



## Re: Proposed New Jersey Surface Water Quality Standards

June 19, 2009

Gary J. Brower, Esq.  
Attn. NJDEP Docket Number 07-09-03/454  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
401 East State Street, Floor 4  
P.O. Box 402  
Trenton, NJ 08625-0402

Re: Proposed New Jersey Surface Water Quality Standards

Dear Mr. Brower:

Delaware Riverkeeper Network, NY/NJ Baykeeper, and Hackensack Riverkeeper submit these comments on proposed changes to New Jersey's Surface Water Quality Standards (SWQS). In addition we support and are signed onto comments submitted by the Eastern Environmental Law Clinic as well. We begin by making general comments on your overall proposal, and conclude with specific comments on a point-by-point basis.

### Overall Comments

We would first like to remark on how difficult NJDEP has made it for citizens to comment on the proposed changes. The Surface Water Quality Standards Proposed Amendments fail to provide context or justification for the modifications in an easily accessible way. Instead it lists language to be changed, incorporates disparate statutes and uses highly technical jargon without defining its terms or explaining its methodology. Our organizations martial significant legal, policy and scientific expertise, but we still found these amendments difficult to navigate. If NJDEP takes seriously its obligation to notify the lay public of profound changes to environmental protections, and allow the lay public to comment knowledgably on the proposal, it should spend time making its notice documents readable.

We are concerned that different programs, such as the TMDL program, are influencing and possibly undermining the setting of water quality standards. The proposal, for example, to do waterbody-by-waterbody natural phosphorus determinations may spare the TMDL program work, but involve vast increases in work for other sections. Parts of your proposal make little sense from a policy, legal or scientific perspective that administrative infighting seems to be the most credible explanation.

Delaware Riverkeeper Network  
300 Pond Street, Second Floor  
Bristol, PA 19007  
tel: (215) 369-1188  
fax: (215) 369-1181  
drkn@delawariverkeeper.org  
www.delawariverkeeper.org

We are concerned that the Department's antidegradation implementation procedures are inadequate and fail to meet minimum federal requirements. In some cases language is vague and inconsistent. The level of protection in the guidance is often unclear and inconsistent with federal regulations. The Department must adopt SWQS that identify specific and protective implementation procedures for EPA review and approval. These procedures should include standards for enforcement of antidegradation policies in affected permit programs in a way that assures that the policies are actually achieved.

We are concerned with the proposed amendment in the standards relating to nutrients, particularly the decision to adopt narrative criteria for phosphorus. This alteration undermines the current standard New Jersey has in place and weakens SWQS. We fear that this change stems from an effort to relax restrictions on polluters. EPA has provided guidance on setting numeric standards for both nitrogen and phosphorus, and has also weighed in with other states to move them from narrative to numeric standards.

We fear that the switch to narrative standards will entail vastly more work for NJDEP, result in far less certainty in enforcement and allow polluters many opportunities to delay and weaken regulation. We firmly believe that the proposal weakens New Jersey's protections for its waters in a major and illegal way and strongly urge the Department to maintain its current policy on phosphorus. We also have concerns of proposed temperature modifications.

#### Specific Comments

##### Proposed Change 1.5(d)1i

We applaud the Dept for integrating protections for threatened and endangered species into protected existing uses. We recommend that the language be strengthened from "maintenance" to an increase in numbers of these species that are declining in number. When listed species are of concern, the NJDEP should aim higher than mere maintenance and attempt measures intended to restore populations to sustainable levels. If additional protections are needed to help increase numbers to sustainable populations, language in the SWQS should reflect that.

##### At N.J.A.C. 7:9B-1.5(d)1

Page 15 - The Department proposes to add a provision that existing uses shall be maintained and protected and that designated uses shall be maintained or, as soon as technically and economically feasible, be attained wherever these uses are not precluded by natural conditions. This provision is currently codified at N.J.A.C. 7:9B-1.5(d)2.

##### (7:9B-1.9(b))

Please define "natural conditions." We suggest removing natural conditions from the language. Inclusion of "natural condition" waivers in WQS regulations create a host of potential legal and programmatic problems. Natural conditions should not include dams and impoundments that might lead to a stream not attaining its designated use. It is impossible or impractical to determine what truly natural conditions in a long-developed state like New Jersey would be. Is the Department going to determine what these waters were like before human settlement? Determining "natural conditions" seems merely an attempt to allow more pollution without coming out and saying "you can pollute more."

##### 7:9B-1.14(b)(2)

Language included is confusing. Reference to "dischargers" problematic because WQC apply to waterbodies, not sources of pollution. As written could be taken to mean that lowering of water quality of PL waters due to nonpoint sources is irrelevant to determining whether high WQ of PL waters is properly maintained. Also, all WQC should apply, not just ones as of nearly 30 years ago. Water quality based discharge limits applicable to point sources as of March 1981 should also remain in effect. All such language should be deleted, so as to make clear that attainment of WQC is to be measured against condition of a waterbody, regardless of what sources of pollutants might affect the water.

What is the effect of :9B-1.14(b)(2) i. and ii?

Page 88 Antidegradation Requirements - Category 1 and Category 2 Waters

How often, in the past, have alternatives to discharge been allowed?

Can the Dept define "water quality based effluents" and also provide justification of why this type of effluent should be allowed?

There appears to be various inconsistencies between provisions of existing and proposed SWQS as they relate to Category 1 and Category 2 waters. SWQS appear to not provide appropriate protection as required by the EPA and at times seems to contradict EPA's regulations (40CFR131.12(a)(2)) as well as the state provision 7:9B-1.5(d)(5). For example, EPA regulations do not allow issuing a permit for a discharge that would "cause or contribute to" failure to meet WQS. Language in this section regarding WQBELs outlined for Category 1 seem to allow "some change in ambient water quality if necessary and justifiable for social and economic development". Under what circumstances could an effluent limit that would result in exceedances of existing water quality criteria be justified?

Page 19 - N.J.A.C. 7:9B-1.5(g) - Nutrient Policies:

DEP's proposal to amend nutrient standards concerns us greatly. New Jersey is one of the few states that have numeric criteria for Total Phosphorus (TP). As a result, we recognize New Jersey as being a leader in this arena and for setting numeric limits for TP, which strengthen New Jersey's water quality standards. The Clean Water Act was passed because instream regulation was insufficient to prevent a growing catastrophe in America's waters. Congress saw that the only way to stop the problem was to require technology based standards that would reduce and ultimately eliminate discharges of pollutants to waters of the United States. In retreating from numeric standards that ultimately influence stream discharges, New Jersey is retreating from the proven regulatory regime that has greatly improved the health of the nation's waters.

Studies indicate that small concentrations of TP can have a big impact to downstream regions and nitrogen can also be a limiting factor affecting stream health - high inputs of either of these nutrients can and do cause dead zones, decreased visibility and aesthetics, crash dissolved oxygen levels, cause large algae blooms, and kill fish.

Having numeric criteria (over narrative criteria alone) helps assure better protection of our streams. Phosphorus is often the limiting factor to plant growth and only a small change in phosphorus can set off a chain of undesirable events causing extensive algal growth; most water quality scientists agree that unpolluted streams have a phosphate level of less than 0.01 mg/l and background levels in streams should not exceed about 0.1 mg/L. This 0.1 mg/l standard is in fact, New Jersey's numeric limit for FW2 water -- one of the best and most protective standards in the nation currently. The Commentators urge NJDEP to keep this stringent numeric standard in place, not dilute it to a narrative criteria embraced by polluters. Using simple numeric criteria as New Jersey currently does is based on sound, defensible science and allows for needed stringent control of phosphorus inputs and discharges.

New Jersey currently exceeds protections set out by the EPA related to phosphorus and EPA does not support narrative criteria for nutrients. EPA published guidance also suggests numeric ambient criteria for total nitrogen. Nitrogen pollution is a major problem in our lakes and rivers. We suggest that rather than weaken the current phosphorus standard, we instead strengthen the nitrogen standard that is set at a high 10 mg/l for drinking water and that does not protect for aquatic life uses impacted by too much nitrogen in the system . Many of our streams suffer from larger concentrations of nitrate-nitrogen so an aquatic life use standard for nitrogen would help better achieve clean streams.

DEP's new conceptual approach in the Nutrient Enhancement Plan proposes to use the existing numeric criteria paired with now another new criteria that is based on "ecosystem response indicators" such as dissolved oxygen or bio-indicators using benthic invertebrates, phytoplankton, chlorophyll a, and related indices to determine use attainability. This proposed approach will weaken the current standard. The current standard is preferable

because it is currently based on the numeric criteria that limits the inputs of pollution from phosphorus and provides a simple numeric standard. It serves as a valuable baseline from which to work toward protecting stream health.

NJDEP's proposed changes could lead to harmful bay conditions as waterbody specific narrative criteria ignores that water moves between waterbodies and ultimately ends up in our bays. For example, a tributary or river may exceed the numeric criteria of TP but if algae or chlorophyll a cannot colonize the waterbody for unrelated reasons, the stream would not be failing to meet its designated use. As that nutrient-rich water flowed to our larger bay systems, major downstream effects could be realized. The proposed framework will not protect the Delaware Bay, for example, which is the largest sink of phosphorus and thus susceptible to deadly anoxic conditions. The Delaware estuary is very high in nutrients today compared to other estuaries. The neighboring Chesapeake Bay has dead zones from too much phosphorus in the watershed - sometimes creating dead zones covering as much as 40% of the Bay's mainstem. While many try to point to a lack of dead zones, algae blooms, pfiisteria outbreaks and the like as proof that nutrients are not a concern for the Delaware Estuary and Bay, the truth is that the ramifications of over-nutrification on the ecosystems of the Delaware Estuary and Bay have never been studied. The fact that over-nutrification is not taking its toll on the Delaware in the same ways it is in other water systems speaks not to a lack of danger of harm, it speaks to a lack of data, and to the reality that the Delaware is very different from these other waterbodies. The Delaware River Basin Commission is just now beginning to consider and investigate this issue recognizing the lack of information and awareness that surrounds it. Also, streams could be unfairly removed from the Integrated List and the subsequent TMDL process - but not because they are not harmed by excessive nutrients or a high TP, but rather because they are not meeting the proposed new "ecosystem response criteria".

NJDEP's policy is further flawed because "response criteria" are only apparent after the stream is harmed by pollution. Thus, the state can only react after the waterbody has already suffered the effects of the pollution. Once the damage is done the regulatory response must include restoration. It is always more expensive to fix a problem than it is to prevent a problem. Allowing polluters to discharge nutrients and knowingly pollute water bodies until algae blooms and anoxic dead zones occur betrays New Jersey residents. It simply does not provide the level of protection our communities deserve or are entitled to under the law. Instead, it appears to be more an effort to placate the demands of dischargers who do not want to meet these nutrient limits but would rather be allowed to continue to pollute our streams and environment in order to increase their profit margins. At a recent comment session in Trenton, several environmental groups were present to express their concern on this proposal. No industry groups lodged complaints.

It simply does not make sense for the NJDEP to make this change. The endeavor will create more burdens on the Department and will unavoidably increase pollution. NJDEP should desire neither outcome. How many years will it take to develop these site specific criteria? What is the budget for this highly technical and labor intensive work load? We should not weaken our standards because of pressure to reduce TMDLs and stream listings - this rationale is wrong.

The Nutrient Enhancement Plan (EP) (NJDEP, January 2009) states that 30% of all assessed wadeable streams in New Jersey exceed the numeric criterion for TP in the 2008 Integrated List. Therefore, the report states that it is a "high priority" to replace the numeric criteria with the proposed "site-specific nutrient translators". Changing the regulatory playing field to make pollution disappear on paper but perpetuate it in the state's waters is not in the spirit of the Clean Water Act. The Clean Water Act is not designed to secure compliance by encouraging downgrades - it is designed to secure compliance with technological standards, to prevent pollution before it occurs, and eventually eliminate discharges to the nation's waters. To weaken standards simply because so much of the state's waters are polluted by nutrients from upstream discharges is a failure of leadership. Instead, efforts must be made to reduce the permitted discharges of TP, reduce the number of man-made impoundments on our streams, and set strong numeric standards for Total Nitrogen.

What will the translators look like? Will there be a formula(s) for deriving WQC applicable to entire watersheds, using watershed-specific information? Or actual "translations" of the narrative WQC (i.e. watershed specific

water quality thresholds consistent with supporting DUs)? Why should they not be incorporated into WQS regulations in the same manner as "site-specific water quality criteria"?

Lakes and Phosphorus Limits -New Jersey has developed phosphorus TMDLs for 48 lakes that exceed numeric TP criterion for lakes (0.05 mg/l). The EP states that modeling has shown that some lakes, given the large upstream watershed, will never meet their phosphorus limits - even with no anthropogenic inputs of phosphorus. As part of the TMDL, NJDEP should require the removal of these run-of-the-river shallow impoundments that decrease overall water quality in the first place and that obstruct fish passage. Lake front property owners and dam owners should be required to agree to allow removal of these structures which cause harm. It is a violation of the Clean Water Act for New Jersey to use these lakes as endpoints for calculating phosphorus reductions that exceed the existing numeric criteria. New Jersey falsely makes this determination by referring to the WQS provision that allows naturally occurring conditions to prevail over numeric criteria. It is clear that a man-made impoundment and dam is not "naturally occurring"; therefore this justification does not comport with the law.

N.J.A.C. 7:9B-1.12 - Designated uses of FW1, PL, FW2, SE1, SE2, SE3, and SC waters - Page 32

Though primary contact recreation standards are more stringent than secondary contact recreation standards, if the streams are used for secondary contact recreation, such as boating or kayaking, what is the rationale for deleting this designated use? Designated uses should reflect all the uses and goals of the stream and should not be deleted but rather listed in full to reflect the diversity of uses provided by each waterway. Removing a designated use is not allowed under the Clean Water Act without an extensive and costly Use Attainability Analysis being conducted that could ultimately lead to a more polluted stream.

Incomplete WQC

Criteria for several "conventional" pollutants /parameters (e.g., pH, sulfates, TSS) have only a criterion-magnitude. There is no mention of a criterion-duration/averaging period and no mention of a criterion-frequency/recurrence interval. Does this assume criterion duration equals an instant while criterion frequency equals zero? If the Dept intends otherwise, it needs to specify in SWQS. The Dept should also show scientific data that designated uses will be protected with longer duration and higher frequency pollution events.

The chronic SWQC for bacteria is expressed as an open-ended geometric mean, unlike corresponding US EPA WQC. There is no mention of 30-day mean (or any other duration). This implies or could be taken to mean all available data, on the record, which could go back decades. Without duration equal to or shorter corresponding EPA WQC's duration, the Dept. would need to present scientific evidence (presumably epidemiological data) showing that exposure to the bacterial criterion-concentration, would not pose risks significantly greater than the 8-10 additional cases of gastrointestinal illnesses per 100 swimmers.

Since sediment issues and flow concerns are common problems in New Jersey. The Dept. should develop appropriate sediment criteria (using total suspended solids or turbidity measures) or flow criteria to be part of the SWQS. Biocriteria and bioassessments to help shift the regulatory focus to the actual, rather than theoretical response of watershed to pollution and other environmental stressors should be pursued and EPA supports the use of biocriteria.

N.J.A.C. 7:9B-1.10 - Procedures for reclassifying specific segments for less restrictive uses, - Page 32 - sets forth specific requirements necessary to petition the Department to remove a designated use from a waterbody. The Department is proposing to readopt this section without change. --- Designated uses are goals for our waterbodies and these protections and uses should not be removed through the process of downgrades or use attainability analyses (UAAs). Limited budgets make it even more critical not to waste agency time on the lengthy process of downgrading waterbodies. Waterbodies that do not attain designated uses should be put on the Integrated list to reach their designated use through restoration, rather than be downgraded through a UAA. The feasibility of attaining a designated use in the future is hard to guess, and the Department should be reluctant to downgrade waters based on what is "impossible." The Department should anticipate new pollution control technologies and remember that the CWA sought to eliminate discharges of pollution into navigable waters by 1985. The antidegradation designation of a waterbody is required to be based on characteristics and

criteria stated in the SWQS. Under the Clean Water Act, states may not consider economic factors in setting SWQS. Economic considerations are to be addressed in implementation, not in setting standards.

N.J.A.C. 7:9B-1.14 - Surface water quality criteria - P. 33 - We propose stronger criteria for total nitrogen based on health of aquatic life rather than only drinking water standards. This is required under the Clean Water Act (Section 303 (c) (2) (A) and EPA has provided guidance to assist with establishing numeric Total Nitrogen standards.

Page 35 - N.J.A.C. 7:9B-1.14(d)4 pH criteria

Expanding the pH criteria to include lower pH's indicative of pineland conditions is appropriate in the coastal plain regions where pineland habitat affects and leads to lower pH ranges. We recognize NJDEP for the development and implementation of this index to help correctly monitor the health of these valuable streams that have a distinct benthic community and naturally low pH. Efforts need to be made to address issues associated with stormwater runoff and the elevated pH's that are impacting these streams.

N.J.A.C. 7:9B-1.14(d)5 Phosphorus:

(See comments above on nutrients).

We strongly oppose any effort to weaken phosphorus standards from numeric phosphorus criteria to narrative criteria - we see it as an exit ramp strategy for polluters. New Jersey's numeric criteria are based on sound scientific data of the past that leads to protective criteria. NJDEP has been a leader when it comes to setting stringent numeric criteria - NJDEP should not backslide. We also believe that new science, such as that published this past winter further strengthens the need for stronger nutrient limits as it relates to global warming and significant effects of nitrous oxide emissions by aquatic macrofauna from excess sediments in our river bottoms, bays and lakes through out-gassing. Due to concerns of nutrients throughout the nation, EPA has established ecoregion numeric criteria that could be used (at a minimum) rather than shift to narrative criteria. EPA has developed nine documents to address nutrient criteria in different ecoregions of the country (The Clean Water Act, River Network, 2005) ([www.epa.gov/waterscience/criteria/nutrient/ecoregions/rivers/index.html](http://www.epa.gov/waterscience/criteria/nutrient/ecoregions/rivers/index.html)). We strongly urge New Jersey to maintain its current protective numeric phosphorus criteria.

Having numeric criteria (over narrative criteria alone) helps assure better protection of our streams. Phosphorus is often the limiting factor to plant growth and only a small change in phosphorus can set off a chain of undesirable events causing extensive algal growth or blooms; most water quality scientists agree that unpolluted streams have a phosphate level of less than 0.01 mg/l and background levels in streams should not exceed about 0.1 mg/L. This 0.1 mg/l standard is in fact, New Jersey's numeric limit for FW2 water -- one of the best and most protective standards in the nation currently. Delaware Riverkeeper Network urges NJDEP to keep this stringent numeric standard in place, not dilute it to a narrative criteria encouraged by those that continually pollute our water who attempt to weaken our standards or from pressure to delist streams or decrease TMDL developments. Using numeric criteria as New Jersey currently does is based on sound, defensible science and allows for needed stringent control of phosphorus inputs. We must remember the goal of the Clean Water Act passed in the 1970's calls for NO DISCHARGE to our waterways.

For the benefit of water quality, NJDEP should be forcing new technologies and adherence to the numeric nutrient criteria limit rather than allowing an "exit ramp" strategy for dischargers. Cumulative impacts of high nutrients and the downstream Delaware estuary must be considered in addition to local attributes of the receiving stream. Just because other "ecosystem indicators" are not showing an extreme problem locally in-stream, doesn't mean this is justification to continue to allow inputs of TP into our streams - both regulated or unregulated. NPJDES must work toward the zero pollution discharge goals of the Clean Water Act.

As stated above, it is clear that much time, research and public investment is going into the development of proposed "ecosystem indicators". We question if this time and expertise of New Jersey scientists would not be better spent on other measures that in fact are not attempting to weaken the standards already put in place - particularly with current budget constraints. This view appears to also be evident in EPA comments to the state of Florida (January 14, 2009).

"Having numeric nutrient criteria in place would have a similar effect on development of TMDLs. When developing TMDLs, Florida translates...the narrative nutrient criterion into a numeric target that the state determines is necessary to meet the narrative criterion and protect applicable designated uses....Each time a site-specific analysis is conducted to determine what the narrative criterion means for a particular water body, in developing a TMDL, the State takes site-specific considerations into account and devises a method that works for the data and information available. EPA maintains that numeric criteria for nutrients would enable the State to, in a more timely manner, establish TMDLs that identify nutrient reductions necessary to protect the designated uses. These resource intensive efforts to interpret the State's narrative criterion contribute to delays in implementing the criterion, and therefore, affect the State's ability to provide the needed protections for applicable designated uses."

Nitrogen Criteria - Given new science that shows the impact and effects of increased nitrogen in our bays and rivers (as it relates to nitrous oxide gas emissions among other findings), we encourage New Jersey to adopt stronger numeric nitrogen standards for protecting aquatic life. EPA has developed total nitrogen standards for nine ecoregions that could be adopted the Dept and below, an excerpt from EPA to the State of Florida supports the setting of numeric standards for TN. Other scientific research draws the same conclusions about nitrogen impacts. James et al. (2005) produced correlative evidence that nitrate concentrations above about 1 mg NO<sub>3</sub>-N L<sup>-1</sup> led to reduced species richness of aquatic plants and Barker et al. (2008) confirmed this experimentally. Official reluctance to declare nitrate standards is misplaced .

"The thresholds of impairment used (by the state) are expressed as increasing as.....chlorophyll-a mean values for streams, estuaries and open coastal waters. While these impairment thresholds and the site-specific assessment processes are useful for identifying impaired waters, significant delays in identifying all nutrient-impaired waters unavoidably result from the need to implement the narrative criterion on a site-specific basis for many waters. Numeric nutrient criteria are necessary to facilitate and expedite the identification of all nutrient impaired waters..., thereby providing necessary protection for the State's designated uses, as required by the CWA..."

"...(Florida's) narrative nutrient criterion alone is not sufficient to protect applicable designated uses, and ...numeric nutrient criteria are necessary to meet the requirements of the CWA (January 14, 2009).

7:9B-1.14(d)5

Does new language regarding WQ-based effluent limits in NJPDES permits for nutrients apply to all the existing total phosphorus water quality criteria, or just some of them?

N.J.A.C. 7:9B-1.8 - Procedures for modifying water quality-based effluent limitations for individual dischargers to Category One waters - Page 30

We do not believe that weakening compliance schedules for discharges should be allowed. An existing three year maximum for compliance already allows too much pollution and is already far too liberal and to further propose to increase this compliance period beyond three years is not acceptable.

We are also confused as to the location of the language as it appears in this section which deals with "Procedures for modifying water quality based effluent limitations for dischargers to Category 1 waters". According to 7:9B1.6(a), the goal for Category One waters is to "protect the existing water quality from any measurable or calculable changes." Presumably these are waters that currently have better-than-WQC water quality, in which case it would be unusual to be imposing new (brand new and/or more stringent than previous WQBELs) WQ-based limits for existing sources. Hence, antidegradation comes up almost always in the context of new or expanded loadings being proposed to a high quality water. It's clearly bad policy, and inconsistent with the spirit of the CWA, to allow someone to commence discharging additional loading to high quality waters that are higher than those needed to comply with antidegradation and give them several years to install new treatment or adopt whatever pollution prevention measures are needed to comply with the actual permit limit. Such controls and measures should be built into the new facility as it is being constructed, so that it complies with its permit limits from day one of discharging.

N.J.A.C. 7:9B-1.5(h) - Regulatory Mixing Zone Policies - p 28 - Though we believe mixing zones are not in the spirit of the Clean Water Act, we agree with the Dept. that e.coli should be added to prohibitions within mixing zones.

Additionally, we encourage the Dept. to make maps and/or verbal descriptions of each single mixing zone that is delineated easily available to the public. This is in keeping with the spirit of transparency in government.

Page 35 - The Department is proposing to delete the reference to limiting nutrient at N.J.A.C. 7:9B-1.14(d)5ii.--- we do not support the removal of "limiting nutrient" in this context.

Page 36 - N.J.A.C. 7:9B-1.14(d)11 Temperature: We recognize the Dept for proposing temperature maximums for fish populations to strengthen temperature criteria currently in place that are based on non-protective summer seasonal averages only; however, we are very concerned that proposed maximum temperatures are far from protective of all three trout species. The Dept states that the lethal temperature for brook trout is 23.9 C but yet the proposed criteria for TM allow maximums above this temperature which is not protective of the fish that live in the stream. For TM waters, the target species should not be brown trout but brook trout which have a lower tolerance for temperature maximums.

This is even more discerning since the Dept states that brook trout now survive in less than half their original range in New Jersey, having once occupied nearly 200 of the State's 900 subwatersheds, according to the Eastern Brook Trout Joint Venture (EBTJV) 2006 assessment report, Eastern Brook Trout: Status and Threats (available at <http://www.easternbrooktrout.org>). Brook trout have been extirpated from 96 New Jersey subwatersheds, and none of the remaining subwatersheds where brook trout are present are considered "intact." The optimal temperature range for feeding, growth and reproduction for brook trout is 11 to 16°C.

Other states like Pennsylvania have maximum temperatures set based on bi-weekly calendar years. For a comparison, Pennsylvania, in its equivalent TP stream segments (CWF), does not allow a maximum of over 66 degrees F, even in the hot months of August and September. While New Jersey, is proposing a maximum of 71.6 degrees F in its FW2-TP regions.

Furthermore, the Dept is proposing maximums for small moth bass and yellow perch that do not allow a buffer or margin of error before lethal effects take place. The daily maximum needs to be more protective of these species to adhere to protecting the designated use.

Page 39 - Temperature - The Dept is recommending an hourly average be used to determine the daily maximum when continuous monitoring is being used. This does not make sense and is not a maximum reading. Instead, the maximum DO reading in that hour should be used. A maximum is just that, a maximum number, therefore, an average is not acceptable even with continuous monitoring.

Will the existing (and revised, with minor addition of degrees in Fahrenheit) temperature WQC (7:9B-1.5(c)(8)) that are expressed in terms of changes in temperature from ambient background levels "trump" the new temperature WQC expressed as: a) daily maximum temperatures, and b) 7-day averages, with regard to rules governing setting of WQBELs for temperature?

7:9B-1.5(d)(ii)(1):

Insert "existing" into provision dealing with application of antidegradation policies with cranberry bogs/blueberry production in the Pine Barrens

Add a date to the provision, "This policy is not intended to interfere with water controls in the operation of cranberry bogs or blueberry production in existence as of (insert date when WQS are finalized).

"Watershed-specific - page 82" - What will the translators look like? Will there be a formula(s) for deriving WQC applicable to entire watersheds, using watershed-specific information? Or actual "translations" of the narrative WQC (i.e. watershed specific water quality thresholds consistent with supporting DUs)? Why should they not be incorporated into WQS regulations in the same manner as "site-specific water quality criteria"?

N.J.A.C. 7:9B-1.15 - Surface water classifications for the waters of the State of New Jersey  
Trout classifications - Page 47

The Commentators support the upgrade of Beaver Brook tributary to FW2-TM but we are strongly against the proposed essential downgrade of the Musconetcong Scout Run tributary and all of its length and tributaries to FW2-NT from FW2-TM. The I.O. for Scouts Run is 19.3 and with a cut off of 20, this stream is too close to the cut off to warrant a change in designation. If this change was allowed, proposed temperature changes would ultimately put the existing trout present in Scouts Run in harms way and this is a violation of the Clean Water Act. Furthermore we see this as a downgrade of status and against the anti-degradation guidance, particularly since temperature criteria would be different. More studies need to be completed with such a close score and a downgrade to TM for the Scout Run is not warranted.

The language on page 45 regarding the Musconetcong is also incorrect as it states it is an upgrade and the Dept. is proposing a downgrade.

Thank you for your work, time and attention and for the opportunity to provide comments. We anticipate continued involvement as NJDEP incorporates needed changes and addresses our concerns in regard to the proposed standards.

The Delaware Riverkeeper Network, grounded in the power of the River and its community of 6,000 members, champions the needs of the Delaware River and in so doing ensures its unfettered ability to protect and provide for all the human and nonhuman communities that love, appreciate and depend upon it.

NY/NJ Baykeeper's mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary - the most urban estuary on the planet. Since 1989, it has served as citizen advocate for the Estuary's bays, streams, and shores. Baykeeper stops polluters, champions public access, influences land use decisions, and restores habitat - benefiting the natural and human communities of our watershed.

The primary mission of the Hackensack Riverkeeper, Inc. is to provide representation for the natural living resources of the Hackensack River. This representation is manifested in the Hackensack environmental advocacy, education and conservation programs. The focus of Hackensack Riverkeeper, Inc. is to protect and defend the environmental quality of the eco-system of the estuary, river and watershed and the quality of life for the people and other creatures that inhabit the Hackensack River watershed.

Sincerely,

Maya K. van Rossum  
the Delaware Riverkeeper

William Sheehan  
the Hackensack Riverkeeper

Deborah Mans  
the NY/NJ Baykeeper

cc. EPA Region 2, 290 Broadway - 26th Fl., New York, NY 10007-1866