



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 1

JOHN F. KENNEDY FEDERAL BUILDING  
BOSTON, MASSACHUSETTS 02203-0001

June 17, 1998

Robert Varney, Commissioner  
Department of Environmental Services  
P.O. Box 95, Hazen Drive  
Concord, NH 03302-0095

Dear Mr. Varney:

As you are aware, the Department of Environmental Services (DES) adopted revisions to its Surface Water Quality Regulations on September 30, 1996. EPA subsequently identified issues that were significant enough to prevent our approval. Our concerns were related to unresolved issues we had first identified in the draft regulations and additional new issues created in the course of finalizing the regulations. Since that time, DES and EPA have made a considerable effort to resolve the issues, and we believe Mr. Nylander's letter of February 23, 1998 represents another significant step towards satisfactory resolution.

DES has agreed to numerous draft revisions to the September 30, 1996 regulations, that, when adopted in a final regulation, will address most of EPA's concerns. Those revisions are contained in the enclosed marked copy of a draft revised rule that was received from Raymond Carter of DES on May 29, 1997. The marked draft includes revisions DES agreed to in a September 23, 1997 letter from Mr. Carter and in Mr. Nylander's February 23, 1998 letter. We believe that the combination of the marked draft and the resolutions discussed below for other key issues are adequate to allow DES to move forward with adoption of a revised water quality standards package that EPA could approve.

### **TPU for Municipal Discharges**

We were pleased to learn that New Hampshire House Bill 1155 was signed by the Governor on May 13, 1998, thus deleting the temporary partial use (TPU) authority for low flow surface waters receiving wastewater treatment plant effluent. The TPU authority had been a great concern to EPA because it side stepped the use attainability analysis process. We thank DES for supporting the TPU repeal.

### **Ammonia**

We appreciate DES's intent to adopt EPA's forthcoming addendum to its freshwater ammonia criteria. Region 1 will do what it can to help move the addendum to finalization. It is important to note that DES's concerns over application of EPA's freshwater chronic ammonia criteria guidance during winter periods was extended to

resolved for the next triennial review , we are prepared to recommend, pursuant section 303(c)(2)(B) of the CWA , that the Administrator determine that a new standard is necessary and act to federally promulgate. We are committed to working DES to resolve the issue to our mutual satisfaction.

### CSOs

We would like to further discuss this issue with you.

### DO for Lakes and Impoundments

While DES and EPA may have differences over implementation of the dissolved oxygen (DO) criteria for the deeper waters within lakes and impoundments (Env-Ws 430.08(d)), we do not view this as an outstanding issue in the water quality standards themselves. The current regulation as written is very protective and would not draw EPA disapproval. We could understand a decision by DES to remove an absolute requirement that DO be as naturally occurs absent human influences, while retaining a level of protection consistent with protecting aquatic resources. However, EPA could not approve water quality standards that allowed "the existing dissolved oxygen concentration" absent consideration of what represents unimpaired versus impaired conditions. Please let us know if you intend to revise the regulation concerning deeper waters within lakes and impoundments.

As expressed above, we believe the point has been reached where DES can move forward with adoption of revised water quality standards that EPA could approve. DES should propose a schedule that will lead to adoption of revised standards in 1998. We would be glad to meet with you and your staff to discuss completion of this effort.

Sincerely,



Ronald G. Manfredonia  
Associate Director, Water Quality Policy

cc: Fred Leutner, SASD 4305  
Vernon Lang, USF&WS  
Chris Mantzaris, NMFS