RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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May 8, 2009

TO: INTERESTED PARTIES

FROM: Alicia M. Good, P.E., Assistant Director
Office of Water Resources
Department of Environmental Management

SUBJECT: Responsiveness Summary to Comments Received on the Proposed Amendments to the Rhode Island Water Quality Regulations.

A public notice for a public hearing on the proposed amendments to the Rhode Island Water Quality Regulations was posted on the Secretary of State's and DEM's websites, and emailed and mailed to numerous interested parties, on Wednesday November 5, 2008. A public hearing for the proposed amendments was held on December 8, 2008. The Department received two comment letters during the comment period and offers the following responses.

Comment letter received from the Warwick Sewer Authority, Janine L. Burke, Executive Director.

The Warwick Sewer Authority reviewed the Water Quality Regulation Amendments proposed by the Rhode Island Department of Environmental Management (RIDEM) and offered comments related to the proposed amendments to Rule 14.

DEM Response: Upon further consideration the Department has decided not to promulgate the proposed amendment to Rule 14.

Comment letter received from Audubon Society of Rhode Island, Eugenia S. Marks, Senior Director for Policy.

Audubon: Thank you for your work creating these regulations on dissolved copper in the Blackstone and Ten Mile Rivers.

DEM Response: No response required.

Audubon: We have questions about the Cold water fishery.
What is minimum length of reach that might be usefully be designated cold or warm?

DEM Response: A defined minimum, or maximum, length of reach has not been established. For tracking purposes, the waters of the state have been assigned to an assessment unit (AU), which refers to a waterbody or waterbody segment, and given a unique waterbody ID number (see Appendix A of the Water Quality Regulations). Each AU varies in size to reflect differences such as classification changes, hydrologic drainage basins, assessment changes, and landuse changes. These AUs were used as the starting point for the fishery designations. Each fishery sampling station is located within one AU. Following the process described in the supporting documentation published with the proposed Water Quality Regulation amendments, the fishery information from each station was evaluated for application to the entire AU. In many instances, as shown in Appendix A of the proposed Water Quality Regulation, an AU was

split into one or more AUs as necessary, to reflect the appropriate fishery designation along the length of the waterbody. The fishery information was also utilized to extrapolate the designation to adjoining waterbodies, as appropriate, following the process described in the supporting documentation.

Audubon: What are the standards for evidence of existing use or potential for brook trout habitat and are there other characteristics that should be used for a cold water stream such as oxygen level? We suggest that the regulation not be restricted to brook trout as the standard for designation. Stream temperature, DO and substrate standards could also contribute to designation.

DEM Response: Presence or absence of brook trout was not used exclusively in developing the fishery designations. As described in the supporting documentation published with the proposed Water Quality Regulation amendments, for waters where no brook trout were observed, DEM determined the potential for the presence of brook trout by evaluating historical trout presence/absence information, habitat and physical characteristic data and best professional judgment to establish the fishery designations. If no trout were present and large quantities of wetlands or impoundments were found in the headwaters, an area was designated a warmwater fishery. If no trout were found but it was determined that the habitat of the area did at one time or should currently support trout, it was designated as a coldwater fishery. Oxygen levels are affected by changes in temperature and can fluctuate on an hourly basis and throughout the year. The Department does not have dissolved oxygen or temperature data that would encompass these variations. Therefore, these indicators were not considered adequate characteristics upon which to establish fishery designations.

Audubon: It should also contain language that speaks to passage to other reaches of the stream that have brook trout habitat, that describes substrate of appropriate materials for trout. The regulation of course should recognize the passage of fish in segmentation of a stream into cold and warm.

DEM Response: In conducting the fishery designations the Department utilized 461 data points of brook trout information collected from waterbodies around the state. The fishery information for each station was evaluated for application to that particular waterbody and to waterbodies tributary to and from it. As noted in the supporting documentation published with the proposed Water Quality Regulation amendments, if the stream contained brook trout, the headwaters were also designated coldwater to preserve the downstream coldwater fishery. If the stream did not contain brook trout, the Department reviewed wetland characteristics, existence of impoundments, and, as available, connectivity between segments and streams to determine the appropriate fishery designation. If the determination could not be made with the available information, the Department chose to designate the stream as unassessed at this time.

Audubon: We are concerned that designations for the lower Clear and Chepachet Rivers may not be adequately protective for cold water fishery.

DEM Response: Only warm water fish were observed at the three fishery stations located on the Clear River south of Wilson Reservoir. Furthermore, the lower Clear river is characterized as generally flat and slow moving with some areas being very shallow with plant infestation but others areas are just slow and deep. In addition, there are 9 impoundments between Wilson Reservoir on the Clear River and Upper Slatersville Reservoir on the Branch River. All of which are indicative of a warmwater habitat and the Department saw no potential for coldwater fish on the lower Clear River. However, during the summer months, brook trout are residing in the headwater streams which are protected as coldwater fisheries.

There seems to be some confusion regarding the Chepachet River as DEM did designate it as a coldwater fishery.

Audubon: We question the designation of Nine Foot Brook, on which I have conducted invertebrate sampling, as a warm water fishery. The Brook, particularly below Evans Road may not hold trout, but other habitat characteristics, including temperature may be more consistent with cold water stream.

DEM Response: As mentioned above, dissolved oxygen and temperature can fluctuate on a daily basis and throughout the year creating a habitat that will not support a coldwater fishery on a year round basis. The Department does not have adequate temperature or dissolved oxygen data to use these indicators in designating the fishery on Nine Foot Brook. Because brook trout were not observed in Nine Foot Brook, there is a large impoundment in the upstream waters, and the brook below Evans Road runs through a wetland complex, the brook was designated as a warmwater fishery. DEM is willing to work with the Audubon Society to review their habitat data on Nine Foot Brook, for future evaluations of the fishery designation.

Minor Clarification

The Department has incorporated one minor change in language from what was presented in the draft Water Quality Regulations. In Appendix A, under the heading "Coldwater/Warmwater Fisheries", the phrase "lakes and ponds", which was inadvertently not included in the draft, has been added to the first sentence of this section. The draft Water Quality Regulations included proposed fishery designations for lakes and ponds, in addition to rivers and streams, in the water quality classification listing of Appendix A.