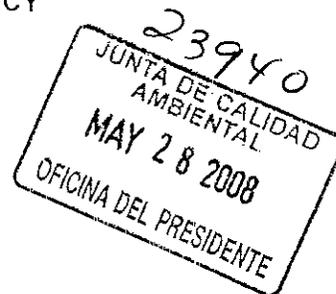




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866



MAY 22 2008

Carlos W. López Freytes, Esq.  
President  
Puerto Rico Environmental Quality Board  
PO Box 11488  
San Juan, PR 00910-2588

Dear Mr. López:

On May 2, 2008, the U.S. Environmental Protection Agency (EPA) received the final documentation for the Commonwealth of Puerto Rico's (the "Commonwealth") 2008 Water Quality Inventory and List of Impaired Waters Report (the "2008 Integrated Report"). EPA action is only required on Category 5 in the 2008 Integrated Report. Category 5 of the 2008 Integrated Report constitutes the Commonwealth's 2008 Clean Water Act (the "Act") Section 303(d) List (the "2008 Section 303(d) List"). EPA has conducted a complete review of the Commonwealth's 2008 Section 303(d) List as well as all supporting documentation and information. Based on this review, EPA has determined that the Commonwealth's 2008 Section 303(d) List meets the requirements of Section 303(d) of the Act and EPA's implementing regulations under 40 CFR Part 130.7. The statutory and regulatory requirements, and EPA's review of the Commonwealth's compliance with each requirement, are described in the support documentation enclosed.

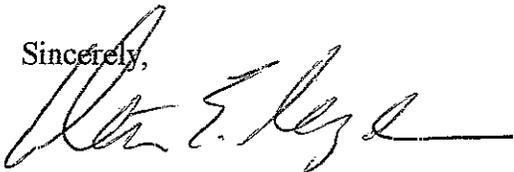
Section 303(d) of the Act and EPA's implementing regulations at 40 CFR Part 130.7 require the Commonwealth to identify those waters within its boundaries for which technology-based and other controls are not stringent enough to implement any water quality standards applicable to such waters. Under EPA's regulations, 40 CFR Part 130.7(b)(4), the Commonwealth is required to identify the pollutants causing the impairment of these waters. Section 303(d) further requires the Commonwealth to establish a priority ranking for such waters, taking into account the severity of the pollution and the designated uses of the listed waters. Finally, the Commonwealth is required to identify the waters targeted for Total Maximum Daily Load ("TMDL") development over the next two years.

The Commonwealth's 2008 Section 303(d) List identifies six hundred and twenty-five (625) assessment unit/pollutant combinations three hundred and eighty-one (381) of which are located in high priority basins and are considered high priority for TMDL development. Thirty (30) of these assessment unit/pollutant combinations have been targeted for TMDL development over the next two years.

The Commonwealth announced the availability of the 2008 Section 303(d) List in Primera Hora and El Vocero newspapers on January, 21 2008, and provided a 30-day comment period which ended on February 21, 2008. In addition, a public hearing was held on February 22, 2008 concerning the 2008 Section 303(d) List.

EPA hereby approves the Commonwealth's 2008 303(d) List pursuant to 40 CFR 130.7(d). Should you have any questions concerning this approval, please do not hesitate to contact me at (212) 637-5000, or have your staff contact Nesmarie Negrón at (212) 637-3883.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter E. Mugdan", written over a horizontal line.

Walter E. Mugdan, Director  
Division of Environmental Planning and Protection

Enclosure

cc: Carmelo Vazquez, Director, The Evaluation and Strategic Planning Area  
(w/enclosure)

## **Supporting Documentation for Review and Approval of Puerto Rico's 2008 Section 303(d) List**

On May 2, 2008, the Commonwealth of Puerto Rico (the "Commonwealth" or "Puerto Rico") submitted to the U.S. Environmental Protection Agency ("EPA"), its 2008 Water Quality Inventory and List of Impaired Waters Report (the "2008 Integrated Report"). Contained within the 2008 Integrated Report is the Commonwealth's 2008 Clean Water Act (the "Act") Section 303(d) List ("2008 303(d) List").

EPA has reviewed the Commonwealth's 2008 303(d) List and all supporting documentation and information. EPA has concluded that Puerto Rico developed its 2008 303(d) list in compliance with Section 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. For the reasons set forth below, EPA approves Puerto Rico's 2008 303(d) List.

## **Identification of Water Quality Limited Segments for Inclusion on Section 303(d) List**

Section 303(d)(1) of the Act directs States (Section 502 of the Act defines "State" to include the Commonwealth of Puerto Rico) 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, which considers the severity of the pollution and the designated uses 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 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 in the Commonwealth's most recent report, prepared pursuant to Section 305(b) of the Act, as partially meeting or not meeting designated uses, or as threatened; (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 categories, States are required to consider any other data and information that is existing and readily available. EPA guidance describes categories of water quality-related data and information that may be existing and readily available. See Guidance for Water Quality-Based Decisions: The TMDL Process - EPA 440/4-91-001, EPA Office of Water, 1991, Appendix C ("EPA's 1991 Guidance"). 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 its submissions to EPA, documentation in support of determinations to rely or not rely on particular data and information for listing decisions. 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 EPA.

Consistent with EPA's guidance, Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates - EPA841-B-97-002A and EPA841-B-97-002B, 1997, and Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act, July 29, 2005 ("EPA's 2006 Integrated Report Guidance"), the Puerto Rico Environmental Quality Board ("PREQB") developed a Consolidated Assessment and Listing Methodology ("CALM") in order to integrate the monitoring and assessment activities under Sections 305(b) and 303(d). PREQB's CALM describes the process for the evaluation and consolidation of monitoring data and information to determine the levels of water quality and use support. PREQB incorporates its CALM into its Integrated Report. PREQB's Integrated Report consists of five, distinct parts: 1) Segmentation Criteria and Waterbody Segment Definition 2) Category Determination 3) Water Quality Assessment by Designated Use, 4) Listing Criteria, and 5) Priority Ranking of the 2008 303(d) List. Each section builds on the previous components to provide a comprehensive methodology. PREQB segments waters under the jurisdiction of the Commonwealth, into "assessment units" and assesses water quality standards attainment as specified by PREQB's CALM. The CALM was submitted to EPA as part of the 2008 Integrated Report and is the background document for the 2008 303(d) List.

PREQB has established six (6) monitoring networks from which it collects water quality data and information. These include the Surface water, Clean Lakes, Non Point Sources, Groundwater, Coastal, and Beach Monitoring Networks. These networks provide physical, chemical and biological water quality data for each type of water. PREQB also receives water quality data and information from local governmental agencies and organizations pursuant to Puerto Rico Law No. 416 (September 22, 2004) which requires any agency, office, instrumentality, public corporation, or municipality of Puerto Rico that receives or generates scientific research, work or studies regarding the environment and natural resources to submit a copy of such research, work, or study to PREQB. Once received, PREQB assembles all existing and readily available data and evaluates this data in accordance with its CALM.

After it has evaluated all existing and readily available data and information, PREQB, in accordance with its CALM and based on designated use support, places assessment units in one of the following 5 categories in its Integrated Report:

- Category 5: impaired and requiring a Total Maximum Daily Load ("TMDL");
- Category 4: impaired or threatened but not requiring TMDL;
- Category 3: insufficient data for determining use attainment;
- Category 2: attaining some designated uses and insufficient data to determine attainment for other uses; and
- Category 1: waters attaining water quality standards for all designated uses.

Assessment units placed in Category 5 of the Integrated Report require a TMDL. Category 5, therefore, is the Commonwealth's 303(d) List.

Assessment units on the 303(d) List are grouped by basin. Each listing contains the assessment unit name, the assessment unit identification number, the impairment type and the impairment source. The 2008 303(d) List contains six hundred and twenty-five (625) assessment unit/pollutant combinations. EPA notes that Río Bucaná-Cerrillos should be identified as PRSR62A1 instead of PRSR62A.

To ensure that all impaired waters are listed, EPA reviewed the Commonwealth's description of the data and information considered for the 2008 Integrated Report and the methodology employed for identifying and categorizing assessment unit/pollutant combinations and compared the assessment unit/pollutant combinations listed in 2008 with those listed in 2006.

EPA concludes that the Commonwealth 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).

EPA recommends however, that because PREQB has not obtained sufficient data and information in the last listing cycle to make an assessment decision for the waters of Jobos Bay, that PREQB immediately begin to acquire water quality data for the waters of Jobos Bay, review this data, as well as any additional data which may become available, and evaluate the impairment status of these waters for future Section 303(d) lists.

### **Delisting**

The Commonwealth delisted 10 assessment unit/pollutant combinations from the 2006 303(d) List.

EPA notes that these 10 assessment unit/pollutant combinations were delisted due to the Commonwealth's development and EPA's approval of the fecal coliform TMDLs in the Upper Río Grande de Loíza watershed. EPA approved these TMDLs on September 26, 2007.

### **Priority Ranking**

EPA regulations also codify 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 waterbody segments 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) of the Act. 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 1991 Guidance.

PREQB prioritizes assessment units for TMDL development in accordance with its CALM and the

## Public Participation

On January 21, 2008, the Commonwealth published the availability of the 2006 303(d) List in two local newspapers, Primera Hora and El Vocero. The thirty-day public comment period ended on February 21, 2008. A public hearing was held on February 22, 2008, as part of the Commonwealth's public participation process. Aside from EPA's comments on the draft 2008 303(d) List, PREQB did not receive any other comments during the public hearing. PREQB sufficiently addressed EPA concerns.