

VOLUME 42, ISSUE 14

ISSUE DATE: JULY 19, 2010

**PUBLIC NOTICES**

**ENVIRONMENTAL PROTECTION  
OFFICE OF LEGAL AFFAIRS**

42 N.J.R. 1634(a)

**Surface Water Quality Standards, N.J.A.C. 7:9B**

**Notice of Receipt of Petition for Rulemaking**

**Point of Application Policy for Nitrate and Total Dissolved Solids**

Petitioner: Association of Environmental Authorities

**Take notice** that on June 18, 2010, the Department of Environmental Protection (Department) received a petition for rulemaking from Edward A. Kondracki, Esq., on behalf of the Association of Environmental Authorities (petitioner). The petitioner requests that the Department amend the Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B, to establish an alternate point of application policy at N.J.A.C. 7:9B-1.5(i) that would allow the human health criteria for nitrate and total dissolved solids (TDS) to be applied at the point of intake for a potable water use, rather than at the point of discharge or the edge of any applicable regulatory mixing zone.

The petitioner asserts that N.J.A.C. 7:9B-1.5(a)3, which provides that it is State policy that all fresh waters be protected as potential sources of public water supply and that point and nonpoint sources are to be regulated to attain the SWQS human health criteria outside of regulatory mixing zones, essentially requires that all wastewater facilities discharge a "drinkable" effluent within 100 meters of the outfall. Petitioner asserts that application of this policy to nitrate and TDS has resulted in NJPDES permit requirements that force municipal dischargers to construct expensive and energy intensive removal facilities, even where there is no indication that nitrate and/or TDS is adversely impacting the use of water as a source of supply. The petitioner claims the existing rule has no

rational relationship to impairment of existing or designated uses and is inconsistent with the State's drinking water regulations.

Petitioner states that nitrate is a common constituent found in nearly all municipal effluents and is generated by municipalities as a byproduct of treatment to remove ammonia from wastewater. Nitrate is naturally assimilated in streams and degrades in the environment, so that it is expected to be at much lower levels downstream of the discharge. Petitioner indicates that the existing rule is inconsistent with the Federal and State drinking water requirement that tap water meet a nitrate standard of 10 mg/l because under the SWQS the standard is applied directly to the surface water at the point of discharge, regardless of whether there is an actual withdrawal downstream and, if there is a withdrawal, regardless of whether the nitrate has naturally assimilated.

Petitioner states that TDS is also a common constituent in municipal effluents and receiving waters. Though TDS does not degrade, it is diluted as the effluent is conveyed downstream. Petitioner states that, as with nitrate, the TDS standard is applied directly at the point of discharge regardless of whether the water is actually being used downstream as a source of supply or whether TDS has any adverse impact on drinking water uses where those uses occur.

Petitioner asserts that protection of all fresh waters as potential sources of public water supply, including low-flow streams and regardless of actual use, is inconsistent with other rules which provide water may only be used as a public potable supply after treatment. Requiring human health SWQS for nitrate and TDS be achieved at the edge of the regulatory mixing zone is inconsistent with Federal and State drinking water requirements which provide that surface waters must be filtered and disinfected prior to use as potable water.

Petitioner requests that the SWQS be amended by adding the following new subsection to N.J.A.C. 7:9B-1.5:

"(i) Point of application policies are as follows:

1. Water quality-based effluent limitations shall be established to ensure that surface water quality criteria are met at the edge of the regulatory mixing zone.

2. An alternate point of application for consumption-based surface water quality criteria shall be approved provided the applicant demonstrates the following:

i. The concentration will exceed the consumption-based surface water quality criteria at the edge of the regulatory mixing zone(s) that would be established in accordance with (i)(1) above;

ii. Existing and designated water supply uses may be fully maintained and protected at the water intake with a higher pollutant concentration at the edge of

the regulatory mixing zone;

(1) The alternate point of application, if approved, shall not extend beyond that which is reasonably necessary to meet the applicable criteria.

3. The permittee shall provide a copy to and solicit comments on the water quality analysis supporting the alternate point of application from potentially affected purveyors prior to issuance of the draft NJPDES permit pursuant to N.J.A.C. 7:14A-15.6."

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.