

Major revisions to the proposed Stream Flow Standards and Regulations: Sections 26-141b-1 to 26-141b-10, inclusive, of the Regulations of Connecticut State Agencies in response to public comment

The majority of comments received during public comment on the proposed Stream Flow Standards and Regulations (Oct. 13, 2009) focused on two particular areas of concern: (1) whether the regulations achieved the balance required by the underlying statute between public uses and aquatic ecosystems, with approximately equal objections to each, and (2) the cost of complying with the regulations. In order to achieve the balance set forth in the statute changes in the way in which our water resources are managed will be necessary. In some circumstances, this will include investment to upgrade existing infrastructure. The DEP has taken great care to address the concerns raised regarding cost while still meeting the statutory mandate set forth in Sec. 26-141b of the Connecticut General Statutes, which requires that the flow regulations apply to all rivers and streams; preserve and protect aquatic life, fish, and wildlife dependent on flow; promote public recreation; be based to the maximum extent practicable on natural variations of flow while meeting needs; and be based on the best available science.

Five themes were established to guide the changes to the regulations to achieve balance while reducing cost: (1) increasing the predictability of the classification of stream and river systems and segments; (2) reducing the overall complexity of the regulations; (3) reducing the cost of complying with the regulations; (4) increasing the time for compliance; and (5) focusing on impaired stream and river systems. The changes include the following revisions:

(1) Increase Predictability of Classification of stream and river systems and segments:

- (a) Consult with the Department of Public Health (DPH) prior to preparing the map of proposed classifications to provide certainty that public water supply needs will be represented;
- (b) Add language to classification factors clarifying that existing conditions will be taken into account;
- (c) Modify the definition of Class 4 to make it clear that while these river and stream segments have been substantially altered by human activity, reasonable efforts must still be made to minimize impact while meeting societal needs;

(2) Reduce the Overall Complexity of the Regulations:

- (a) Delete intermediate compliance with presumptive standards five years post-classification; instead, require full compliance ten years after the effective date of classification for the relevant river or stream system or segment;
- (b) Eliminate the variable wet/dry release for all bioperiods except the rearing and growth bioperiod, which simplifies operation, makes more water available for storage, and reduces the impact on drinking water system margin of safety while continuing to protect aquatic organisms during that period of the year when they are most vulnerable;

- (c) Include additional circumstances (e.g., watersheds under three square miles, impoundments with minimal storage) where a dam does not need to periodically adjust the release of water as long as an ecologically protective minimum flow release is made (i.e., release the rearing and growth bioperiod Q80 or natural inflow, whichever is less);
- (d) Exclude owners and operators of “other structures” (e.g., wells and intake structures) from meeting numeric criteria, but include provisions allowing such owner or operator the flexibility to determine how best to minimize stream flow impacts while meeting legitimate water needs;
- (e) Promote flexibility by allowing a subset of all diverters or a single diverter within a river or stream system to propose a flow management compact to address impairments, so long as other diverters that are not a party to the compact are taken into consideration;

(3) Reduce the Cost of Complying with the Regulations:

- (a) Include longer time for compliance with a one-step compliance for dam owners and operators ten years post-classification rather than a two-step compliance schedule. This gives dam owners eleven or more years to invest in the infrastructure necessary to make the required releases;
- (b) Eliminate the need to calculate a minimum release of water twice per month during the eight months outside the rearing and growth bioperiod (July 1 through October 31), which reduces operating cost;
- (c) Include provisions, such as the elimination of wet-release requirements outside of the rearing and growth bioperiod, that allow more water to be stored, if storage is available, thereby reducing the need to develop new drinking water sources;
- (d) Include the ability for dam owners or operators to request additional time to comply with the minimum release requirements when the water supply system’s supply of water may not be enough to meet the demand for water (determined to be a 1.15% margin of safety by the DPH);
- (e) Eliminate requirement for owners and operators of other structures to demonstrate compliance with presumptive standards (i.e., the numeric criteria);

(4) Increase the Time for Compliance:

- (a) Include longer time for compliance with the release standards for dam owners and operators – ten years post-classification rather than five years;
- (b) Include ability for dam owners or operators to request additional time to comply with the minimum release requirements when the water supply system’s supply of water may not be enough to meet the projected demands for water (at or below 1.15% margin of safety as determined by the DPH);

(5) Focus on Impaired Stream and River Systems:

- (a) Expand the Class 4 narrative standard to make clear that river and stream systems or segments that have been assigned a Class 4 designation, because of substantial impact on stream flow due to human alteration, will be subject to a requirement that best management practices be applied to work towards achieving consistency with the Class 3 narrative standard while meeting societal needs;
- (b) Include provisions where, when narrative standards are not met in a stream or river system or segment, the commissioner may order owners and operators of other structures in such systems or segments to evaluate the impairment and implement site-specific measures to reduce the impact and meet the narrative standard; and
- (c) Allow those proposing a flow management compact to also propose best management practices that are appropriate to the specific impairment situation, for the commissioner's approval.