

# Flow Standard and Guidance

## 2008 Amendment to New York's Water Quality Standards Regulations and Forthcoming TOGS

**Scott J. Stoner**

**Diane English**

**Division of Water**

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# Narrative Flow Standard

- New narrative standard for all fresh surface waters:

*“No alteration that will impair the waters for their best usages”*

*[6 NYCRR Parts 701 and 703]*

- *Best usages include fishing, primary and secondary contact recreation, source of drinking water (depending on water class)*



# Flow Standard: Rule Making Timeline

- Part of a larger rule making
- Proposed December 13, 2006
- Six Public Information Meetings - Jan 2007
- Public Hearing Feb 5, 2007
- Comment period ended Feb 14, 2007
- Addressed public comment
- Approved by Environmental Board – Nov 28, 2007
- Notice of Adoption Jan 17, 2008
- ***Standard in effect Feb 16, 2008***



# Flow: the Proposal

- DEC has statutory authority to regulate alterations to flow, but no standard
- Proposed standard does not create new authority; it merely clarifies and highlights existing authority
- No regulatory impact
- Highlights that an appropriate *quantity* (as well as quality) of water is needed to maintain best uses including water supply, swimming, boating, and fishing



# Flow: Public Comments

- Many and strong opinions for and against
- Guidance should be prepared (work group)
- DEC should develop numeric criteria
- Points in support:
  - Important first step and justified
  - Critical to managing water resources
  - foundation to protect aquatic resources
  - Benefits cold water fisheries



# Flow: Public Comments

- **Points in opposition:**
  - **Lacks statutory authority**
  - **Invalid under SAPA and SEQRA**
  - **Devastating impact on ski industry**
  - **Lack of implementation guidance**



# Flow: Response to Comments

- DEC does have statutory authority
- Valid under SAPA and SEQRA
- No impact to ski industry (nor any other regulatory impact) from adopting this standard
- No change to proposal or regulatory impact statement needed; adopted as proposed
- *Outside advisory group to assist DEC in the development of guidance*



# Implementation Guidance

- Requested during public comment
- A guidance can provide:
  - Internal guidance to staff
  - Public insight into Department policies and procedures
  - Consistency
  - Detail
  - Flexibility
  - Adaptability



# Flow TOGS

- Division of Water guidance document; part of **T**echnical and **O**perational **G**uidance **S**eries
- Will be available on NYSDEC website



# Flow TOGS Development Process to Date

- **Standard adopted**
- **Internal discussions and rough draft**
- **Advisory group**
  - **Water Management Advisory Committee (WMAC)**
  - **Working group**
- **Revisions**



# Scope of Flow TOGS

- **Defines extent of regulatory authority**
- **Refines, consolidates, and directs staff to existing policies and procedures**
- **Provides guidance on the standard, its applicability, and implementation**



# Guidance on the Standard

- Provides working definitions
- No new regulatory authority; No new permits or programs needed to implement the standard
- Flow standard prohibits impairment of best uses
- Only flow alterations that impair best uses are affected by the standard



# Applicability

- **Fresh surface waters**
- **Does not apply to saline water or groundwater**
- **Does not apply to emergency firefighting withdrawals or emergency authorizations**



# Implementation

## Regulatory Permitting Process

- **Within the existing regulatory framework according to the SEQR process**
- **With technical support from the various Divisions**
- **Case-by-case basis**



# Implementation

## Balancing Multiple or Competing Best Uses

- **Best uses are defined in Part 701**
- **State policy**
- **All best uses are considered on a case-by-case basis**



# Implementation

## Increased Flow

- Increased flows may result from discharges to surface water or hydrologic modifications
- Currently regulated or managed through
  - SPDES Permits
  - Protection of Waters Permits
  - Flood Plain Management Program
  - Flood Control Program



# Implementation

## Decreased Flow

- **Decreased flows may result from surface water withdrawals; construction of dams, impoundments, or other hydrologic modifications**
- **Currently regulated through**
  - **Water Supply Permits;**
  - **Protection of Waters Permits;**
  - **Section 401 Water Quality Certifications**
  - **SPDES Permits**



# Implementation

## Decreased Flow

### Passby flows and conservation releases

- Consistent with current practices
- Methodology
- Guidance is a starting point for case-by-case evaluations



# Implementation

## Regulated Groundwater Withdrawals or Discharges

- Regulated groundwater withdrawals or discharges that alter flow of nearby fresh surface waters
- Currently regulated through
  - Water Supply Permits
  - Long Island Wells Permits
  - SPDES Permits



# Appendices

## Regulatory Process



# Appendices

## Permits, agreements and programs that regulate or manage flow alterations

- Name of Permit
- Statutory Authority
- Applicable Regulations
- Involved Divisions
- Legislative Intent
- What is covered
- What is not covered
- Ways in which regulation of flow alteration is implemented



# Appendices

## Other Regulatory Authorities

- Agencies with statewide jurisdiction
- Agencies with local or regional jurisdiction



# Flow TOGS Development Process: Next Steps

- **Draft for internal review**
  - Division
  - Department
- **Public notice (ENB) and comment period**
- **Revisions and Responsiveness Summary**
- **Finalize and post on Department website**



# Contact Information

## Scott Stoner

Chief, Standards and Analytical Support Section

Phone: 518-402-8193

Email: [sxstoner@gw.dec.state.ny.us](mailto:sxstoner@gw.dec.state.ny.us)

## Diane English

Water Quality Assessment Section

Phone: 518-402-8195

Email: [dmenglis@gw.dec.state.ny.us](mailto:dmenglis@gw.dec.state.ny.us)

