



## **Court Upholds Listing in Narrative Criteria Nutrient Impairment Lawsuit June 2019**

On March 31, the U.S. District Court for the District of Columbia issued a ruling upholding EPA's approval of Virginia's decision not to list the Shenandoah River as "impaired" under the CWA. The Shenandoah Riverkeeper and others (collectively, "Riverkeeper") initially filed suit against EPA regarding Virginia's 2014 305(b)/303(d) Water Quality Assessment Integrated Report. After EPA approved the Commonwealth's 2016 list in 2018, Riverkeeper amended its complaint to focus on the 2016 list. VAMWA intervened in the case, participating in defense of EPA's approval of the 2016 list. VAMWA's motion for summary judgment was granted by the federal court.

Riverkeeper challenged the EPA approval in light of Virginia DEQ's decision to not list all or segments of the Shenandoah as impaired for the recreational use, which Riverkeeper had urged based on its members' subjective visual evidence of algae accumulations. The Court held that EPA's action was reasonable and within the law, effectively upholding the underlying DEQ decisions on the subjective observations.

Although effectively approving of the DEQ assessment methodology process, underway at the time of the appeal (and still), the Court's decision was based on its determination that EPA acted correctly in approving DEQ's cautious application of the existing narrative recreational water quality criteria.

This is positive news, supportive of both a science-based approach to impairment listings and TMDLs, and of the Shenandoah algae evaluation process by DEQ that VAMWA has largely supported.

On May 30, Riverkeeper filed notice that it intends to appeal its loss to the D.C. Circuit Court of Appeals.