

Exhibit 23

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029



AUG 29 2005

The Honorable Kendl P. Philbrick  
Secretary  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, MD 21230

Dear Secretary <sup>Ken</sup>Philbrick:

The Maryland Department of the Environment (MDE) adopted amendments to the Maryland Water Quality Standard (WQS) regulations in Sections 26.08.01 and 26.08.02 of COMAR on August 9, 2005. Before adopting these amendments, MDE published notices of proposed amendments on December 27, 2003, January 7, 2005, and June 24, 2005, in the *Maryland Register* and accepted public comments both in writing and at public hearings on January 20 - 26, 2005, and July 11, 2005. MDE forwarded the new and revised water quality standards, Attorney General certification, and supporting material to the Environmental Protection Agency (EPA) Region III for review in accordance with §303(c)(2)(A) of the CWA. The EPA received this package on August 11, 2005.

EPA has completed its review of MDE's new or revised WQS regulations. I am pleased to inform you that EPA approves these revisions as consistent with the Clean Water Act and its regulations. EPA's review and decision is set forth in more detail in the enclosure entitled, "Environmental Protection Agency Region III State of Maryland Water Quality Standards List of 2005 New and Revised Items".

On behalf of the Region, I would like to commend MDE for its diligent efforts to update its regulations by incorporating WQS for the Chesapeake Bay. The regulations adopted by Maryland are supported by appropriate technical and scientific data and analysis [see EPA documents *Ambient Water Quality Criteria for Dissolved Oxygen Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries* (EPA 903-R-03-002, EPA 903-R-04-005 - Addendum), and *Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability* (EPA 903-R-03-004, EPA 903-R-04-006 - Addendum)]. EPA supports Maryland's decision to institute restoration variances for very limited portions of the Chesapeake Bay, and to review these variances at a minimum every 3 years. EPA believes that you and your MDE colleagues have played a very central role in our continued collective successes in enhanced protection of Chesapeake Bay water quality to date.

I also commend MDE on revising the State's bacteriological criteria for the protection of recreational use in Maryland waters (see COMAR 26.08.02.03-3(A)(1)) to make it as protective as EPA recommendations. On November 16, 2004, EPA promulgated, under the BEACH Act of 2000, bacteriological criteria applicable to Maryland coastal recreation waters (see 40 C.F.R. 131.41). However, those regulations specify that in states with criteria which EPA determines meet the requirement of the BEACH Act, the approved state criteria apply instead of the Federally-promulgated criteria. In this approval EPA has determined that Maryland's recreation bacteriological criteria meet the requirement of the BEACH Act. Thus, these revised state criteria are the criteria that now apply under the Clean Water Act for the protection of recreational use in all Maryland waters, including coastal recreation waters.

Under the Endangered Species Act, EPA has an obligation to consult with the National Marine Fisheries (NMFS), and the United States Fish and Wildlife Services (USFWS) to determine if our approval of revisions to a state's water quality standard regulations will adversely affect or jeopardize threatened and endangered species and their critical habitat. EPA had previously received concurrence from the USFWS and NMFS on January 27, 2003 and April 19, 2004, that the EPA criteria for the Chesapeake Bay were not likely to adversely affected endangered species. EPA sent letters to update the NMFS and USFWS on the proposed revisions to the Maryland WQS on July 29, 2005. Both NMFS and USFWS agreed, on August 12, 2005 and August 23, 2005, respectively, that the prior consultation on the Bay criteria satisfied the consultation requirement for this approval. Thus, EPA has completed consultation with the NMFS and USFWS. Copies of official correspondence between EPA, NMFS, and the USFWS are also enclosed for your records.

Should you have any questions concerning this correspondence, please contact me or have your staff contact Tiffany Crawford at (215) 814-5776.

Sincerely,



Jon Capacasa, Director  
Water Protection Division

Enclosures (5)

cc: Richard Eskin, MDE  
Joseph Beaman, MDE  
Christopher Guy, USFWS  
Julie Crocker, NMFS

Enclosure 1: Environmental Protection Agency, Region III State of Maryland Water Quality Standards List of 2005 New and Revised Items

Section Revisions	Description of Revision	EPA Decision Rationale
.01 Definitions	<p>26.08.01 General</p> <p>Definition for the term "Benthos" added as (9-1)</p>	<p>EPA reviewed new definitions in the context of the new and revised Water Quality Standards listed below. Approval of the WQS listed below includes approval of the use of the terms defined here as they are applied in the approved WQS.</p>
.01 Definitions	<p>Definition for the term "Chesapeake Bay" added as (11-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Chesapeake Bay program segment" added as (11-2)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Chlorophyll a" added as (11-3)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Dissolved Oxygen" added as (22-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Epifauna" added as (28-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Infauna" added as (40-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Mean Low Water" added as (43-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Mesohaline" added as (43-2)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Oligohaline" added as (54-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Opportunistic Species" added as (55-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Percent-Light-Through-Water (PLW)" added as (58-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Polyhaline" added as (67-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Pycnocline" added as (72-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Restoration Variance" added as (78-2)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Secchi Disk" added as (79-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Secchi Depth" added as (79-2)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Submerged Aquatic Vegetation (SAV)" added as (89-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Subpycnocline" added as (89-2)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Tidal Fresh" added as (91-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Water Clarity" added as (100-1)</p>	<p>See above.</p>
.01 Definitions	<p>Definition for the term "Water Quality Criteria" added as (100-2)</p>	<p>See above.</p>

Enclosure 1: Environmental Protection Agency, Regional State of Maryland Water Quality Standards List of 2005 New and Revised Items

26.08.02 Water Quality

(key for revisions :

underline = new language, [brackets] = deleted)

02 Designated Uses  
Designated use revised in B(1) Use I: Water Contact Recreation, and Protection of Nontidal Warrwater Aquatic Life. This revision narrows the scope of the designated use.

Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in *Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability* (EPA 903-R-03-004) and *Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries* (EPA 903-R-03-002) and its addenda.

02 Designated Uses  
Designated use revised and defined in B(3) Use II: Support of Estuarine and Marine Aquatic Life and Shellfish Harvesting. A27

Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in *Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability* (EPA 903-R-03-004) and *Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries* (EPA 903-R-03-002) and its addenda.

02 Designated Uses

Designated use (B)(4) Use II-P added and defined

Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in *Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability* (EPA 903-R-03-004) and *Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries* (EPA 903-R-03-002) and its addenda.

02 Designated Uses

Designated use revised in B(5) Use III: [Natural Trout Waters] Nontidal Cold Water.

Meets the requirements of CWA 101(a) and EPA regulations at 40 C.F.R. 131.2 and 131.10. The change in the definition assures that the use provides for recreation and aquatic life protection.

02 Designated Uses

Designated use revised in B(6) Use III-P: [Natural Trout Waters] Nontidal Cold Water and Public Water Supply.

Meets the requirements of CWA 101(a) and EPA regulations at 40 C.F.R. 131.2 and 131.10. The change in the definition assures that the use provides for recreation and aquatic life protection.

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<p>02 Designated Uses</p> <p><u>02 -1 Support of Estuarine and Marine Aquatic Life and Shellfish Harvesting.</u></p>	<p>Designated use revised in B(7) Use IV: Recreational Trout Waters</p> <p>New - A-G. establish and define the subcategories of Use II.</p>	<p>Meets the requirements of CWA 101(a) and EPA regulations at 40 C.F.R. 131.2 and 131.10. The change in the definition assures that the use provides for recreation and aquatic life protection.</p> <p>Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data and analysis, as discussed in Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004) and Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002) and its addenda.</p>
<p>03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>Criteria for Use I Waters: A.(1)(a) - (g) Bacteriological criteria revised</p>	<p>EPA is approving this subsection under both CWA 303(c) and 303(i) (2000 BEACH Act) Consistent with EPA 304 (a) recommended criteria (see 40 C.F.R. 131.11(b)(1)(i)) and as protective as EPA 304(a) criteria. Scientifically defensible for the reasons discussed in Ambient Quality Criteria for Bacteria-1986 (EPA 440/5-84-002). Under 40 C.F.R. 131.41(d)(2), in Maryland these criteria now supercede the federally-promulgated bacteriological criteria in 40 C.F.R. 131.41(c).</p>
<p>03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>A.(6) - (11) was recodified to A. (2) -(7).</p> <p>A.(3) Temperature: Language added in (c) - (e) that discusses the difference between "ambient" and "specific" temperature, and their different methods of measurement.</p>	<p>Minor modification to reflect the reorganization of the regulation.</p> <p>EPA views this addition as a minor modifications to the regulations for clarity.</p>
<p>03-3 Water Quality Criteria Specific to Designated Uses</p> <p>03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>A.(3) Temperature: Section recodified from (3)(c) - (d) to (3)(f) - (g).</p> <p>B.(1) Criteria for Subcategory Use I-P Waters - Water Contact Recreation, Protection of Non tidal Warmwater Aquatic Life and Public Water Supply. Title of criteria section revised to compliment the revised designated use in COMAR 26.08.02.02</p>	<p>Minor modification to reflect the reorganization of the regulation.</p> <p>Minor modification to reflect the reorganization of the use designation regulation.</p>

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<p>03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>C. Criteria For Use II Waters - <u>Support of Estuarine and Marine Aquatic Life and Shellfish Harvesting</u>. Subsections C.(4) - (8) recodified to C.(3) - (7).</p>	<p>Minor modification to reflect the reorganization of the regulation.</p>	
<p>03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>Revised C.(1) Bacteriological Criteria, to apply recreation bacteria criteria in Use II waters (in addition to shellfish consumption bacteria criteria already applicable in shellfish harvest waters.)</p>	<p>EPA is approving this subsection under both CWA 303(c) and 303(i) (2000 BEACH Act). Consistent with EPA 304 (a) recommended criteria (see 40 C.F.R. 131.11(b)(1)(i)) and as protective as EPA 304(a) criteria. Scientifically defensible for the reasons discussed in Ambient Quality Criteria for Bacteria-1986 (EPA 440/5-84-002). Under 40 C.F.R. 131.41(d)(2), in Maryland these criteria now supercede the federally-promulgated bacteriological criteria in 131.41(c).</p>	
<p>03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>Deleted existing C.(3) Dissolved Oxygen and added new C.(8) <u>Dissolved Oxygen Criteria for Use II Waters</u>. (a) Criteria are the same as Use I, except as provided for the specific subcategories. Specific DO criteria are provided for (b) Seasonal and Migratory Fish and Spawning and Nursery, (c) Seasonal shallow-water SAV, (d) Open-Water Fish and Shellfish, (e) Seasonal Deep-Water Fish and Shellfish, and (f) Seasonal Deep-Channel Refuge. Also provides dissolve oxygen variances for 3 Chesapeake Bay segments.</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.10 and 131.11. The criteria are scientifically defensible as discussed in <i>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries</i> (EPA 903-R-03-002) and its addendum, and the restoration variances are based on appropriate scientific and technical data and analysis, as discussed in <i>Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability</i> (EPA 903-R-03-004), and its addendum, as well as the Use Attainability Analyses for the Chesapeake Mainstem and the Patapsco River submitted by Maryland.</p>	
<p>03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>Added new - C.(9) <u>Water Clarity for Seasonal Shallow-Water SAV</u>. New water clarity criteria for this subcategory</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.11. The criteria are scientifically defensible as discussed in <i>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries</i> (EPA 903-R-03-002), and <i>Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability</i> (EPA 903-R-03-004), and its addenda.</p>	

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<p>.03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>Added new - <u>C.(10) Chlorophyll a</u>. New narrative criteria.</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.11. The criteria are scientifically defensible as discussed in <i>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries</i> (EPA 903-R-03-002) and its addendum.</p>
<p>.03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>Added new - <u>C.(11) Compliance Schedule for Protection of Downstream Uses in Tidal Waters</u>. Allows compliance schedule for water quality-based effluent limitations for dissolved oxygen and water clarity.</p>	<p>The water quality standards regulations at 40 CFR Part 131 do not require that states allow compliance schedules. However, under the CWA and the NPDES regulations states have the discretion to adopt compliance schedules in the appropriate circumstances. See 40 CFR 122.47. This provision authorizes the use of compliance schedules to meet MD water quality standards not only in MD permits, but also on permits issued by other jurisdictions in the Bay to discharges that impact water quality in MD Bay waters. Adoption of this provision is discretionary and meets the requirements of the CWA.</p>
<p>.03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>Added C-1. Criteria for Use II-P Waters</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.11. The criteria are scientifically defensible as discussed in <i>Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries</i> (EPA 903-R-03-002), and <i>Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability</i> (EPA 903-R-03-004), and its addenda.</p>
<p>.03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>D. Criteria for Use III Waters - <u>[[Natural Salmonid Waters]] Nontidal Cold Water</u>. The title of the section was revised to correspond with the name of the designated use.</p>	<p>Minor modification to reflect the reorganization in the use designation regulation.</p>
<p>.03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>E. Criteria for Use III-P Waters - <u>[[Natural Salmonid Waters]] Nontidal Cold Water and Public Water Supplies</u>. The title of the section was revised to correspond with the name of the designated use</p>	<p>Minor modification to reflect the reorganization in the use designation regulation.</p>
<p>.03-3 Water Quality Criteria Specific to Designated Uses</p>	<p>F. Criteria for Use IV Waters - <u>Recreational [[Salmonid Waters]] Trout Water</u>. The title of the section was revised to correspond with the name of the designated use</p>	<p>Minor modification to reflect the reorganization in the use designation regulation.</p>



Appendix 1: Environmental Protection Agency, Region IV State of Maryland Water Quality Standards List of 2005 New and Revised Items

<p>903-3 Water Quality Criteria Specific to Designated Uses</p>	<p>G. Criteria for Use IV-P Waters - Recreational III[Salmomid Waters]] Trout Water. The title of the section was revised to correspond with the name of the designated use</p>	<p>Minor modification to reflect the reorganization in the use designation regulation.</p>
<p>07 Surface Water Use Designation</p>	<p>A. Language revised to allow more specific classification of waters in accordance to use.</p>	<p>Minor modification to reflect the reorganization in the use designation regulation. Although the change appears to remove the designation of all Maryland waters as Use I, all the other Uses as defined incorporate the applicable Use I uses. Thus all waters are still designated as fishable and swimmable, as well as for agricultural and industrial supply.</p>
<p>07 Surface Water Use Designation</p>	<p>E. revised to add new subcategories of uses as defined in the designated use regulation.</p>	<p>Minor modification to reflect the reorganization of the use designation regulation.</p>
<p>07 Surface Water Use Designation</p>	<p>F. revised to allow for identification of the Chesapeake Bay segments.</p>	<p>Minor modification to reflect the reorganization of the use designation and stream segmentation regulations. Consistent with Technical Support Document for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004), and its addendum, and Chesapeake Bay Program Analytical Segmentation Scheme (EPA 903-R-04-008, October 2004).</p>
<p>08 Stream Segmentation Designations</p>	<p>The entire regulation at 26.08.02.08 was revised to provide for redesignation of tidally influenced waters as Use II waters, to allow for designation of subcategories under Use II and to provide greater specificity regarding the limits and coordinates of the stream segments listed.</p>	<p>Meets the requirements of EPA regulations at 40 C.F.R. 131.10. Based on appropriate scientific and technical data for the Identification of Chesapeake Bay Designated Uses and Attainability (EPA 903-R-03-004) and Ambient Water Quality Criteria for Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002) and its addenda, the Chesapeake Bay Program Analytical Segmentation Scheme (EPA 903-R-04-008, October 2004), and the Use Attainability Analyses of the Chesapeake Bay Mainstem and the Patapsco River submitted by Maryland.</p>