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VERONA TOWNSHIP WTP Petitioner, v. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, Respondent.	ADMINISTRATIVE ACTION FINAL DECISION (Consolidated) OAL DKT NOS.: EER 05228-21 and ELU-10600-15 AGENCY REF. NOS.: 0024490-47050 and 0024490-47050

This order addresses the consolidated challenges by the Verona Water Treatment Plant (Petitioner) of conditions in its New Jersey Pollutant Discharge Elimination System (NJPDES) permits issued by the New Jersey Department of Environmental Protection (Department) in 2014 and 2019, pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -73, and its implementing NJPDES rules, N.J.A.C. 7:14A, requiring that Petitioner's sewage treatment facility adhere to a numeric Water Quality Based Effluent Limitation (WQBEL) for the pollutant Nitrate-Nitrogen, Total (nitrate), commonly known as a nitrate limit.

Petitioner submitted an adjudicatory hearing request to challenge the 2014 permit on September 17, 2014. It filed its subsequent request and a request for a stay of the nitrate limit on October 3, 2019. The Department transmitted Petitioner's requests to the Office of Administrative Law (OAL) on July 13, 2015, and June 15, 2021, respectively. The Department subsequently

issued a stay of the permit on September 2, 2021, to remain in effect until the resolution of this contested case or the effective date of any future permit action addressing nitrate.

On November 20, 2023, Administrative Law Judge Joann L. Candido issued an Initial Decision granting the Department's motion for summary decision. ALJ Candido found that the grounds upon which Verona disputed the nitrate limit were immaterial, irrelevant, or deemed waived, and concluded, as a result, that the Department was entitled to summary decision. The ALJ also found that the first of the consolidated matters, OAL Dkt. No. ELU-10600-15, concerning the 2014 permit, was moot because the 2019 Permit superseded the 2014 permit. As such, the ALJ dismissed the first of the consolidated matters.

For the reasons set forth herein, the Initial Decision granting summary decision in favor of Respondent is ADOPTED.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner operates a municipal wastewater treatment facility in the Township of Verona, Essex County. Petitioner's permit authorizes the discharge of up to three million gallons per day (MGD) of treated, disinfected sanitary wastewater into the Peckman River, which is a tributary of the Passaic River and part of the Passaic Basin. Peckman River is designated by regulation as a FW2-NT waterbody,[1] with designated uses including as a potable water supply ("[p]ublic potable water supply after conventional filtration treatment" N.J.A.C. 7:9B-1.12(c)). Petitioner has long held a NJPDES permit for this discharge. Beginning with Petitioner's December 28, 2007 permit, NJPDES permit no. NJ0024490 (2007 Permit), this permit has included a nitrate limit. Also beginning with the 2007 permit, Petitioner has contested the nitrate limit.

[1] FW2-NT waterbodies are fresh waters other than FW1 or Pinelands Waters that have not been designated as trout production or maintenance. N.J.A.C. 7:9B-1.4.

The 2007 Permit set a Water Quality Based Effluent Limitation (WQBEL) for nitrate of 15.20 mg/L as a monthly average and 21.1 mg/L as a daily maximum concentration. The permit contains nitrate loading limitations of a monthly average of 172 kg/day and a daily maximum of 239 kg/day. Petitioner requested an adjudicatory hearing and stay of contested conditions, which the Department granted, including a stay of the nitrate limit. In February 2013, Petitioner and the Department executed a Stipulation of Settlement, resolving all adjudicatory issues related to the 2007 Permit except for its nitrate limit.

On June 27, 2014, the Department issued a draft renewal NJPDES permit, again containing a nitrate limit. Petitioner commented on this draft permit, including commenting on the nitrate limit. On August 11, 2014, the Department issued a final renewal NJPDES permit (2014 Permit), with a nitrate WQBEL of a monthly average of 12.6 mg/L and a daily maximum of 14.5 mg/L. The 2014 Permit contained nitrate loading limitations of a monthly average of 142.9 kg/day and a daily maximum of 165.0kg/day. The 2014 Permit superseded the 2007 Permit.

Petitioner requested an adjudicatory hearing and stay of contested conditions in the 2014 Permit, including nitrate. The Department granted both requests. Before a hearing could take place, on July 10, 2019, the Department issued Petitioner a draft renewal NJPDES permit again containing a nitrate limit.

On September 6, 2019, the Department issued the most recent NJPDES permit, at issue here (2019 Permit). The 2019 Permit authorizes Petitioner to discharge up to 3.0 million gallons per day (MGD) of treated and disinfected sanitary wastewater into the Peckman River. The Department analyzed Petitioner's effluent data and found that nitrate was present in quantifiable amounts in the effluent. The Department then carried out a cause analysis under N.J.A.C. 7:14A-13.5, and determined that Petitioner caused an excursion above the 10 mg/L SWQS [Surface Water

Quality Standard] for nitrate in the Peckman River and calculated a WQBEL for nitrate using the methodology set forth at N.J.A.C. 7:14A-13.6. The 2019 Permit specifies a nitrate WQBEL with concentration limitations of a monthly average of 12.80 mg/L and a daily maximum of 18.23 mg/L. The 2019 Permit contains nitrate loading limitations of a monthly average of 145.35 kg/day and a daily maximum of 207.11 kg/day. The Permit supersedes the 2014 Permit such that the 2014 Permit has no further force and effect and the 2019 Permit is the governing permit for Verona.

On October 3, 2019, Verona requested an adjudicatory hearing and stay of contested conditions for the nitrate limit in the 2019 Permit. The nitrate limit is the sole issue. In its hearing request, Verona argued that the nitrate limit should not apply because there is no downstream potable water intake and the cost to treat nitrate is substantial. Verona also argued that the Department improperly used a steady-state model to establish the nitrate limit, instead of the dynamic model developed for the 2008 Total Maximum Daily Load Report for the Non-Tidal Passaic River Basin (TMDL Report) for nutrients in the Passaic Basin.

INITIAL DECISION

ALJ Candido issued an Initial Decision on November 20, 2023, granting the Department's motion for summary decision. The ALJ found that Verona's hearing request challenged "duly promulgated regulations," which cannot be challenged in an administrative hearing. N.J.A.C. 7:14A-17.4(b). ALJ Candido found that because the Peckman River is designated as a potable water supply by regulation, and the applicable nitrate SWQS criteria is set by regulation, Verona can only challenge the designation of the Peckman River and the nitrate SWQS in the Appellate Division. Any argument by Verona that the Department did not utilize a use attainability analysis when it designated the Peckman River as a potable water supply also constituted a challenge to the regulation. ALJ Candido found that Verona cannot challenge the nitrate limit in its permit based

on financial costs because the regulations governing calculation of WQBELs do not allow the Department to consider cost.

The ALJ also concluded that Verona did not raise its argument that the Department should have used a dynamic model to calculate the nitrate limit during the public comment period as required by N.J.A.C. 7:14A-17.4(b), and that this argument was therefore waived. Lastly, ALJ Candido found that any prior permit adjudications or issues raised in the hearing requests of those adjudications were moot.

Verona filed exceptions to the Initial Decision on January 24, 2024.[2] Verona requested that the Initial Decision be modified to allow it the opportunity to seek a modification of its permit using a dynamic model, and that the nitrate limit be stayed while it "complies with any requirements of the NJDEP relevant to utilization of dynamic water quality modeling techniques." Petitioner's Exceptions 2-3. Verona argued that its request for dynamic modeling was not waived because it raised the issue in 2014 permit application and referred to it in its 2019 application. Verona also argued that it does not have sufficient time to either come into compliance with the nitrate limit or submit and have approved a permit modification by January 2025. Notably, Verona did not take exception to the portions of ALJ Candido's decision regarding the use of a 10 mg/L SWQS and the cost of compliance with the nitrate limit.

The Department responded to Verona's exceptions on February 2, 2024. The Department replied that it properly used steady state modeling because it did not have sufficient data to develop a nitrate limit based on a dynamic model and because Verona had not requested one at the time. The Department also argued that the issue of using a dynamic model was not properly raised in the 2019 hearing request and prior hearing requests were moot. Lastly, the Department noted that

[2] The time limit for filing exceptions was extended due to good cause shown by Petitioner. Therefore, the exceptions were accepted in accordance with N.J.A.C. 1:1-18.4(d).

nothing in the Initial Decision precludes Verona from applying for a major modification of its permit or requesting dynamic modeling in its upcoming permit renewal.

DISCUSSION

Under N.J.A.C. 1:1-12.5, a party is entitled to summary decision where the moving party shows that there is no genuine issue as to any material fact challenged and should prevail as a matter of law. E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 350 (App. Div. 2010). To prevail, the non-moving party must submit responding affidavit(s) setting forth specific facts to show that there is a genuine issue that can be determined only in an evidentiary hearing. N.J.A.C. 1:1-12.5(b); see Housel v. Theodoridis, 314 N.J. Super. 597, 604 (App. Div. 1998) (to defeat a summary judgment motion, the non-moving party cannot simply "sit on his or her hands," but must present specific facts showing there is a genuine issue for trial). Like the standard for summary judgment under N.J. Court Rule 4:46-2, the standard on a motion for summary decision requires the court or agency to determine whether the evidence, when viewed in the light most favorable to the non-moving party, is "'sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.'" Piccone v. Stiles, 329 N.J. Super. 191, 194 (App. Div. 2000) (quoting Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995)). And "[e]ven though the allegations of the pleadings may raise an issue of fact, if the other papers show that, in fact, there is no real material issue, then summary judgment should be granted." Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 201 (App. Div. 1978) (citing Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 75 (1954)).

As discussed below, ALJ Candido's ruling granting the Department's motion for summary decision was appropriate under these circumstances. I note upfront that I ADOPT ALJ Candido's conclusion that Verona's challenges to nitrate limits in prior permits are moot and are therefore

dismissed. ALJ Candido found, and I concur, that the parties stipulated that each new permit superseded the previous permit. Superseded permits no longer govern the facility, and any relief granted regarding these permits would have no effect. Superseded permits no longer confer the "rights, duties, obligations, privileges, benefits, or other legal relations" necessary for a contested case. N.J.S.A. 52:14B-2; Div. State Police v. Maguire, 368 N.J. Super 564, 573 (App. Div. 2004).

I. The Department appropriately set the nitrate limit for Verona's NJPDES permit in accordance with the SWQS for the Peckman River.

The federal Clean Water Act (CWA) establishes a comprehensive program intended to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §1251(a). The CWA is administered by the U.S. Environmental Protection Agency (EPA) as well as by State agencies, through a system of cooperative federalism: EPA develops regulations, and the CWA authorizes States to administer programs under EPA's oversight. 33 U.S.C. §1251(b); 40 C.F.R. § 123.25.

Through its implementation of the State Water Pollution Control Act (WPCA) and cooperative agreements with EPA, the Department has primary authority for administering the CWA in New Jersey. The WPCA directs the Department to promulgate "reasonable codes, rules and regulations to prevent, control or abate water pollution" and to carry out the intent of the WPCA, including enabling the Department to issue permits under the Clean Water Act. N.J.S.A. 58:10A-4. It is "unlawful for any person to discharge any pollutant except in conformity with a valid NJPDES permit issued by the Department, unless specifically exempted[.]" N.J.A.C. 7:14A-2.1(d).

Under the CWA, states are required to establish water quality standards sufficient to "protect the public health or welfare, enhance the quality of water and serve the purposes of [the

CWA]." 33 U.S.C. §1313(c)(2)(A). For the surface waters of New Jersey, those standards are set forth in the Surface Water Quality Standards at N.J.A.C. 7:9B. These rules establish the designated uses for individual waterbodies throughout the state, classify the waterbodies based on the designated uses, and specify the surface water quality criteria for specified substances, including nitrate, that must be met to support the designated use. N.J.A.C. 7:9B-1.1. The surface water quality criteria are expressed either as numerical concentrations or levels, or as narrative elements, and represent "a quality of water that supports a particular designated use." N.J.A.C. 7:9B-1.4. "When the criteria are met, water quality will generally protect the designated use." Ibid.; 40 C.F.R. § 131.3(b).

Designated uses for surface waters include both existing and potential uses that the Department has established for waters of the State. These uses can include potable (drinking) water supply, propagation of the natural and established biota, maintenance of wildlife, recreation, agricultural and industrial water supplies, and navigation. N.J.A.C. 7:9B-1.12. The designated uses inform the establishment of surface water classifications for each waterbody.

Freshwater waterbodies (FW) such as the Peckman River are classified as either FW1 waters (not subject to any wastewater discharges), PL waters (waters of the Pinelands Area not otherwise classified as FW1), and FW2 waters (all other waters). N.J.A.C. 7:9B-1.4. It is the policy of the State that all freshwaters – regardless of their classification or presently existing use – be protected as potential sources of potable water supply. See 30 N.J.R. 1778(a) (May 18, 1998) (All New Jersey freshwaters are designated "for use as public potable water supply after such treatment as required by law or regulation.") To this end, the SWQS rules governing this and all surface water discharge permit matters are clear:

> The restoration, maintenance and preservation of the quality of the waters of the State for the protection and preservation of public

> water supplies is a paramount interest of the citizens of New Jersey. In order to provide adequate, clean supplies of potable water, it is the policy of the State that all freshwaters be protected as potential sources of public water supply. Therefore, point and nonpoint sources of pollutants shall be regulated to attain compliance with the Surface Water Quality Standards human health criteria outside of regulatory mixing zones.
>
> [N.J.A.C. 7:9B-1.5(a)(3).]

The SWQS are intended to protect that designated use to ensure the continued and future availability of potable water, which is critical to the State's public and environmental health.

To ensure that the SWQS are met and the designated uses of waterbodies are protected, an NJDPES permit must be obtained prior to discharging any pollutant into the surface waters of New Jersey. N.J.A.C. 7:14A-2.1(d). An NJPDES permit will often set a restriction, known as an effluent limit, on the quantities, quality, discharge rates, and concentration of chemical, physical, thermal, biological, radiological, and other constituents of pollutants. N.J.A.C. 7:14A-13.6(a). WQBELs are "effluent limitations established so that the quality of the waters receiving a discharge will meet the [SWQS], after the introduction of the effluent." N.J.A.C. 7:14A-1.2.

WQBELs "control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants, including whole effluent toxicity) which are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the [SWQS]." N.J.A.C. 7:14A-13.5(a). To determine whether a discharge causes, has the reasonable potential to cause, or contribute to an excursion above the SWQS, the Department conducts a "cause analysis." The determinations resulting from a cause analysis are based on a comparison of a pollutant's maximum effluent concentration value – the highest value of the pollutant measured in the effluent during a particular monitoring period – with the pollutant's applicable site-specific wasteload application (WLA) – the amount of the pollutant

allocated to the point source or sources of pollution – in accordance with procedures set forth by the EPA. N.J.A.C. 7:14A-13.5(d). A discharge is determined to have caused an excursion above the SWQS if the maximum reported effluent concentration value is greater than the WLA or the site-specific allocation. N.J.A.C. 7:14A-13.5(e). If the Department determines that a discharge causes, has the reasonable potential to cause, or contributes to an excursion above a SWQS, a WQBEL is established for the discharging facility. N.J.A.C. 7:14A-13.6.

The entire length of the Peckman River has been classified as "FW2-NT." N.J.A.C. 7:9B-1.15(f). "NT" means "nontrout waters," or waters that are "generally not suitable for trout." N.J.A.C. 7:9B-1.4. Potable water supply is therefore a designated use for the Peckman River under the Department's regulations, and WQBELs for pollutants discharged into the river must be set at a level that protects that designated use. See N.J.A.C. 7:9B-1.5(a)(3); N.J.A.C. 7:9B-1.15(f).

Nitrate is a naturally occurring substance, but nonetheless toxic at certain levels. It is therefore classified as a toxic substance under the SWQS. N.J.A.C. 7:9B-1.14(f)(7). Nitrate in drinking water can cause methemoglobinemia, also known as "blue baby syndrome." This disease most often affects infants, who may show signs of blueness of the skin, including around the mouth, hands, and feet. Some cases may be fatal. The most common cause of methemoglobinemia is elevated levels of nitrates in drinking water. Such elevated nitrate levels put bottle-fed infants most at risk, compounded by the increased susceptibility of infants' hemoglobin and the compounding effect of gastrointestinal infection.

The federal government has taken specific note of the health risks posed by nitrate. According to the National Primary Drinking Water Regulations, nitrate in drinking water at levels above 10 ppm [parts per million] poses "particularly high health concern for infants under 6 months of age and can interfere with the capacity of the infant's blood to carry oxygen, resulting

in a serious illness . . . known as 'blue baby syndrome'." 40 C.F.R. § 141.154(c)(1). The EPA specifies that the maximum amount of permissible nitrate in potable waters, expressed as a maximum contaminant level, is 10 mg/L. The Department developed a statewide water quality criteria for nitrate based on impacts on human health from ingestion. The nitrate surface water quality criteria for FW2 waters like the Peckman River is identical to the federal limit of 10 mg/L. N.J.A.C. 7:9B-1.14(f)(7).

There is no dispute that the Department analyzed effluent data from Verona's facility and correctly determined that nitrate was found in quantifiable amounts, necessitating a cause analysis in accordance with the Department's regulations. The Department conducted a cause analysis under N.J.A.C. 7:14A-13.5 and determined that Verona's discharge could contribute to an excursion of the SWQS. It then calculated the nitrate limit pursuant to N.J.A.C. 7:14A-13.6(a), using a steady state model. Verona did not challenge the result of the Department's cause analysis.

Instead, Verona argues that the 10 mg/L nitrate limit should not be applied to its facility because there are currently no downstream drinking water intakes in the Peckman River. This fact is not material, because the Department's determination to impose a WQBEL does not turn on whether an effluent is discharging into surface water that is presently supplying potable water. All freshwaters of the State are interconnected, and each is protected as a potential source of potable water supply through application of the SWQS. See 30 N.J.R. 1778(a); N.J.A.C. 7:9B-1.5(a)(3). In addition to improving degraded waters, the Department must preserve the quality of the State's waters and maintain both their existing and potential human uses, as well as their ecological, aesthetic and recreational functions. Ewing Lawrence Sewerage Auth. v. New Jersey Dep't of Env't Prot. and Sussex Cty. MUA Upper Wallkill Facility v. New Jersey Dep't of Env't Prot., EER 02687-21 and EER 13242-19, final decision, (Feb. 14, 2023),

https://njlaw.rutgers.edu/collections/oal/final/eer13242-19_1.pdf. Irrespective of the Peckman River's current water supply use status, the Department must maintain its water quality for potential future water supply use and preserve the many, and inherently valuable, natural resource functions of its waters.

Alleged capital costs are also not material to the Department's determination of a WQBEL. The NJPDES permitting process, which I find that the Department properly followed when issuing Verona's permit, is solely concerned with whether a permit holder's discharge causes an excursion of the SWQS, and the Department must apply its regulations as promulgated. Ewing Lawrence Sewerage Auth.; see also SMB Assoc. v. N.J. Dept. of Env. Protection, 264 N.J. Super 38, 50 (App. Div. 1993); In re CAFRA Permit No. 87-0959-5, 152 N.J. 287, 308 (1997). N.J.A.C. 7:14A-13.5 and N.J.A.C. 7:14A-13.6 do not provide for consideration of economic impacts.[3] "Such costs are properly considered through the rulemaking process of proposing, receiving public comment, and adopting the pertinent regulations in accordance with the Administrative Procedure Act." Ewing Lawrence Sewerage Auth., slip op. at 14.

Accordingly, I ADOPT ALJ Candido's conclusion that the Department properly set Verona's nitrate limit in accordance with the nitrate SWQS.

II. The Department's use of a static model was appropriate.

Verona also argues that the Department should have used the dynamic model developed in the TMDL Report[4] to calculate the nitrate limit in its 2019 Permit rather than a steady state model.

[3] While the capital cost of complying with SWQS does not provide a basis for waiving duly promulgated standards, the Department routinely makes low-cost financing available to publicly-owned treatment works like Petitioners for the purpose of making capital improvements necessary to meet permit requirements. See https://nj.gov/dep/wiip.

[4] The TMDL Report addressed phosphorus, not nitrate. Although both phosphorus and nitrate are nutrients, phosphorus is a distinct pollutant with a distinct impact on waterbodies and therefore has a distinct SWQS. N.J.A.C. 7:9B-1.14(d)(4) (phosphorus SWQS); N.J.A.C. 7:9B-1.14(f)(7) (nitrate SWQS). In its Opposition Brief, Verona

A dynamic model predicts the effects of receiving water and effluent flow and concentration variability, while a steady state model holds effluent flow and loading constant. N.J.A.C. 7:14A-13.5 and 13.6 allow either steady state or dynamic modeling.

ALJ Candido found, and I agree, that Verona did not raise arguments related to dynamic modeling during the public comment period or in its hearing request. Any "contested legal and/or factual issues" must have been "raised during the public comment period" for a draft permit. N.J.A.C. 7:14A-17.4(b). "If an applicant or permittee or any person fails to raise any reasonably ascertainable issues within the public comment period, the right to raise or contest any such issues in any subsequent adjudicatory hearing or appeal shall be deemed to have been waived." N.J.A.C. 7:14A-15.13.

In its comments on the 2019 Permit, Verona referred to previous permit cycles and stated that the "tiered approach" proposed in 2014, but not ultimately adopted by the Department, "would have been an appropriate vehicle to differentiate dischargers having different impacts on drinking water intakes." Exhibit M, 5. In its comments on the draft 2014 Permit, Verona stated that if the Department were to adopt the then-pending Tiered Drinking Water Use Rule, "the Department already has developed a dynamic model that can simulate nitrate impacts upon drinking water (the [TMDL Report])." Exhibit H, 6. Verona's reference to a 2014 comment on the availability of a dynamic model is not a request that the Department use that model in calculating the 2019 Permit's nitrate limit.

I therefore ADOPT ALJ Candido's conclusion that Verona's argument regarding the Department's use of a static model is not properly before the OAL. This decision does not prevent

explained that the TMDL Report's model is capable of addressing nitrate as well as phosphorus. Petitioner's Brief in Opposition to Motion, at 11-12. However, in its Reply Brief the Department asserted that using the model for that purpose would require additional data collection and research, rendering such a change appropriate for consideration through a major modification or a new permit application. Department's Reply Brief, at 22-26.

Verona from applying for a major modification pursuant to N.J.A.C. 7:14A-16.3 or requesting dynamic modeling in future permit applications.

III. Verona cannot challenge the designation of the Peckman River as a potable water supply source in this administrative proceeding.

Rule 2:2-3(a)(2) provides the Appellate Division with exclusive jurisdiction to "review final decisions or actions of any state administrative agency or officer." A party requesting an administrative hearing must challenge "the Department's application of the regulations" and not the underlying duly promulgated regulation. N.J.A.C. 7:14A-17.4(b).

ALJ Candido found, and I agree, that Verona cannot challenge the designation of the Peckman River as a potable water supply source in this adjudicatory hearing because this designation is set by regulation. N.J.A.C. 7:9B-1.12; N.J.A.C. 7:9B-1.15(f). The nitrate SWQS criteria of 10 mg/L that applies to the Peckman River is also set by regulation, N.J.A.C. 7:9B-1.14(f)(7), and depends directly on the designation of the river as a potable water supply. Any challenges to the validity of these regulations must be raised in the Appellate Division under Rule 2:2-3. To the extent that Verona maintains that the Department inappropriately failed to utilize a use attainability analysis as defined in 40 C.F.R. § 131.3(g) when it designated the Peckman River as a potable water source, this is also a challenge to the regulation designating the Peckman River as "FW2-NT" and also not appropriately part of this administrative case.

I rejected similar arguments in Ewing Lawrence Sewerage Auth. v. New Jersey Dep't of Env't Prot. In that case, which also involved nitrate limits in NJPDES permits for public utility authorities, I noted that "Petitioners challenge neither the Department's conclusion that the facilities exceeded the SWQS nor the Department's calculation of the nitrate limit in Petitioners' permits," but instead "challenge the regulations underlying these determinations." Here, too,

Verona does not challenge the Department's conclusion that Verona's effluent caused an excursion above the nitrate SWQS for a FW2-NT waterbody, and does not argue that the Department failed to calculate a WQBEL in accordance with that SWQS. Instead, Verona argues that a 10 mg/L SWQS is inappropriate because the Peckman River is not currently used as a potable water source. OAL is not the appropriate forum for a challenge to the underlying SWQS.

I therefore ADOPT ALJ Candido's finding that challenges to the Department's regulations classifying the Peckman River and setting the SWQS are not properly before the OAL.

CONCLUSION

For the foregoing reasons, I ADOPT the ALJ's Initial Decision of November 20, 2023.

IT IS SO ORDERED.

Date: October 7, 2024

Shawn M. LaTourette, Commissioner
NJ Department of Environmental Protection

VERONA TOWNSHIP WTP
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

OAL DKT. NOS.: EER 05228-21 and
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AGENCY DKT. NOS.: 0024490-47050 &
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