

NEW JERSEY CLEAN WATER COUNCIL
October 11, 2005
Meeting Highlights

Location:

NJ Environmental Infrastructure Trust, Building 6, Suite 201, 3131 Princeton Pike, Lawrenceville, NJ

Attendees

Members: Russ Furnari, Amy Goldsmith, Pamela Goodwin, George Hawkins, Tony McCracken, Ray Nichols, Pat Pittore, Dan Van Abs, and Ray Zabihach.

Others: Dave Stout and Helen Heinrich

Meeting convened by Pamela Goodwin, Chair.

Welcome newly appointed member: Chair Pamela Goodwin welcomed George Hawkins as a newly appointed member of the Council, representing the Public.

PRESENTATION BY DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF:

Debra Hammond, Chief of the Bureau of Water Standards and Assessment discussed the proposed amendments to the **Surface Water Quality Standards (SWQS)** that the Department is planning to adopt, pending the review of comments from the public. She noted that a public hearing was scheduled for October 24. [Subsequent to this meeting, the date of the public hearing was changed to November 9, 2005.] The deadline for submitting written comments is November 18, 2005.

Debra discussed the substance of the proposed changes and explained why the changes were needed. For example, she described how the Department is proposing several amendments to clarify the existing rule language and to recodify implementation policies regarding bacterial and temperature criteria. Other amendments would modify the antidegradation policies and antidegradation designations to support smart growth initiatives. Also, the surface water quality criteria for aquatic life and human health protection would be updated to reflect state-of-the-science risk assessments.

In addition, the Department is proposing to:

- (1) Require monitoring for mercury and PCBs using new, more sensitive USEPA approved methods;
- (2) Reclassify and/or upgrade the antidegradation designation of several streams based on fish sampling data;
- (3) Establish criteria for toxic pollutants based on the updated USEPA 304(a) recommended criteria; and
- (4) Establish criteria that will enable the State to set site specific criteria that would be more stringent than the Federal criteria.

Debra noted that, due to the need to re-adopt the existing rules within five years, according to the Administrative Procedures Act, and the limited amount of time available before the existing rules expire in February 2006, the Department is not proposing any changes to either the nutrient criteria or the bioassay procedures and criteria currently in effect.

Although the Department had previously proposed to adopt wildlife criteria for mercury, PCBs and DDT, but then did not do so, the current proposal does not include any wildlife-based criteria. Based upon a study commissioned by USEPA, it has been determined that there is no “end of pipe” treatment that will meet the standards that the Department is seeking to adopt. Consequently, the Department is proposing an implementation plan and implementation requirements which will establish a monitoring program to do baseline studies. Dischargers will be required to do monitoring using more sensitive analytical methods. Then the problem areas can be more clearly identified, and more efficient strategies to address those problems developed.

Debra then discussed how, concurrently with proposing these amendments, the Department published a notice in the New Jersey Register seeking public comment on possible revisions to the Surface Water Quality Standards which would establish an antidegradation policy for nonpoint source discharges. The Department anticipates proposing antidegradation requirements for nonpoint sources for all Highlands open waters in connection with its Highlands Water Protection and Planning Rules rulemaking initiative, under N.J.A.C. 7:38. Therefore, the request for comments is focused on surface waters located outside of the Highlands Region.

She noted that there is widespread agreement that the establishment and maintenance of buffer zones around streams has a variety of benefits. These benefits can be measured in terms of water quality, flow rates, flood control, ecological diversity, wildlife and aquatic life. Therefore, to meet the antidegradation objectives of the Clean Water Act, the Department seeks to create regulations addressing nonpoint sources of pollution, in particular, the pollutants associated with new development and redevelopment of land areas located near streams. To do so, the Department is considering proposing rules that would establish regulated areas called riparian zones.

The horizontal extent (or width) of the riparian zone associated with a given stream would be established based upon that stream’s classification (as listed in the SWQS) and the designated state planning area (as determined according to the State Development and Redevelopment Plan). A tier system would be established based upon the various combinations of classes. Waterways deemed to need the greatest level of buffering, or protection, such as a C1 waterway in Planning Areas 4 or 5, would have a regulated riparian zone extending 300 feet from the water way, as is case currently under the Stormwater Rules. For Trout Maintenance and FW2-NT waters in PA3, PA4 and PA5, the riparian zone would be 150 feet, while for FW-2 Non-Trout streams in PA 1 or 2, it would be 50 feet. These rules are envisioned as applying to new or expanded development that would disturb one or more acres of land or increase impervious surfaces by one-quarter acre or more. They would establish a requirement to maintain an undisturbed riparian zone adjacent to the stream, unless written authorization by the Department was obtained.

The Department could authorize disturbances in riparian zone only if certain criteria were met, including minimization of impacts and mitigation for unavoidable impacts. In addition, it would have to find that there was:

1. A Compelling Public Need; or
2. Applicant is eligible for a waiver under
 - Flood Hazard Area Control rules
 - Freshwater Wetlands Protection rules
 - Highlands Protection and Planning Act rules; or
3. Project is consistent with a regional plan which addresses stormwater

The explanation Debra provided concerning the Department's intentions in drafting the proposal and the related Request for Comment on the riparian buffer rule being considered by the Department, initiated a lively and informative discussion regarding both the substance of the rule proposal and the procedure for soliciting comment.

During the discussion several members raised the concern that the goals of the riparian buffer rules and its potential implementation were either unclear or confusing to the reader. There was particular focus on how the establishment of a riparian buffer "water quality criteria" would be applied to an agricultural property that was being re-developed as residential or commercial property, and/or other similar re-development activities, should these occur within and along designated water bodies.

Also, some of the Council members noted that, by publishing the request for comments simultaneously with the proposed amendments, but assigning different end dates for submitting comments, there was unnecessary confusion. Therefore, members expressed the desire to see the Department conduct additional stakeholder outreach activities to both explain and seek comment on this potential rule making initiative. They noted that, because the Department was contemplating an important action targeted at managing the impacts of nonpoint source pollution in NJ's water bodies, it was both proper and desirable for the process to be more fully vetted before it is formally proposed.

APPROVAL OF SEPTEMBER'S MEETING HIGHLIGHTS:

The highlights were approved as submitted.

OLD BUSINESS:

Recognition of past chairman for years of service: Pamela announced that the next council meeting, on Nov. 9, would be a special breakfast meeting held at her office, so that the Council could recognize Pat Matarazzo for his years of service as chairman of the CWC. She was arranging to have refreshments there and would have a plaque made up for presentation to Pat. Since the Council does not have a budget to cover such events, she invited the members to contribute to the cost as they saw fit.

Final Preparations for 2005 Public Hearing: Russ has set up a teleconference for October 19 at 9:30 a.m. so that the members of the planning committee and the speakers can determine the order of the speakers. Since there will be 10 speakers, each will be encouraged to speak for five minutes so that there will be an opportunity for questions after all the panelists have spoken. Council members would be given the chance to ask questions of the panelists, followed by questions from the audience. Then, following a 15 minute break, testimony from the public will be heard.

Follow up to setting CWC priorities for 2006: This subject was tabled to next meeting. Pamela noted that, when this subject is next discussed, the council members will need to consider what they heard from Debra and what they will hear at the public hearing.

NEW BUSINESS: None

ADJOURNMENT

Reminder: The next meeting will be on Wednesday, November 9, at the offices of Saul Ewing, LLC., 750 College Road East, Suite 100, Princeton. The building is at the corner of Scudders Mill Road and College Farm Road East. The meeting will begin at 10:00 a.m. For a map and more detailed directions, see <http://www.saul.com/offices/directions.aspx?officeID=147> Pat Matarazzo will be our guest of honor and breakfast will be served. Two major incentives to show up on time!