C1 Stakeholder Meeting

NOTES DECEMBER 10, 2010 9:30 AM -12:30 PM NJDEP, 401 E. STATE ST., TRENTON NJ

MEETING CALLED BY	Water Monitoring & Standards
TYPE OF MEETING	Informal Conversation
FACILITATOR	Kerry Pflugh
NOTE TAKER	Gigi Mallepalle, Al Korndoefer, & Jill Lipoti

Agenda:

- Attendees and Department personnel introduced themselves
- DEP provided a PowerPoint presentation on the existing process used to identify C1 waters
- The floor was opened for a facilitated discussion, centered around the categories of C1 designations, and the Department's interest in getting feedback on the following three questions:
    - Do you have any recommendations that would improve the existing methodology?
    - What other ecological factors should the Department be considering?
    - What other types of data should the Department be considering when designating C1 waters?
- The DEP asked the attendees to complete a "satisfaction" survey to help the program staff evaluate what aspects of this stakeholder communication outreach were successful and which were in need of improvement.

C1 Discussion

GENERAL CONVERSATION TOPICS

DISCUSSION	**The following is a condensation of the questions asked of the Department and the suggestions offered as to how to improve the current methodology used when determining the acceptability of a waters of the State for C1 anti-degradation protections:**
1.	Would the DEP consider sending both the current and future C1 designation methodologies to the Science Advisory Board for their review and comment? Why not send all prior C1 designations to them for review?
2.	Is the DEP going to review the existing C1 designations to verify their scientific justifiability? a. There was some sentiment that the Department had already designated too many waters as C1, and without adequate scientific rationale. One of the stakeholders questioned how 45% of the waters of such an urbanized state as NJ could have already been designated as a combination of ONRW and C1. Accordingly, these existing designations should all be revisited and re-justified.
3.	Do "Measurable Changes" also include "calculable changes" so that modeling can be used?
4.	The documentation provided by DEP on what constitutes a "Measureable Change" for each of the three main categories of exceptional waters, needs to be more transparent and clearly defined. a. Criterion for "Measureable Change" needs to be feasible and attainable
5.	There was some discussion as to the variability in the "quality" of existing C1 designations, due to the shift over time in how waters were accepted as candidates.
6.	Several stakeholders critiqued how DEP invited stakeholders, especially those from the environmental activist / watershed community. DEP was encouraged to be more inclusive in their invitations and to let the community tell the DEP who needed to attend a meeting.
7.	It was also observed by a stakeholder that while it may well be advisable to revisit the designation of existing C1 waters, one cannot talk about doing so without recognizing the substantial commitment of resources this would require. Under the present circumstances it is even doable? a. One suggestion to limit the scope of a review was to make of impervious land cover as a trigger for additional review of waters.

8. What about the exceptional "Scenic" qualities of a water body? Why hasn't the DEP developed and applied criterion for this aspect of the C1 anti-degradation protections?
    a. Important for recreational activities such as canoeing, kayaking, etc.
    b. Water quality characteristics such as clarity and color could be used.
    c. "The public knows it when it sees it"

9. It was recommended that the Highlands waters receive special designation along the same lines as the Pinelands (PL) waters have already.
    a. One complication is how we assess the routinely intermittent streams in the Highlands.

EXCEPTIONAL ECOLOGICAL SIGNIFICANCE

DISCUSSION	**The following is a condensation of the questions asked of the Department and the suggestions offered as to how to improve the current methodology used when determining the acceptability of a water of the State under this category (discussion points suggesting the collection / assessment of new or additional data are highlighted in yellow):**

1. In the presentation, a list of "Aquatic Dependent" Endangered or Threatened species was listed; why aren't there any fish species listed?
    a. It was acknowledged that while both the Div. of Fish and Wildlife, and WM&S-Bureau of Freshwater & Biological Monitoring in their collection of fisheries data do account for the presence of such species, the Department does not currently have an organized effort to monitor specifically for them and identify their habitats
        i. (one exception mentioned was the known population of "heritage" native trout)
    b. What about the sturgeon, for example?

2. Why have some Endangered or Threatened species not listed as being used to justify the designation of waters for C1 protections, such as the Wood Turtle?
    a. David Jenkins, of the Bureau of Non-Game and Endangered Species, provided the following working definition of "Exceptional Ecological Significance" which serves to justify the current list of Endangered or Threatened species used to qualify waters as "ecologically significant":
        i. "Consider as exceptionally ecologically significant any water body that provides habitat essential to the maintenance of any local populations of any endangered or threatened wildlife species or that is an essential component of the species' habitat, or that comprises or harbors any rare or unique ecological community or that plays a critical role in sustaining such a rare or unique ecological community."
        ii. Therefore, there must be an essential relationship of the Endangered or Threatened specie to a water body in order for that specie to be useful in the C1 designation process.
        iii. Dave Jenkins explained that in January 2011 additional E&T aquatic dependent species would be proposed by the DEP for inclusion in the states list.
    b. Several stakeholders took the view that the DEP should expand its review of E&T species to include non-water dependent species; perhaps factoring them in using a weighted approach.
        i. Reference was made to including amphibians, for example.
    c. The use of DF&W's Landscape model was suggested as a means of designating waters for E&T species.
    d. Some of the stakeholders questioned why E&T habitat protection was not a criterion; Dave Jenkins explained that the protection of habitat was not part of the E&T rules – rather it was dependent upon the protections provided for in other rules, such as NJPDES.
    e. The protection of "unique" populations should be included in the criterion.

3. Doesn't the DEP then have the onus to prove that non-measureable changes in water quality or even biological community health are actually impacting upon the survival of the E&T species?
    a. A discussion then ensued about how by the time you were able to measure an impact; it would already be too late to protect the E&T community in question.
    b. The questioned raised, whether it be in the case of C1 waters designated on the basis of E&T protections, or aquatic community protections, was where do you draw the line on how much degradation is acceptable, and by inference how and what is being "measured"?

4. The historical lack of C1 designations in freshwater headwater reaches was questioned. Mr. Korndoerfer explained that until recently the DEP did not have scientifically valid biological metrics applicable to headwaters so as to make valid assessments. In the past few years the DEP has expended the effort and capital to develop such metrics (benthic macroinvertebrates and an IBI) and is now able to make assessments in headwaters so that such reaches can be considered for C1 designation.

5. It was suggested that the DEP look at the indicators used in the designation of National "Wild and Scenic Rivers" as well as "Aquatic Trails" in order to expand the waterbody assessment "toolbox".

6. In the coastal and estuarine waters, it was suggested that the Department consider the use of NOAA's, "Essential Fish Habitat" program , along with other indices such as:
    a. Prime fishing areas
    b. Prime ocean grounds
    c. Submerged vegetative habitat
    d. Once finalized, the Rutgers Biotic Index is expected to be very useful for designating waters in the estuarine and coastal waters.
        1. Bob Schuster from Bureau of Marine Water Monitoring explained that the Barnegat Bay index is expected to be completed by the end of calendar year 2011, with the coastal index by the end of 2012.

EXCEPTIONAL WATER SUPPLY

DISCUSSION	**The following is a condensation of the questions asked of the Department and the suggestions offered as to how to improve the current methodology used when determining the acceptability of a water of the State under this category:**
1.	How was the threshold of water supply system serving a population of 100,000 persons chosen, and what is the justification for it? a. There was concern raised that by limiting the criterion for designation to population served of 100,000, vital headwaters needed for smaller potable waters systems are not being adequately protected.
2.	Why weren't water supplies using direct stream uptakes also considered in the criterion? The Manasquan River system was given as an example of a water supply not being given the C1 protection as a result of this exclusion (however, it should be noted that the Manasquan River reservoir and its tributaries have in fact been awarded C1 protections).
3.	A stakeholder put forth the following premise, which is paraphrased: The concept of designating certain waters for water supply as "Exceptional", and therefore must not be allowed to suffer any "measureable change" in water quality related to this use, inherently includes the premise that not all waters will qualify as exceptional – even though they are still expected to meet the SWQS for potability. a. Since waters can be treated for potability, what makes them exceptional in the first place?
4.	The DEP should take into account when determining whether or not a water supply is "exceptional", the impact of interconnections between systems.
5.	Given that Category 2 freshwaters also must be protected for potable uses after treatment, what does the term "exceptional" actually mean in this context to the DEP? … to the stakeholders? a. Should there be a "multiple weight of evidence" style approach to determining what is exceptional? b. How do we deal with the inevitable impacts of human activities within a watershed while still maintaining the essential anti-degradation protections? c. What is the defined difference between degradation and "No Measureable Change"? d. How does the concept of "No Measureable Change" interact with the water's designated use or uses?
6.	The DEP should modify its protocol to take into account seasonal changes in local populations, such as experienced in NJ shore towns in the summer (however, this would only be relevant in this context if the shore towns in question were using surface water drinking water sources, as opposed to ground water sources).

EXCEPTIONAL RECREATIONAL

DISCUSSION	**The following is a condensation of the questions asked of the Department and the suggestions offered as to how to improve the current methodology used when determining the acceptability of a water of the State under this category (discussion points suggesting the collection / assessment of new or additional data are highlighted in yellow):**
1.	Why isn't the DEP using criterion to assess waters for acceptability as C1 under this category? The Department could, for example, develop a definition based upon the pathogen criterion for Primary Contact Recreation.

Implementation Issues

DISCUSSION	**The following issues regarding the impacts and problems associated with implementing the anti-degradation restrictions associated with Category 1 water designations were brought up during the meeting and are documented here:**
1.	The DOT expressed frustration with their ability to abide with the anti-degradation restrictions placed upon all road building / maintenance activities in the vicinity of C1 designated waters, while still being able to perform much needed road repairs and improvements. a. It was suggested that some mechanism for "Grandfathering" existing stormwater management systems, while still making improvements to them could help; especially in the urban areas where there simply isn't the land to expand the existing systems. b. The use of stormwater management system "banking" was also offered up as a suggested means of relief. c. It was suggested that a case study conducted collaboratively between NJDEP and NJDOT on how road maintenance / improvements could be done around C1 waters without causing "measurable changes" in water quality could be informative and constructive.
2.	While everyone is concerned that sound science is used in the designation of waters for C1 protection, it is how the designations then become applied in the other DEP rules (NJDPES, Stormwater, etc.) for the protection of said waters (i.e.; buffering, etc.) that creates the problem for the regulated community; including the builders, NJDOT, municipalities, etc. Conversely, other stakeholders also see the implementation side of this issue as where the designations become reality on the ground with regards to environmental protection.
3.	Several stakeholders expressed concern about the current lack of DEP staff to implement and enforce the C1 protections for designated waters.
4.	It was observed by a stakeholder that about 90% of the discussion at the meeting centered on issues of policy regarding the application of anti-degradation, IE; implementation, not about the science of designating waters as C1.
5.	Need to explore ways to improve the communication and teamwork between the regulators and the regulated community, including the local governments, so that implementation of C1 protections can be achieved with the least impacts to needed infrastructure maintenance / improvements. a. Investigate with stakeholders why mechanism of "variances" has never been utilized.
6.	The application of C1 protections for water supplies in the rule making programs is not always predictable