



ASSOCIATION OF ENVIRONMENTAL AUTHORITIES

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May 22, 2019

Commissioner Catherine R. McCabe
New Jersey Department of Environmental Protection
401 East State Street , 7th floor East Wing
Mail Code: 402
Trenton, NJ 08625-0402

Re: Surface Water Quality Standards
N.J.A.C. 7:9B
Category 1 Designation Proposal
DEP Docket No. 01-19-01

Dear Commissioner McCabe:

I am writing to thank you for your consideration of our recent requests in connection with the Category 1 rule proposal. Like many stakeholders we requested additional comment time and a second public hearing. We also were concerned about having certain background data necessary to identify affected tributaries and accurately assess impacts on treatment facilities. I raised the former in our May 22 letter (enclosed), and you and I spoke about the latter following your remarks at the NJWEA conference earlier in May.

While I am disappointed that thus far the DEP is not scheduling an additional public hearing, I very much appreciate that the DEP was able to grant more comment time. I also appreciate that "shape" files have been made available. My members advise me that this has enabled them to identify some tributaries not previously identified as impacted. I should add, however, that they also tell me there are apparently still gaps in this information. My hope is that your staff can continue to work with our impacted members on this process.

Very truly,

Peggy Nolting Gallos
Executive Director

CC: David Harpell, AEA President



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April 17, 2019

Commissioner Catherine R. McCabe
New Jersey Department of Environmental Protection
Gary J. Brower, Esq. Office of Legal Affairs
401 East State Street , 7th floor East Wing
Mail Code: 402
Trenton, NJ 08625-0402

Re: Surface Water Quality Standards
N.J.A.C. 7:9B
Category 1 Designation Proposal
DEP Docket No. 01-19-01

Dear Commissioner McCabe and Mr. Brower:

I am writing regarding the Category 1 rule proposal on behalf of the 85 municipal and county authorities, regional sewerage authorities, improvement authorities and municipal water/sewer utilities that are members of the Association of Environmental Authorities. AEA members are expressing serious concerns about the transparency of this process, the proposal's adoption schedule, the quality and completeness of the data backing it, and their ability to assess the proposal's implications for their systems and their ratepayers.

While Gov. Murphy's Executive Order No. 63 is not formally effective until June 1, it provides a useful framework for the Category 1 reclassification process. According to the Governor's Office news release, EO63 was signed on April 2 "after months of gathering input from State agencies and stakeholders" and is intended to "improve New Jersey's regulatory structure." AEA believes DEP should align its process with the standard set by this pending executive order.

The C1 proposal has been moved along at an unusually brisk pace. It was publicly discussed Jan. 17, 2019, submitted for publication in the New Jersey Register by, at the latest, the Jan. 31 publication deadline, and available in the Register by March 4. In contrast, EO63 says "state entities should engage with affected communities, and provide opportunities for various groups to work in partnership with the State." That includes "gathering information through meetings and/or other discussions with affected communities in advance of formulating a proposed rule; and/or publishing and broadly disseminating a notice pre-proposal, and seeking comments." AEA believes more engagement and more input are needed. Therefore, AEA supports the request of its member organization, Raritan Township MUA (RTMUA), and other groups for a 90-day extension of the comment period. We also support the request made by RTMUA and the Utility and Transportation Contractors Association of New Jersey for a second public hearing.

The extension request is further warranted because the comment period that closes May 4 is, as a practical matter, shorter than 60 days. Local government governing bodies such as authority boards and town councils generally have one regular meeting per month. The first opportunity the RTMUA board had to discuss the proposal after its March 4 publication date was 17 days later, at its March 21 meeting. RTMUA and other AEA members have not had sufficient time to fully review and comment on the proposal.

At the April 8 public hearing, RTMUA testified that the DEP response to its request for specific documents related to this rulemaking was deficient. We respectfully request that in the interest of full transparency the DEP:

- Make all documents referred to in the rule language available;
- Release a GIS coverage layer it apparently has, and

- Address any issues, technical or otherwise, that are rendering portions of the rulemaking information inaccessible or partially accessible.

EO63 says “governmental decisions should be based on the best available data, including scientific data if applicable.” AEA members question data used for certain proposed designations and are concerned that there may be gaps in data. For example, certain bio-monitoring stations listed in Table E, page 326, are not located on the stream segments being included as a Category One waters, but rather on main stems in other locations. It is reasonable to ask whether the data underpinning these proposed designations is sound. Another concern relates to the precision of some locational data. It is not clear that all streams and tributaries that flow into the proposed C1 waters have been accurately accounted for; maps provided do not include a sufficient level of detail to exhaustively determine what properties fall within the 300-foot buffer areas. It is not clear that all treatments plants/sewer service areas impacted by the proposed rule, such as those upstream of C1 waters, have been accurately accounted for. Landis Sewerage Authority (LSA) has noted that four NJPDES facilities are potentially impacted by the proposed designation of Blackwater Branch and Burnt Mill Branch. LSA also notes that there appear to be issues with the data backing these proposed designations and that there is a Superfund site at the headwaters of Burnt Mill. LSA questions proposing Little Robin Branch for C1 designation given the fact that it is piped for thousands of feet beneath downtown Vineland. AEA respectfully requests that the points raised by LSA be given consideration.

Implications for long-term capital planning in economic growth areas, CSO remediation in Camden, and affordable housing planning are among the impacts that are not sufficiently addressed in the proposal. Again, I refer to EO63: “where relevant data is available, State entities should consider distributed impacts, or the effects of regulatory action across various subsets of the population and economy.”

We understand from our meeting with you and your staff on April 2 that NJDEP may propose a rule connected with the work of the Arsenic Water Quality Standards Variance Workgroup (AWQSW), whose objective was to develop a water quality standard variance for arsenic. Hackettstown MUA (HMUA) and RTMUA are among NJPDES permit holders facing arsenic limits that are lower than human health criteria in their discharge area. AEA would like to understand the implications of the C1 proposal for HMUA, RTMUA and possibly other dischargers. Would a waiver be applicable to all streams, including C1, or would it only apply to streams designated as “impaired”? If the latter is the case, that would mean that treatment plants could be required to meet arsenic limits even more stringent than the 0.017 ug/l with which they are currently struggling.

AEA supports the NJDEP efforts to expand the water bodies designated C1 and the goal of protecting the environment. But AEA believes the designations must be based on sound science, and they should be established based on a robust public dialogue of the kind described in EO63. Extending the comment period by 90 days and holding at least one more public hearing will help ensure these valuable objectives are achieved.

Very truly,



Peggy Nolting Gallos
Executive Director

CC: David Harpell, AEA President