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Status of the 2021 Amendments to the Massachusetts Surface Water Quality Standards (314 CMR 4.00)

I. Introduction. In 2021, MassDEP amended the Massachusetts Surface Water Quality Standards (the “Regulation”), 314 Code of Massachusetts Regulations (CMR) 4.00. On January 7, 2022, pursuant to Section 303(c)(3) of the Clean Water Act and 40 Code of Federal Regulations Part 131, MassDEP certified and submitted these amendments to the U.S. Environmental Protection Agency (EPA) for approval. The revisions to the Regulation are effective for State enforcement purposes. EPA approval, however, is required for federal enforcement of the revisions to the Regulation applicable to the Clean Water Act; until then, the prior, EPA-approved Regulation remains federally enforceable.

MassDEP previously outlined all amendments to the Regulation in a document entitled, [*Summary of Final Revisions to the Massachusetts Surface Water Quality Standards \(314 CMR 4.00\) and Response to Comments*](#). In letters sent to MassDEP on March 31 and September 15, 2022, and May 1, 2023, EPA approved the majority of the revisions to the Regulation applicable to the Clean Water Act but disapproved the removal of Public Water Supply qualifiers from seven waterbodies. EPA also deferred approving or disapproving (*i.e.*, “deferred action” on) a few amendments. Further details on EPA’s approvals, disapprovals, and deferred actions are provided below.

II. 2021 Amendments to the Regulation: EPA Approvals. *EPA has approved the following amendments to the Regulation:*

- A. **Narrative.** All revisions to the narrative portion of the Regulation, except for the following:
 - 1. bacteria criteria for secondary contact recreation for Class C and Class SC waters at 314 CMR 4.05(3)(c) and 4.05(4)(c), respectively. As described below in Section IV, EPA deferred action on these revisions.
- B. **Classification Tables.** All revisions to the classification tables at 314 CMR 4.06(6)(b): *Figure A; Figures and Tables 1 through 27*, including updated Combined Sewer Overflow

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qualifiers and the addition of 153 Cold Water stream designations,¹ except for the following:

1. the removal of one Cold Water qualifier and two classification changes from Class A to Class B. As described below in Section IV, EPA deferred action on these revisions.
 2. the removal of seven Public Water Supply qualifiers. As described below in Section III, EPA has disapproved these revisions.
- C. Site-Specific Criteria for Copper, Zinc, and Nitrogen. All revisions to site-specific criteria for copper, zinc, and nitrogen at 314 CMR 4.06(6)(c): *Table 28*.
- D. Water Quality Criteria. All new and revised water quality criteria listed in two new tables at 314 CMR 4.06(6)(d): *Table 29a* (Generally Applicable Aquatic Life Criteria) and *Table 29b* (Generally Applicable Human Health Criteria),² except for the following:
1. new criteria for diazinon. As described below in Section IV, EPA deferred action on this revision.
 2. revised bacteria criteria for secondary contact recreation. As described below in Section IV, EPA deferred action on these revisions.
- E. Appendices A to F. Appendices A through F associated with 314 CMR 4.06(6)(d): *Table 29a* (Generally Applicable Aquatic Life Criteria), except for the following:
1. a portion of Appendix E. As described below in Section IV, EPA deferred action on this revision.
- F. Organoleptic Effect Criteria Table. New table for organoleptic effect criteria at 314 CMR 4.06(6)(e): *Table 30*.³

III. 2021 Amendments to the Regulation: EPA Disapprovals. *EPA has disapproved the following amendments to the Regulation:*

- A. Removal of Seven Public Water Supply Qualifiers. The removal of the Public Water Supply qualifier from the following seven waterbodies and their tributaries at 314 CMR 4.06(6)(b):⁴
1. *Table 7, Connecticut River Basin*. Unquomok Brook Reservoir and Lithia Springs Reservoir.
 2. *Table 12, Hudson River Basin*. Thunder Brook and Broad Brook.

¹A “High Quality Water” qualifier is incorrectly listed for the second segment of the Mumford River (mile point 9.0 - 0.0) in Table 1 (Blackstone River Basin). The qualifier should only apply to the first segment of the Mumford River (mile point 14.5 – 9.0). EPA has acknowledged this formatting error. MassDEP plans to correct this error in future amendments to the Regulation.

² In addition to the new and revised criteria, *Table 29a* and *Table 29b* also expressly list criteria that were previously incorporated by reference.

³ These criteria were previously incorporated by reference.

⁴ The Public Water Supply qualifier remains applicable to each of these seven waterbodies and their tributaries. This means that the human health criteria apply to these waters. Human health criteria for drinking water plus fish & shellfish consumption listed at 314 CMR 4.06(6)(d): *Table 29b* (Generally Applicable Human Health Criteria) apply to these waters, in addition to other applicable criteria in the Regulation.

3. *Table 16, Millers River Basin. Lake Ellis and Phillipston Reservoir.*
4. *Table 27, Westfield River Basin. Cold Brook Reservoir.*

IV. 2021 Amendments to the Regulation: EPA Deferred Actions. *EPA has deferred action on the following amendments to the Regulation:*

A. Criteria:

1. 314 CMR 4.06(6)(d): Table 29a. New aquatic life criteria for diazinon (inland and coastal and marine surface waters).⁵
2. 314 CMR 4.05(3)(c): Class C and 4.05(4)(c): Class SC. Revised bacteria criteria for secondary contact recreation in Class C and Class SC waters.⁶
3. 314 CMR 4.06(6)(d): Table 29a, Appendix E, #2. The use of the “Streamlined Water-Effect-Ratio Procedure for Discharges of Copper” (EPA-822-R-01-005) for the development of copper site-specific criteria in coastal and marine waters.⁷

B. Classifications:

1. 314 CMR 4.06(6)(b): Table 11 and Table 18. The reclassification of the Lower Sackett (*Table 11*) and Ashby (*Table 18*) reservoirs from Class A to Class B.⁸

C. Qualifiers:

1. 314 CMR 4.06(6)(b): Table 17. The removal of the Cold Water qualifier for Shad Factory Pond.⁹

⁵ EPA’s criteria recommendation for diazinon (2005) was its first recommended criteria for this pollutant. The Regulation did not previously include criteria for diazinon. MassDEP’s promulgated criteria for diazinon are not federally enforceable for Clean Water Act purposes until EPA approval.

⁶ MassDEP’s promulgated revisions to bacteria criteria for secondary contact recreation in Class C and Class SC waters are not federally enforceable for Clean Water Act purposes until EPA approval. The secondary contact bacteria criteria for Class C and Class SC waters promulgated in the 1997 amendments to the Regulation remain federally enforceable:

- 314 CMR 4.05(3)(c)(4): *Class C:* Fecal Coliform Bacteria - Shall not exceed a geometric mean of 1,000 organisms per 100 mL, nor shall 10% of the samples exceed 2,000 per 100 mL.
- 314 CMR 4.05(4)(c)(4): *Class SC:* Fecal Coliform Bacteria - Shall not exceed a geometric mean of 1,000 organisms per 100 mL, nor shall 10% of the samples exceed 2,000 per 100 mL.

⁷ MassDEP’s promulgated method to adjust copper criteria in coastal and marine waters, described in EPA-822-R-01-005, is not federally enforceable for Clean Water Act purposes until EPA approval. As described above in Section II, EPA approved Appendices A through F associated with 314 CMR 4.06(6)(d): Table 29a (Generally Applicable Aquatic Life Criteria), except for this portion of Appendix E.

⁸ The Lower Sackett and Ashby reservoirs remain Class A, Outstanding Resource Waters.

⁹ Shad Factory Pond remains a Cold Water and Cold Water Fishery criteria apply.