



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 15 2012

Linda MacGregor, Chief
Watershed Protection Branch
Environmental Protection Division
Georgia Department of Natural Resources
4220 International Parkway, Suite 101
Atlanta, Georgia 30354

Dear Ms. MacGregor:

The purpose of this letter is to summarize the Environmental Protection Agency's review of the Georgia Environmental Protection Division's (EPD's) revisions to Chapter 391-3-6-.03 of Georgia's Rules and Regulations for Water Quality Control. The revisions were adopted as a result of the EPD's triennial review of water quality standards (WQS), as required under the provisions of Clean Water Act (CWA or the Act) section 303(c).

The State held public hearings on the proposed triennial review revisions on January 27, 28 and 31, 2011. The revisions were published for public review and comment and thereafter adopted by the Board of Natural Resources on March 23, 2011. EPD submitted new and revised WQS to the EPA by letter dated November 7, 2011 and, received by the EPA on November 14, 2011. The State's submittal included a certification letter dated October 25, 2011, signed by Samuel Olens, Georgia Attorney General, which stated that the revisions were duly adopted in accordance with State law.

New and Revised Standards that are Approved by the EPA

Based on the review of the State's submittal, the EPA has determined the six categories of new and revised standards listed below are consistent with 40 CFR Part 131 and section 303 of the CWA. Therefore, the EPA is approving the following new and revised water quality standards:

- Removal of the minimum and maximum hardness bounds from the aquatic life-based water quality criteria equations that apply to all waters of the State for six parameters in subparagraph (e)(ii) of Rule 391-3-6-.03(5);
- Revision of the water quality criterion for 2,3,7,8 tetrachlorodibenzo-p-dioxin (TCDD) that applies to all waters of the State in subparagraph (e)(vi) of Rule 391-3-6-.03(5);
- Clarification of subparagraph (c)(iii) of Rule 391-3-6-.03(6) to state that the bacteria criteria for protection of coastal areas where shellfish may be harvested apply to "shellfish growing areas", and to update the reference manual for bacteria requirements listed in this Rule;
- Updating designated uses for streams and stream reaches in Rule 391-3-6-.03(14) to assign the Drinking Water use and/or the Recreation use;

- Revisions to Rule 391-3-6-.03(16) to clarify the qualification criteria for waters to be listed as “Waters Generally Supporting Shellfish” in this Rule as well as to state that it may not be legal to harvest shellfish from those waters; and
- Revisions of certain water quality criteria for chlorophyll *a*, total nitrogen, and total phosphorus in subparagraphs (d)(i), (d)(iii) and (d)(viii) of Rule 391-3-6-.03(17) for Lake Allatoona and three of its major tributaries.

Please note that Enclosure 1 is a listing of the revisions to classified uses of State waters in Rules 391-3-6-.03(14) and (15) that are subject to this approval action.

Revisions to Rule 391-3-6-.03 that are not New or Revised Water Quality Standards Subject to the EPA’s Approval Action

All other revisions to Rule 391-3-6-.03 are not new or revised water quality standards that are subject to the EPA’s review under CWA section 303(c) authorities. Therefore, the EPA is not acting on the following provisions:

- The adoption of new and revised standards provisions created the need to renumber or re-codify certain provisions of the previous standards regulation, and several other provisions were renumbered to reflect current customary formatting practices;
- Revision of the abbreviation, “ml” to “mL” in several subparagraphs of Rule 391-3-6-.03(6) that include this term;
- A change to reflect an alphabetic listing of stream segments of primary and secondary trout streams in each county in Rule 391-3-6-.03(15), as well as minor grammatical changes and a change to correctly list the East Armuchee Creek watershed as a secondary trout stream in Walker County (which was previously incorrectly listed as being located in Whitfield County); and
- Other revisions related to renumbering and/or arrangement of the codification of various provisions in Chapter 391-3-6-.03.

These revisions are either editorial in nature or reflect corrections of inaccurate information, do not have a substantive effect on the intent or meaning of these provisions and, do not alter the effectiveness of the standards, either individually or when taken as a whole. Therefore, the EPA is not acting on these revisions under CWA 303(c) authorities.

Endangered Species Act

The EPA’s action to approve the above new and revised water quality standards is subject to consultation under section 7 of the Endangered Species Act (ESA). The EPA has prepared a Biological Evaluation of the effect of the EPA’s approval of these new and revised water quality standards provisions, and this Biological Evaluation has been provided to the U.S. Fish and Wildlife Service (FWS) for concurrence.

Based on review of available information, the EPA has determined that the Agency has “No Discretion” in the approval of the revisions to the water quality criterion for 2,3,7,8 TCDD in Rule 391-3-6-.03(5) under ESA section 7 based on the fact that the criterion are established for the protection of human health as an endpoint. The EPA has also determined that the Agency has “No Discretion” in the approval of revisions adopted by the State that relate to the assignment of the Drinking Water designated use, assignment of the Recreation designated use, and revisions to provisions in Rule 391-3-6-.03(6) and (16) that relate to shellfish growing areas, since the only water quality criteria that were revised due to those State actions are also based on the protection of human health as an endpoint.

With respect to ESA section 7 consultations relating to the EPA’s review of revisions to aquatic life criteria for cadmium, chromium III, copper, lead, nickel, and zinc in subparagraph (e)(ii) of Rule 391-3-6-.03(5), which are equal to the EPA’s nationally recommended criteria, the EPA has the option of conducting a consultation with the FWS on such revision or deferring to the national consultation between the EPA and the FWS relating to all of the EPA’s criteria guidance values. In this instance, the EPA has determined it is appropriate for the consultation to be handled at the national level. Therefore, ESA section 7 consultation on these aquatic life criteria revisions are being “Deferred to the National Consultation.”

The EPA has determined that revisions to the water quality criteria for Lake Allatoona adopted by the State in paragraph (d) of Rule 391-3-6-.03(17) are not likely to adversely affect listed species. Implementation of the criteria will avoid excessive concentrations of nutrients, which can lead to algal bloom conditions and invasive aquatic plants, and subsequently can result in adverse effects on the aquatic life community and resource of a water body. Although it is not possible to quantify the effect of the criteria on listed species, the EPA has determined that these revisions, when taken as a whole, are not likely to adversely affect listed species that are present in Lake Allatoona or the tributaries of the lake to which the revised criteria apply.

The EPA’s approval decisions on these revisions to the State’s aquatic life criteria in Rules 391-3-6-.03(5)(e)(ii) and 391-3-6-.03(17) and the revisions to water quality criteria for Lake Allatoona are fully consistent with ESA section 7(d) because these actions do not foreclose either the formulation by the FWS or the implementation by the EPA of any alternatives that, through the consultation, might be determined necessary in order to comply with ESA section 7(a)(2). By approving the standards subject to the results of completion of consultation under ESA section 7(a)(2), the EPA is expressly retaining the discretion to revise its approval decision if the consultation identifies deficiencies in the standards requiring modification by the EPA. Moreover, the application of the revised standards is not anticipated to cause any impacts of concern during the interim period, until consultation is completed.

Issues for Follow-up Action

During review of the documents submitted to the EPA in support of the 2010 – 2011 triennial review, the EPA identified other areas of Chapter 391-3-6-.03 that warrant follow-up actions by the State, as described below.

Droughts, floods, water disputes and the development of regional and state water plans have brought Georgia’s water quantity and quality issues into sharp focus - including impacts of both extreme low and

high flows on habitat and aquatic life. Around the country and here in Region 4, states and tribes have begun to address flow through the water quality standards program. Existing water quality standards implicitly protect flow through narratives for protection of aquatic life, protection of designated uses, biological integrity, habitat protection and through antidegradation policies. As discussed at the past three State Water Director's meetings, Region 4 is encouraging all of our states and tribes to consider explicit expression of flow as a water quality standard, either through a narrative standard, (i.e. such as that used by Tennessee "...flow shall support the aquatic criteria...") or through a numeric standard (i.e. such as used by Vermont, "no more than 5% 7Q10 change from natural flow regime..."). The Region can provide you with full examples in use by other states or additional information as needed.

Also, Rule 391-3-6-.03(14) currently includes a footnote for the segment of the Chattahoochee River from Buford Dam to Atlanta (Peachtree Creek), which states:

Specific criteria apply at all times when the river flow measured at a point immediately upstream from Peachtree Creek equals or exceeds 750 cfs (Atlanta gage flow minus Atlanta water supply withdrawal).

Based on recent discussions between our agencies, the State should evaluate the need for retaining this provision in relation to (1) the past requests by the State to reduce flows released from Buford Dam to instream flows that are less than 750 cfs, (2) the instream design flows used in the development of effluent limitations for NPDES permit discharges that enter this segment, and (3) current monitoring/reporting capabilities to ensure that a particular instream flow can be maintained on a daily basis. The possibility of installing an alternate monitoring station to accurately measure instream flow should also be considered in the State's evaluation.

Additionally, the EPA recently released for public comment revised Recreational Water Quality Criteria Recommendations, pursuant to the Agency's obligations under the CWA section 104(v) and section 304(a)(9). These revisions reflect multiple decades of scientific advances in assessing and managing recreational waters, and include guidance for predictive modeling, sanitary survey methods, site-specific criteria derivation and rapid analytical detection methods. These recommendations will serve Georgia in future triennial reviews of recreational criteria under Rule 391-3-6-.03(6) and support the EPD's stated goal in Rule 391-3-6-.03(12)(c):

The Environmental Protection Division will continue to conduct monitoring to evaluate the use of E. coli and Enterococci as indicators of bacteriological quality in Georgia. The Environmental Protection Division will also conduct studies to determine if a better human specific indicator can be found to replace current indicator organisms.

Summary

The State's new and revised standards address all "issues for follow-up" that were identified by the EPA in the Agency's action on the State's previous triennial review of WQS. These new WQS will result in the use of defensible and protective water quality criteria that are applicable to all waters of the State, ensure protection of drinking water and recreation uses in streams and stream segments where those uses have been identified as existing uses, and will provide additional clarity and specificity to the implementation of the water quality standards regulation.

The revisions to Georgia water quality standards approved by the EPA are now effective for all purposes of the Clean Water Act. If you have any questions regarding this action by the EPA, please call me at 404-562-9470 or have your staff contact Stephen Maurano at 404-562-9044.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Giattina', with a long horizontal flourish extending to the right.

James D. Giattina
Director
Water Management Division

Enclosure

cc: Elizabeth Booth, EPD

Appendix 1
Revisions to Classified Uses of Georgia Waters
Approved by the EPA

The Drinking Water use was added as a designated use for the segments of the following water bodies:

Chattahoochee River Basin:

Alexander Creek
Blue Creek
Camp Creek
Cedar Creek
Centralhatchee Creek
Chattahoochee River (Soque River to White Creek)
Chattahoochee River/ Lake Lanier
Chattahoochee River (Pink Creek to Harris Creek)
Chattahoochee River/West Point Lake
Flat Creek
Hazel Creek
Hillabahatchee Creek
Sandy Creek
Snake Creek
Soque River
Sweetwater Creek
Turner Creek
Upatoi Creek
Yaholla Creek

Coosa River Basin:

Beech Creek
Blackwell Creek
Chestnut Cove Creek
Coahulla Creek
Coosawattee River/Carters Lake
Dry Creek
Duck Creek
Etowah River (Headwaters to confluence with Duck Creek)
Etowah River (Lily Creek to Mill Creek)
Euharlee Creek
Holly Creek
Long Swamp Creek
Pettit Creek
Raccoon Creek
Tributary of Dakwa Lake
Woodward Creek

Flint River Basin:

Elkins Creek
Flat Creek
Flint River (Birch Creek to Red Oak Creek)
Heads Creek
Horton Creek
Keg Creek
Lazer Creek
Line Creek
Potato Creek
Pound Creek
Rush Creek
Shoal Creek
Still Branch
White Oak Creek
Whitewater Creek

Ocmulgee River Basin:

Beaverdam Creek
Big Cotton Indian Creek
Big Towaliga Creek
Brown Branch
Cornish Creek
Edie Creek
Indian Creek
Little Cotton Indian Creek
Little Towaliga River
Long Branch
Ocmulgee River (Jackson Lake Dam to Wise Creek)
Pates Creek
Rocky Creek
Tobesofkee Creek
Town Creek
Tributary to Dried Creek
Tussahaw Creek
Walnut Creek

Oconee River Basin:

Apalachee River
Barber Creek
Bear Creek
Cedar Creek (Hall County)

Curry Creek
Fort Creek
Hard Labor Creek (Headwaters to Lake Brantley Dam)
Hard Labor Creek (Lake Rutledge Dam to Mile Branch)
Jacks Creek
Lake Oconee
Lake Sinclair
Little River
Lowry Branch
Mulberry River
North Oconee River
Parks Creek
Popes Branch

Ogeechee River Basin:

Rocky Comfort Creek

Savannah River Basin:

Abercorn Creek
Beaverdam Creek
Beaverdam Creek/Lake Boline
Brier Creek
Chattooga River/Tugaloo Reservoir
Cedar Creek
Grove Creek
Little Beaverdam Creek
Mountain Creek
North Fork Broad River
Savannah River/Lake Russell and Clarks Hill Lake
Sherrills Creek
Sweetwater Creek
Tallulah River/Lake Rabun
Town Creek (Tributary to Long Creek)
Tributary to Crawford Creek
Tugaloo River/Lake Hartwell

Tallapoosa River Basin:

Astin Creek
Beach Creek
Bush Creek
Indian Creek
Little Tallapoosa River
Turkey Creek

Tennessee River Basin:

Black's Creek
Hiawassee River/Lake Chatuge
Lookout Creek
Mud Creek
Notley River/Lake Notley
South Chickamauga Creek
Toccoa River
Tributary to Crawfish Spring Lake

The Recreation use was added as a designated use for the segments of the following water bodies:

Chattahoochee River Basin:

Chattahoochee River (House Creek to North Highland Dam – including Lakes Harding, Goat Rock, Oliver, and North Highlands)

Oconee River Basin:

Lake Oconee

Savannah River Basin:

Chattooga River/Tugaloo Reservoir
Tallulah River
Tallulah River/Lake Rabun
Tallulah River/Lake Hartwell

Tennessee River Basin:

Notley River/Lake Notley
Notely River
Toccoa River