impaired



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The United States Environmental Protection Agency (“EPA”) has determined that the Hawaii Department of Health (“HDOH”) should have listed two waterbodies as impaired under Section 303(d) of the Clean Water Act.

EPA had undertaken a review of Hawai’i’s 2018 List of Impaired Waters as required by Section 303(d).

Section 303 of the Clean Water Act requires that each state develop water quality standards (“WQS”) for jurisdictional waters of the United States within their borders.

WQS establish water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual point sources. WQS serve a dual purpose. They establish the water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual point source discharges.

The particular WQS deemed applicable to a waterbody can, therefore, be an important determinant of the effluent limits a discharging facility will need to attain.

A WQS consists of three parts:

1. Designated uses of a waterbody
2. The water quality criteria (“WQC”) that are necessary to protect existing uses and to attain the beneficial uses designated by the state
3. An anti-degradation statement or policy to protect existing uses in high quality water

WQS may be expressed either as a numeric concentration level or a narrative standard.

States must adopt uses consistent with the Clean Water Act objectives and WQC sufficient to protect the chosen uses. However, EPA is required to ensure that state WQS, along with any changes, meet the minimum requirements of the Clean Water Act.

Section 303(d) of the Clean Water Act requires that states assess water quality monitoring data from various locations. The state is then required to utilize an assessment methodology to determine which waters are not meeting their designated uses or WQS.

EPA addressed through the disapproval letter why Hawai'i's decision not to list the Kamilo Beach and Tern Island waterbodies as impaired was incorrect, stating:

. . . the existing and readily available data and information for those waterbodies indicate that they are impaired by trash and the State's decision is inconsistent with CWA Section 303(d) and EPA's implementing regulations.

EPA states that its decision is based on identification of "trash impairments of marine waters and marine bottom ecosystems designated uses." Plastics are referenced as a component of the materials that have been identified.

A copy of the EPA letter can be downloaded [here](#).