



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 30 2011

Jill Lipoti, Ph.D., Director
Division of Water Monitoring and Standards
New Jersey Department of Environmental Protection
401 East State Street, Floor 2 West
P.O. Box 409
Trenton, New Jersey 08625-0409

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Dear Dr. Lipoti:

The U.S. Environmental Protection Agency has completed its review of the revisions to the New Jersey Surface Water Quality Standards (NJSWQS) dated January 18, 2011. N.J.A.C. 7:9B. These revisions were adopted by the New Jersey Department of Environmental Protection on December 20, 2010 and became fully effective on January 18, 2011. They were submitted to the EPA on February 18, 2011. The submission was accompanied by a letter, dated February 17, 2011 from New Jersey Deputy Attorney General Jane F. Engel, which certified that the 2011 revisions had been adopted in accordance with New Jersey law. In taking this action, the EPA considered the following documents submitted in connection with the revised NJSWQS:

1. the letter from the New Jersey Deputy Attorney General Jane F. Engel, certifying that the standards were duly adopted pursuant to New Jersey law (dated January 17, 2011); and,
2. the applicable notices from the New Jersey Register (dated December 21, 2009 and, January 18, 2011).

Under Section 303(c) of the Clean Water Act (CWA), 33 U.S.C. § 1313(c), states are required to conduct a triennial review of their water quality standards and submit any new or revised standards to the EPA for review. Federal regulations at 40 C.F.R. §§ 131.20-131.22 implement these requirements. New Jersey's previous review and revision of its water quality standards were adopted on November 13, 2009 and became fully effective on December 21, 2009. As part of the review process on the 2011 revisions, NJDEP held an extended public comment period from December 21, 2009 to March 15, 2010 to receive public input and comment on the proposed revisions to the NJSWQS, and held a stakeholder meeting on March 10, 2010. The EPA considers the adoption of the 2011 revisions to the NJSWQS, along with the public review and comment process, to constitute the State's triennial review of water quality standards. Based on our review, NJDEP's procedures are consistent with, and satisfy the procedural requirements of 40 C.F.R. § 131.20.

In summary, NJDEP adopted amendments to its narrative nutrient and the phosphorus criteria, N.J.A.C. 7:9B-1.14(d)4 i and ii. As a result of this adoption, the nutrient criteria consist of:

- a general narrative criterion applicable to all nutrients, including phosphorus, which is applicable to all waters in the State; and,
- the existing numeric criteria for phosphorus, which are applicable in particular waterbodies.

The NJSWQS include the narrative criterion at N.J.A.C. 7:9B-1.14(d)4i and the numeric phosphorus criteria applicable to streams and lakes at N.J.A.C. 7:9B-1.14(d)4ii(1) and (2). According to NJDEP, the establishment of nutrients as a “substance” with a general narrative criterion followed by numeric criteria applicable to particular types of nutrients in particular waterbodies enables the State to consolidate numeric criteria for additional nutrients and nutrient-related pollutants for rivers and lakes, as well as numeric criteria for other waterbody types including waters classified as SE and SC, under the nutrients category. When criteria for other parameters are developed, amendments to the nutrient criteria will be proposed to incorporate these criteria within the nutrients category at N.J.A.C. 7:9B-1.14(d)4. This could include criteria for nitrate, nitrogen, and chlorophyll *a*, among others.

By this letter, I am pleased to approve the following revisions to the NJSWQS pursuant to Section 303(c) of the CWA, subject to the results of consultation under section 7(a) (2) of the Endangered Species Act.

- The re-codification, and revision, of the State’s narrative nutrient criteria, which describes in narrative form the objectionable impacts to surface waters caused by nutrients and provides that it is the State’s policy that nutrients shall not be allowed in concentrations that create these negative conditions, from N.J.A.C. 7:9B-1.5(g)2 to N.J.A.C. 7:9B-1.14(d)4i, which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a); and,
- The expansion of the application of this narrative to include estuarine and coastal waters (Class SE and SC waters), as well as fresh waters (FW waters), which is also approved as being consistent with the requirements under 40 C.F.R. § 131.11(a).

The EPA initiated consultation with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries (Services) on these provisions on June 21, 2011, under Section 7(a)(2) of the Endangered Species Act. Section 7(a)(2) requires that federal agencies, in consultation with the Services, insure that their actions are not likely to jeopardize the existence of federally listed species or result in the adverse modification of designated critical habitat of such species. Upon completion of consultation with the Services, the EPA will notify NJDEP of the results.

As part of this rulemaking NJDEP also re-codified the State’s numeric phosphorus criteria for lakes and streams from N.J.A.C. 7:9B-1.14(d)5i and ii to N.J.A.C. 7:9B-1.14(d)4ii(2) and (1), respectively. In summary, where nutrients cause undesirable conditions in freshwaters, NJDEP will require actions to reduce phosphorus by implementing the State’s numeric phosphorus criteria at N.J.A.C. 7:9B-1.14(d)4ii. The numeric phosphorus criteria apply unless watershed-specific translators are established or until it is demonstrated that the narrative criterion for nutrients is met. The specific revisions are as follows:

- Restriction of the application of the numeric phosphorus criterion of 0.1 mg/L at N.J.A.C. 7:9B-1.14(d)4ii(1) to non-tidal streams.
- Application of the numeric phosphorus criterion of 0.05 mg/L for lakes, ponds and reservoirs at N.J.A.C. 7:9B-1.14(d)4ii(2) to these waterbody types, as well as tributaries at the point where they enter such bodies of water, unless watershed-specific translators are established pursuant to N.J.A.C. 7:9B-1.5(g)3, or if NJDEP determines that the narrative criterion for nutrients at N.J.A.C. 7:9B-1.14(d)4i is met.
- Revision of the numeric phosphorus criteria to replace the reference to watershed specific criteria with the term "watershed specific translators." Watershed-specific translators are established to demonstrate compliance with the narrative criterion to protect existing or designated uses for a specified watershed. Watershed-specific translators may only be established as part of a TMDL evaluation to demonstrate compliance with the narrative criterion. Watershed-specific translators may be an alternative criterion or a combination of criteria. For example, a watershed-specific translator could be a variation of the existing phosphorus criteria, criteria established for a new parameter such as Chlorophyll *a*, or a combination of criteria for different parameters (for example, Chlorophyll *a* and dissolved oxygen).

With regard to the revised provisions at N.J.A.C. 7:9B-1.14(d)4ii(1) and (2), NJDEP stated in its May 19, 2011 letter that, "We would like to provide additional information related to this rule to enable EPA to review and approve our Water Quality Standards in accordance with Section 303(c) of the Clean Water Act and 40 C.F.R 131 – Water Quality Standards Regulations." This letter also states that, "The Department has determined that it is necessary to clarify implementation of the narrative nutrient criteria." In summary, consistent with the requirements of 40 CFR §131.6(b), the outcomes, findings, and recommendations which will result from the State's efforts constitute necessary supporting documentation which is required in order for the EPA Region 2 to be able to make a final determination regarding the adequacy of these provisions. Therefore, the EPA has made a determination that it will not act on N.J.A.C. 7:9B-1.14(d)4ii(1) and (2) until the NJDEP has officially provided the EPA with the resultant supporting documentation. To this end, we encourage NJDEP to complete its evaluation and make recommendations by August 15, 2011.

The EPA Region 2 looks forward to continuing to work with NJDEP to further improve the NJSWQS. If you have any questions, please call me at (212) 637-3725 or have your staff contact Mr. Jeffrey F. Gratz, Chief, CleanWater Regulatory Branch at (212) 637-3873.

Sincerely,



Kevin Bricke, Acting Director
Division of Environmental Planning and Protection

cc: Ms. Debra Hammond, Chief, Bureau of Water Quality Standards and Assessment,
New Jersey Department of Environmental Protection