

**Lower Neuse Basin Association®**

P.O. Box 1410  
Clayton, N.C. 27528 – 1410

February 13, 2017

Ms. Marion Hopkins  
U.S. EPA, Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Reference: Comments on EPA's Partial Approval of NC's 2016 CWA Section 303(d) Lists

Dear Ms. Hopkins:

On behalf of the Lower Neuse Basin Association (LNBA) we respectfully submit the attached comments regarding the 2016 NC 303(d) EPA Decision Support Document dated December 8, 2016.

This year represents the 23<sup>rd</sup> year the LNBA has participated in a voluntary NPDES coalition program based on cooperation between the NC Division of Water Resources (DWR) and the members of our coalition. The LNBA's extensive water quality monitoring data has been collected and analyzed in concert with the NC DWR to provide an abundant amount of water quality assessment data for the Neuse River Basin. In addition, over many years, the LNBA has expended extensive resources supporting the data collection efforts of the UNC Institute of Marine Sciences' ModMon program in the Neuse River estuary.

The attached comments and concerns are focused on the Neuse River Basin as a result of the EPA's 2016 303(d) proposed additional listings. Thank you for the opportunity to provide comments on the 2016 303(d) Decision Document.

Sincerely,



Daniel F. McLawhorn  
Chairman

Cc: LNBA Board  
Haywood Phthisic, Executive Director

Attachments: LNBA Membership List  
2016 CWA 303(d) Lists Comments and Concerns

## Lower Neuse Basin Association Membership

Town of Apex, N.C.  
Town of Benson, N.C.  
Town of Cary, N.C.  
Town of Clayton, N.C.  
Contentnea Metropolitan Sewage District, Grifton, N.C.  
Town of Farmville, N.C.  
Dupont-Kinston, Kinston, N.C.  
Town of Fuquay-Varina, N.C.  
City of Goldsboro, N.C.  
Town of Havelock, N.C.  
Johnston County, N.C.  
Town of Kenly, N.C.  
Town of LaGrange, N.C.  
City of New Bern, N.C.  
Duke Energy - Progress  
City of Raleigh, N.C.  
City of Wilson, N.C.  
City of Kinston, N.C.

## LOWER NEUSE BASIN ASSOCIATION ®

### Comments on EPA's 2016 North Carolina 303(d) Decision Document

1. The LNBA and its members have cooperatively worked with the NC DWR in the review and development of many of NC's rules and regulations related to water quality. It is through the rules and regulations adopted using the appropriate Administrative Procedures that good, fair, and just governmental regulations are constructed. In this light, the LNBA has also been heavily involved in the NC Environmental Management Commission's (EMC) methodology for generating the NC 303(d) list. The NC 303(d) list methodology provides the benefit of identifying waters that are actually impaired. The EPA 303(d) list additions should not dilute the focus on impaired waters by including waters on the 303(d) list without confidence. Our members and their communities must deal with the consequences of the 303(d) listing decisions. EPA's 2016 303(d) Decision Support Document inappropriately overrides NC's desire to establish a reasonable risk level approach for determining the attainment of NC's water quality standards. The LNBA generally supports the decisions and the administrative process used by the NC EMC in establishing the NC 303(d) methodology.

2. The EPA Region IV 303(d) Decision Support Document proposes to add the following Neuse River Basin waters to the NC 303(d) list because EPA has the philosophy that it should require more rigor to delist waters. There is no EPA regulation that requires this level of rigor. The EMC has determined that these waters are assessed as not exceeding the NC water quality standards. The EPA should indeed differentially leave this decision to the state unless there are specific regulations at the federal level that require a more rigorous delisting approach. EPA should remove these waters from their proposed 2016 303(d) list.

27-52-(1)b Mill Creek (Moorewood Pond) Neuse **Dissolved Oxygen**

27-86-3-(1)a2 Turkey Creek Neuse **Dissolved Oxygen**

3. The EPA Region IV 303(d) Decision Support Document proposes to add the following Neuse River Basin waters to the NC 303(d) list because EPA has the philosophy that a very limited number of samples (<10) can adequately determine compliance with water quality standards. There is no EPA regulation that requires this level of rigor. The EMC has considered all of the existing and readily available data used in these assessments. The EMC has determined that these waters are not exceeding the NC Water Quality Standards for 303(d) purposes. The EPA should indeed differentially leave this decision to the state unless there are specific regulations at the federal level that require the 303(d) listing (as opposed to considering) of waters with less than ten observations. EPA should remove these waters from their proposed 2016 303(d) list because the available information has been determined inadequate by the EMC to consider these waters impaired.

27-10-(1) Ledge Creek (Lake Rogers) Neuse **Chlorophyll**

27-10-(1) Ledge Creek (Lake Rogers) Neuse **Turbidity**

27-33-(1) Crabtree Creek Neuse **Chlorophyll**

27-33-(3.5)a Crabtree Creek (Crabtree Lake) Neuse **Chlorophyll**

27-43-(5.5)b Swift Creek (Lake Benson) Neuse **Chlorophyll**

27-43-15-3 Basal Creek [(Bass Lake, (Mills Pond))] Neuse **Chlorophyll**

27-86-11-(1) Toisnot Swamp (Silver Lake, Lake Wilson) Neuse **Chlorophyll**

4. The EPA Region IV 303(d) Decision Support Document proposes to add the following Neuse River Basin waters to the NC 303(d) list because EPA favors a one in three year numerical exceedance for toxics. The EPA guidance ">1 exceedance in a 3-year period" listing method is **NOT** a regulation. This guidance is based on prevention of significant impacts on biological communities. EPA has cited as the basis for their decision that studies suggest when a biological community is severely altered by toxics more than once in three years the community does not readily recover. EPA seems to consider a significant biological community impact to be equal to a numerical exceedance of a threshold laden with additional safety factors. EPA's approach ignores the scientific clarity gained by an appropriate sample size and ignores the uncertainty of exceedingly small samples. The LNBA concurs with the listing of waters when the biological communities are actually impaired. The EMC has determined that these waters are not exceeding the NC Water Quality Standards for 303(d) purposes and EPA should remove them from the proposed additional listings to the NC 303(d) list.

27-(22.5)c NEUSE RIVER Neuse **Copper**

27-(36) NEUSE RIVER Neuse **Copper and Zinc**

27-(49.75) NEUSE RIVER Neuse **Copper**

27-(96)b2 NEUSE RIVER Estuary Neuse **Copper**

27-34-(4)b Walnut Creek Neuse **Copper**