

From: Hammond, Debra [<mailto:Debra.Hammond@dep.state.nj.us>]
Sent: Monday, August 19, 2013 3:25 PM
To: Wojtenko, Izabela; Jackson, Wayne
Cc: Lipoti, Jill
Subject: NJ's Nutrient Criteria Enhancement Plan

I am pleased to provide you with New Jersey's updated Nutrient Criteria Enhancement Plan (NCEP). This version reflects comments provided by Region 2 on January 15, 2013. Based on your comments, we have removed information related to implementation of nutrient criteria in permits and TMDLs. Our efforts are directed towards developing the scientific justification needed to change the magnitude of the existing numeric phosphorus criteria and establish an appropriate averaging period and frequency of allowable exceedences. This plan also references DRBC's Nutrient Criteria Plan for the Delaware River. We intend on working with the basin states and EPA to develop criteria for the Delaware River, Delaware Bay and the tidal tributaries to the Delaware Estuary. We also identified our ongoing efforts in Barnegat Bay that we hope will provide the scientific basis for nutrient-related criteria, if needed. Unfortunately, many of the projects will require funding which is currently not available or will take longer than the time period of the NCEP. These projects are identified with a completion date of "beyond 2015". We hope that EPA can use this plan to justify directing additional funding to New Jersey.

If you have questions or need clarification, please give me a call.

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From: Wojtenko, Izabela
Sent: Wednesday, September 04, 2013 3:28 PM
To: Debra Hammond
Cc: Anderson, Kate; Locicero, Felix; Jackson, Wayne
Subject: RE: NJ's Nutrient Criteria Enhancement Plan - EPA comments

Hi Debra,

Thank you very much for your submission of the draft New Jersey Nutrient Criteria Enhancement Plan for 2013. As it is described in details in your Plan, State has developed a significant database of nutrient and nutrient response data from freshwater lakes, streams/rivers, and coastal waters to support enhancement of the existing nutrient criteria for freshwaters and the development of new numeric nutrient criteria for coastal waters. State is completing a great amount of research to support these efforts.

We have completed our review of the draft document and our comments are listed below for your consideration. Our main concern remains to be lack of the specific/detailed schedule for actual revision of existing numeric criteria for freshwaters and the development/adoption of numeric nutrient criteria to protect coastal waters of the state.

- (1) Page 2 – Report focuses on addressing the impacts of nutrients on the aquatic life use. The Department believes that achieving full support of this use will also improve other uses – NJDEP must demonstrate that the nutrient criteria adopted to protect the aquatic life use will also fully protect (not only improve protection of) all other uses.
- (2) Page 3 – The Department published a progress report in 2011 and intends on updating this every three years or as needed to address substantive changes - As agreed with NJDEP a revised Nutrient Plan should be resubmitted to EPA as necessary, to address substantive changes to the plan, schedule or to update ongoing research but, at a minimum, the plan should be resubmitted ever three years.
- (3) Page 5 – numeric nutrient criteria listed are not EPA approved - It should be clarified in the text of the Plan that these criteria while adopted by NJDEP, are not approved by EPA.
- (4) Pages 14 and 18 – The Nutrient Plan does not include schedules for the adoption of nutrient criteria for lakes and streams/rivers. The tasks for lakes and streams/rivers focus on research only. We thought that NJDEP had agreed to adopt nutrient criteria for lakes and streams/rivers as part of its 2014-2016 WQS triennial review process. However, this Plan does not include a commitment to revise existing criteria for lakes and streams/rivers. NJDEP should provide a commitment and schedule to revise and adopt nutrient criteria for lakes and streams/rivers. NJDEP should include the 2014-2016 timeframe to revise and adopt nutrient criteria for lakes and streams/rivers in this Nutrient Plan document.
- (5) Page 20 – there is no commitment to develop and adopt nutrient criteria for NJ's Estuaries. Tasks focus on research only. Detailed schedule that includes completion dates for the following milestones should be included in the document: (1) data collection, (2) information/data analysis, (3) proposal of draft numeric nutrient criteria to EPA, and (4) adoption of criteria into SWQS Regulations.

Please let us know if you have any questions or would like to discuss our comments in more details.

Thank you

Izabela

From: Hammond, Debra [Debra.Hammond@dep.state.nj.us]
Sent: Wednesday, September 04, 2013 3:51 PM
To: Wojtenko, Izabela

Cc: Anderson, Kate; Locicero, Felix; Jackson, Wayne; Hirst, Barbara; Lipoti, Jill
Subject: RE: NJ's Nutrient Criteria Enhancement Plan - EPA comments

Thanks for the quick review.

(1) This is the toughest comment to address, particularly when we have multiple uses for a waterbody. Swimmers might prefer crystal clear water, boaters would prefer no weeds, but fish need some algae and weeds. The most stringent use/criteria might eliminate the other

uses. Can you provide studies conducted/funded by EPA or other states to address other uses since most of the research has focused on biological integrity? There are exceptions - NYDEC using disinfection by products for their water supply reservoirs.

(2) Oops. We will revise to indicate a progress report annually with a revised plan every three years.

(3) I realize that our rule is not approved. Would you prefer that we just indicate that we have narrative and numeric criteria? We did not want to state that our rule, while formally adopted in accordance with state procedures has not been approved by EPA. Suggestions?

(4) Research always takes longer than planned. Sometimes it identifies the need to change direction. Since this plan covered work completed before the end of 2015, we indicated that rulemaking was not scheduled for completion before the end of 2015. The next triennial review will need to address a lot of things. If we have the technical basis needed to modify the existing numeric criteria for phosphorus in lakes and streams we can include but I'm not sure it will be ready by then.

If you have some ideas to address these issues, let me know. We'd like to be able to post the plan on our website before the end of the year. Deb

Jeff Ruch

From: Wojtenko, Izabela
Sent: Tuesday, September 10, 2013 1:34 PM
To: Debra Hammond
Cc: Anderson, Kate; Locicero, Felix; Jackson, Wayne
Subject: NJ's Nutrient Criteria Enhancement Plan - EPA comments

Debra,

Thank you very much for your prompt response to our comments. We fully understand that nutrients are a very complex issue and that addressing them is a true challenge. As requested, we would like to provide you with some suggestions for the 2013 draft of the New Jersey Nutrient Criteria Enhancement Plan.

(1) Page 2 - Report focuses on addressing the impacts of nutrients on the aquatic life use. The Department believes that achieving full support of this use will also improve other uses - NJDEP must demonstrate that the nutrient criteria adopted to protect the aquatic life use will also fully protect (not only improve protection of) all other uses.

NJDEP has the option to focusing initial nutrient criteria development on the adoption of "use-specific" nutrient criteria to protect the aquatic life use. EPA supports NJDEP's efforts to establish aquatic life based nutrient criteria. Should NJDEP demonstrate that aquatic life criteria are protective of all other uses, than aquatic life based nutrient criteria are all NJDEP would need to adopt. NJDEP would need to adequately demonstrate that aquatic life criteria represent the most stringent values and would protect (not just "improve other uses") all applicable uses.

With regard to your request for examples of States pursuing to nutrient criteria to protect other uses, states like Kansas and New York are working on the development of numeric nutrient criteria to protect drinking water use and states like Minnesota, Montana and New York are developing criteria to protect recreational use. Status of development and adoption of the individual criteria in different states can be found on the EPA's website: <http://cfpub.epa.gov/wqsits/nnc-development/>

(2) We agree with your response.

(3) Page 5 - numeric nutrient criteria listed are not EPA approved - It should be clarified in the text of the Plan that these criteria while adopted by NJDEP, are not approved by EPA.

As agreed upon, this issue will be addressed during the upcoming triennial WQSR review process 2014-2016. In the meantime, the general statement that State has narrative and numeric criteria is sufficient.

(4 and 5) Pages 14, 18 and 20- The Nutrient Plan does not include schedules for the adoption of nutrient criteria for lakes, streams/rivers, and estuaries. A nutrient criteria plan should include a timeline and milestones to complete all phases of nutrient criteria development through the adoption and submittal, to EPA, of final nutrient criteria. To date your nutrient plans have been more of a progress report of completed/ongoing research rather than a Nutrient Plan for criteria development and adoption. NJDEP should provide a Nutrient Plan that includes dates and milestones for all phases of nutrient criteria process, including monitoring, assessment, development through adoption and submittal, to EPA, of final nutrient criteria.

We understand that good research takes time and resources. We fully agree that sometimes research identifies the need to change direction.

This is why the State's Nutrient Plans are considered to be living documents which maybe periodically revised to reflect necessary schedule/milestone changes to all phases of the Nutrient Plan.

We are looking forward to your submission of the final Nutrient Plan document.

Izabela