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

MAY 2 1 2010

Ms. Leslie J. McGeorge, Administrator
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

Dear Ms. McGeorge:

The U.S. Environmental Protection Agency (EPA) has completed its review of the revisions to the New Jersey Surface Water Quality Standards (NJSWQS) dated November 16, 2009. N.J.A.C. 7:9B. These revisions were adopted by the New Jersey Department of Environmental Protection (NJDEP) on November 13, 2009 and became fully effective on December 21, 2009. They were submitted to EPA on March 30, 2010. The submission was accompanied by a letter, dated January 11, 2010 from New Jersey Deputy Attorney General Jane F. Engel, which certified that the 2010 revisions had been adopted in accordance with New Jersey law. In taking this action, 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 11, 2010); and,
2. the applicable notices from the New Jersey Register (dated April 20, 2009 and December 21, 2009).

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 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 and became effective on October 16, 2006. As part of the review process on the 2009 revisions, NJDEP held a public hearing on June 4, 2009 to receive public input and comment on the proposed revisions to the NJSWQS. EPA considers the adoption of the 2009 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.

The following constitute the revisions which are being addressed under this action. These revisions enhance the NJSWQS, and represent improvements in the NJSWQS. The revisions are separated into three categories based upon the applicable EPA action.

I. Revisions which are Approved Pursuant to Section 303(c) of the CWA

- inclusion of three new definitions for "DRBC Regulations," "Site-specific criteria," and "watershed-specific translators;" modification of the definitions for "shellfish waters," "Best management practices," "Category 1 waters," "FW1," "Non-trout waters," "Pinelands waters," "Surface water classifications," "Trout maintenance waters," and "Trout production waters;" and the deletion of the definitions for "Ambient temperature," "Anadromous fish," "Bioconcentration," "Flow-through bioassay," "Thermocline," and "Limiting Nutrient," (7:9B-1.4), which are approved as being consistent with the requirements under 40 C.F.R. § 131.3;
- the addition of a new provision which states that, "When the Department promulgates a new or revised Maximum Contaminant Level (MCL) in the Safe Drinking Water Act rules at N.J.A.C. 7:10 for a parameter for which there is an established human health based criterion at N.J.A.C. 7:9B-1.14(f)7, the Department shall modify the human health based criterion based on the toxicity factor used to establish the MCL and shall incorporate the modified criterion into N.J.A.C. 7:9B-1.14(f)7. The Department shall publish a notice of administrative change in the New Jersey Register" (7:9B-1.5(a)6), which are approved as being consistent with the requirements under 40 C.F.R. § 131.11(a);
- revisions to the antidegradation policies to further clarify and update the existing policy, including the addition of a provision which states that "The maintenance migration, and, as appropriate propagation of threatened or endangered species is considered an existing use that must be maintained." (7:9B-1.5(d)), which are approved as being consistent with the requirements under 40 C.F.R. § 131.12;
- revisions to the nutrient policies to: clarify that except as due to natural conditions, nutrients shall not be allowed in concentrations that render the waters unsuitable for the existing or designated uses due to objectionable algal densities, nuisance aquatic vegetation, abnormal diurnal fluctuations in dissolved oxygen or pH, changes to the composition of aquatic ecosystems, or other indicators of use impairment caused by nutrients; and, allow NJDEP to develop watershed-specific translators or site-specific criteria through a TMDL and incorporate the resultant site-specific criteria at N.J.A.C. 7:9B-1.14(g), (7:9B-1.5(g)), which are approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1) and (b);
- revision to the mixing zone policy to include a pH as a pathogen indicator for which mixing zones are prohibited (7:9B-1.5(h)), which is approved as being consistent with the requirements under 40 C.F.R. § 131.13;

- the addition of a provision to allow NJDEP to authorize compliance schedules in accordance with individual NJPDES permits to allow permitees time to comply with new effluent limitations, (7:9B-1.6(d)), which is approved as being consistent with the requirements under 40 C.F.R. § 131.13;
- deletion of the "secondary contact recreation" use from the designated uses of FW-1, PL, FW-2, SE-1 and SC waters, since these use designations require compliance with the primary contact recreation use and criteria to support this use, (7:9B-1.12), which is approved as being consistent with the requirements under 40 C.F.R. § 131.10;
- revision of the complete citation of the Delaware River Basin Commission (DRBC) rules with the term "DRBC water quality regulations" which are now defined in 7:9-1.4, and a correction with a cross reference in the rules, (7:9B-1.13(a)), which are approved as being consistent with the requirements under 40 C.F.R. § 131.10 and 131.11; and,
- the addition of a provision which states that, "Any site-specific criterion developed through a TMDL adopted as an amendment to the Statewide Water Quality Management Plan or the applicable Area wide Water Quality Management Plan in accordance with N.J.A.C. 7:15-6.4 shall be incorporated into this section. The Department shall publish a notice of administrative change in the New Jersey Register." (7:9B-1.14(g)), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11.

By this letter, I am pleased to approve the above revisions to the NJSWQS pursuant to Section 303(c) of the CWA. With regard to the provision which authorizes the development of site-specific criteria through a Total Maximum Daily Load (TMDL) (7:9B-1.14(g)), it must be understood that the resultant site-specific criteria must be submitted to EPA for review and approval and must include the requisite Attorney General certification, since the TMDL must be based on an EPA-approved water quality standard. Further, in order to ensure that the TMDL is based on an EPA-approved water quality standard, the resultant site-specific criteria must first be adopted by the State as an amendment to the Statewide Water Quality Management Plan or the applicable Area wide Water Quality Management Plan before the TMDL is finalized and adopted by the State through the same process. By separating the adoption of the site-specific criteria and the TMDL into two separate and distinct actions, it will allow NJDEP and EPA to address any potential revisions to the TMDL that may result from EPA's final review of the TMDL. Whereas the adoption of the site-specific criteria and TMDL concurrently through the Statewide Water Quality Management Planning process, while representing a more streamlined approach, does not provide an effective mechanism to address the potential need for revisions to the TMDL based upon EPA review.

II. Revisions which are Approved Subject to the Results of Consultation under Section 7(a)(2) of the Endangered Species Act

In addition, I am approving the following revisions, subject to the results of consultation under section 7(a) (2) of the Endangered Species Act:

- revision to the statement of policy on the implementation of temperature criteria to reflect a more accurate value for the allowable increase in stream temperature for FW2-TM waters (from 1.1°C to 1.2°C) caused by a discharge without exceeding the temperature criteria at N.J.A.C. 7:9B-1.14(d)1, (7:9B-1.5(c)(8)(A.2), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1).
- deletion of the criteria for petroleum hydrocarbons based upon updates to the EPA national program, (7:9B-1.14(d)6), which is approved as being consistent with the requirements under 40 C.F.R. § 131. 11(a)(1).
- revision of the State's pH criteria to include a pH range of 4.5 – 7.5 for coastal plain FW2 waters outside of the Pinelands boundary, (7:9B-1.14(d)4), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1).
- revision to the current temperature criteria for TP, TM and NT waters with acute criteria (based on a daily maximum) to protect against fish lethality and chronic criteria (based on a seven day rolling average) to protect fish against sub-lethal effects, (7:9B-1.14(d)11), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(1).
- revision to the current marine aquatic life cyanide acute and chronic criteria based upon additional updated toxicity information, (7:9B-1.14(f)7), which is approved as being consistent with the requirements under 40 C.F.R. § 131.11(a)(2);
- reclassification of four stream segments based on most sampling data(7:9B-1.15), which are approved as being consistent with the requirements under 40 C.F.R. § 131.10; and,
- editorial changes/amendments to the surface water classifications for the waters of the State of New Jersey to reflect reconfigurations to: clarify that the waters of the mainstream Delaware River are under the jurisdiction of DRBC; and, split the existing Delaware and Raritan River basins into upper and lower basins to accommodate the pH criteria changes for coastal plain FW-2 waters outside of the Pinelands boundary; and reclassify several FW2SE waters to FW2 based on stream biology (7:9B-1.15), which are approved as being consistent with the requirements under 40 C.F.R. § 131.10.

EPA initiated consultation with the U.S. Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries (Services) on these provisions on April 29, 2010, 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, EPA will notify NJDEP of the results.

III. Revisions which EPA is not Taking Action on Pursuant to Section 303(c) of the CWA

Finally, please note that EPA is not taking action pursuant to Section 303(c) of the CWA on the following revisions, since these provisions relate to requirements associated with other areas of the water program, including permitting and assessment, rather than elements of Section 303(c) of the CWA relating to water quality standards.

- the addition of a policy statement stating that, "The Department encourages the use of reclaimed water for beneficial reuse to help preserve the highest quality water and reduce the export of freshwater out of basins in support of meeting water supply needs and natural resource protection." (7:9B-1.5(a)(8));
- the addition of a policy statement stating that, "The Department uses the Integrated Water Quality Monitoring and Assessment Methods developed pursuant to N.J.A.C. 7:15-6.2 to evaluate water quality data and identify waters where water quality does not meet the Surface Water Quality Standards at N.J.A.C. 7:9B as required by Section 303(d) and 305(b) of the Federal Clean Water Act." (7:9B-1.5(a)(9));
- the deletion of the metals translators and modification to the NJPDES rules at N.J.A.C. 7:14A-13.6(c);
- deletion of the WET policies and recodification to the NJPDES rules at N.J.A.C. 7:14 (7:9B-1.5(i));
- revisions to the nutrient policies to allow NJDEP to establish water quality-based effluent limits for nutrients, in addition to or more stringent than the effluent standard in N.J.A.C. 7:14A-12.7, as necessary to meet a wasteload allocation established through a TMDL, or to meet the criteria at N.J.A.C. 7:9B-1.14(d)5. (7:9B-1.5(g)(4)); and;
- revisions to the provisions addressing the establishment of Water Quality-Based Effluent Limits (WQBELs) to require that WQBELs be established for NJPDES point sources in accordance with N.J.A.C. 7:14A, require that new and/or expanded NJPDES point sources comply with the antidegradation policies at N.J.A.C. 7:9B-1.3(d), (7:9B-1.6).

EPA Region 2 looks forward to continuing to work with NJDEP to further improve the NJPDES. 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,

Barbara A. Finazzo, Director
Division of Environmental Planning and Protection

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