

Participating Organizations

- Alliance for a Living Ocean
- American Littoral Society
- Arthur Kill Coalition
- Asbury Park Fishing Club
- Bayberry Garden Club
- Bayshore Regional Watershed Council
- Bayshore Saltwater Flyrodders
- Belford Seafood Co-op
- Belmar Fishing Club
- Beneath The Sea
- Bergen Save the Watershed Action Network
- Berkeley Shores Homeowners Civic Association
- Cape May Environmental Commission
- Central Jersey Anglers
- Citizens Conservation Council of Ocean County
- Clean Air Campaign, NY
- Coalition Against Toxics
- Coalition for Peace & Justice/Unplug Salem
- Coast Alliance
- Coastal Jersey Parrot Head Club
- Communication Workers of America, Local 1034
- Concerned Businesses of COA
- Concerned Citizens of Bensenville
- Concerned Citizens of COA
- Concerned Citizens of Montauk
- Concerned Students and Educators of COA
- Eastern Monmouth Chamber of Commerce
- Fisher's Island Conservancy
- Fishermen's Conservation Association, NJ Chapter
- Fishermen's Conservation Association, NY Chapter
- Fishermen's Dock Cooperative, Pt. Pleasant
- Friends of Island Beach State Park
- Friends of Liberty State Park, NJ
- Friends of the Boardwalk, NY
- Garden Club of Englewood
- Garden Club of Fair Haven
- Garden Club of Long Beach Island
- Garden Club of RFD Middletown
- Garden Club of Morristown
- Garden Club of Navesink
- Garden Club of New Jersey
- Garden Club of New Vernon
- Garden Club of Oceanport
- Garden Club of Princeton
- Garden Club of Rumson
- Garden Club of Short Hills
- Garden Club of Shrewsbury
- Garden Club of Spring Lake
- Garden Club of Washington Valley
- Great Egg Harbor Watershed Association
- Green Party of Monmouth County
- Green Party of New Jersey
- Highlands Business Partnership
- Holly Club of Sea Girt
- Hudson River Fishermen's Association
- Jersey Shore Captains Association
- Jersey Shore Parrot Head Club
- Jersey Shore Running Club
- Junior League of Monmouth County
- Keyport Environmental Commission
- Kiwanis Club of Manasquan
- Kiwanis Club of Shadow Lake Village
- Leonardo Party & Pleasure Boat Association
- Leonardo Tax Payers Association
- Main Street Wildwood
- Mantoloking Environmental Commission
- Marine Trades Association of NJ
- Monmouth Conservation Foundation
- Monmouth County Association of Realtors
- Monmouth County Association of Realtors
- Monmouth County Friends of Clearwater
- National Coalition for Marine Conservation
- Natural Resources Protective Association, NY
- NJ Beach Buggy Association
- NJ Commercial Fishermen's Association
- NJ Environmental Federation
- NJ Environmental Lobby
- NJ Main Ship Owners Group
- NJ Marine Education Association
- NJ PIRG Citizen Lobby
- Nottingham Hunting & Fishing Club, NJ
- NYC Sea Gypsies
- NY State Marine Education Association
- NY/NJ Baykeeper
- Ocean Wreck Divers, NJ
- PaddleOut.org
- Picatinny Saltwater Sportsmen Club
- Raritan Riverkeeper
- Religious on Water
- Riverside Drive Association
- Rotary Club of Long Branch
- Rotary District #7510-Interact
- Saltwater Anglers of Bergen County
- Sandy Hook Bay Anglers
- Save Barnegat Bay
- Save the Bay, NJ
- SEAS Monmouth
- Seaweeders Garden Club
- Shark Research Institute
- Shark River Cleanup Coalition
- Shark River Surf Anglers
- Shore Adventure Club
- Sierra Club, NJ Shore Chapter
- Sisters of Charity, Maris Stella
- Sons of Ireland of Monmouth County
- Soroptimist Club of Cape May County
- South Jersey Drive Club
- South Monmouth Board of Realtors
- Staten Island Tuna Club
- Strathmere Fishing & Environmental Club
- Surfers' Environmental Alliance
- Surfrider Foundation, Jersey Shore Chapter
- TACK I, MA
- Terra Nova Garden Club
- Three Harbors Garden Club
- Unitarian Universalist Congregation/Monm. City
- United Boatmen of NY/NJ
- Village Garden Club
- Volunteer Friends of Boaters, NJ
- WATERSPIRIT
- Women's Club of Brick Township
- Women's Club of Keyport
- Women's Club of Long Branch
- Women's Club of Merchantville
- Women's Club of Spring Lake
- Women Gardeners of Ridgewood
- Zen Society



Ocean Advocacy
Since 1984

Clean Ocean Action

www.CleanOceanAction.org

Main Office
 18 Hartshorne Drive, Suite 2
 Highlands, NJ 07732-0505
 Telephone: 732-872-0111
 Fax: 732-872-8041
 SandyHook@CleanOceanAction.org

South Jersey Office
 Telephone: 609-729-9262
 732-272-2197
 SJprogram@CleanOceanAction.org

September 18, 2009

John King
 Chief of Coastal Programs Division (N/ORM3)
 Office of Ocean and Coastal Resource Management
 NOS, NOAA
 1305 East-West Highway
 Silver Spring, Maryland 20910

VIA: EMAIL

Dear Mr. King,

Clean Ocean Action (COA) is a broad-based coalition of 125 conservation, environmental, fishing, boating, diving, student, surfing, women's, business, service, and community groups and also represents concerned citizens and businesses. Our goal is to improve the degraded water quality of the marine waters off the New Jersey/New York coast. COA has worked for over 25 years to improve water quality by identifying and eliminating sources of pollution and improving coastal management.

COA has reviewed NOAA's and EPA's draft of approval of the New Jersey Department of Environmental Protection's (NJDEP) Coastal Non-point Pollution Control Program (CNPCP) and strongly disagrees that it should be approved at this time. To be clear, we urge the federal agencies to maintain the Conditional Approval of NJ's CNPCP to allow for continued funding while NJ acts to strengthen the program and its implementation.

The CNPCP must not be approved for several reasons. First of all, the program appears to be dysfunctional, lacking critical coordination and communication among the various entities of NJDEP. Secondly, the necessary management measures are not existent, inadequate, or lack proper enforcement. Many programs offered to satisfy the compliance requirements are only 'occasional' or very limited in their application, and several of the programs no longer exist. Finally, certain water quality standards that are designed and needed to protect the environment and for the assessment of non-point source pollution in coastal waters are non-existent or have been weakened. While the program has improved at noted in the draft approval document since it was conditionally approved in 1997, significant modifications to the program continue to be necessary and there are critical inaccuracies in the draft approval document.

1.) Overall Governance of the Program is Lacking and Undermines the CNPCP

a) The implementation of the CNPCP is haphazard as the management structure is dysfunctional

The Coastal Management Program is comprised of a myriad of offices. However, these act independently and often at cross purposes. Somewhere within this

network is the CNPCP. It is unclear how the CNPCP is coordinated and implemented to ensure compliance. It seems appropriate that the Coastal Management Office, which is part of the Commissioner's Office of Policy, Planning, and Science should act as the office for coordination and compliance. However, it lacks authority to provide this essential oversight and enforcement. Moreover, it is the Office of Land Use that acts as the dominant program. Indeed, most of the federal funding is directed to this office to review development projects. [It is important to note that most permits are approved, for example, 93% of CAFRA permits in 2008 were approved.] The deficiency of leadership is serious and leads to lack of coordination among the many NJDEP entities that issue rules, regulations, planning, and permits for the CNPCP. In short, no one is ensuring the CNPCP is implemented and enforced.

b) There is no “plan”

Although the NJDEP's website covers different parts of the program and refers to a CNPCP plan with some of its highlights, we did not find any comprehensive, updated document describing the state's CNPCP, except the 1995 CNPCP Plan. In fact, NOAA and NJDEP confirmed that a new comprehensive plan does not exist. Not only does a lack of an updated, comprehensive plan make it more difficult to adequately review and assess, it also leads to confusion in implementation the plan by various governmental entities and make it more difficult to hold the NJDEP accountable to the program plan.

c) Public input ignored

Since this plan was conditionally approved in 1997, COA and other NJ environmental organizations have been frustrated and alarmed by the lack of response or actions to repeated public comments and requests to maintain and improve environmental protections through the state's rules, regulations, and permits related to non-point source pollution. Some of NJDEP's actions have actually led to weakened regulations. NJDEP's very high approval rates of coastal related permits have allowed many environmentally harmful development and other activities to proceed. Lack of progress to control nonpoint source pollution is also evident in the high numbers of NJ's coastal waterways that continue to be impaired by multiple contaminants. COA has attached several comments as examples and provided hyperlinks to online documents below.

2.) Problems with Management Measures Still Need to be Addressed

a) NJ's Category 1 Water Definition Excludes Most Marine Waters

In the May 21, 2007, the NJDEP proposed changes that significantly narrowed the definition of “category one waters” (“C1 waters”) under § 7:9B-1.4 and adopted them in June 2008 despite COA's and others' objections. [Right click to open COA's online comments.](#) One of the greatest flaws in the new definition is the near exclusion of saline and brackish waters from the possibility of being considered for C1 designation. For example, a waterbody can be designate C1 based on “exceptional ecological significance,” which is defined, in the proposed rule, to include certain endangered and threatened species which all occur exclusively in freshwater. The only criteria for

designating brackish or saline waters as C1 is found under the proposed definition for “exceptional fisheries resource(s),” and it only provides C1 status to waterbodies that are approved for unrestricted shellfish harvest pursuant to the Shellfish Growing Water Classification rules at N.J.A.C. 7:12. The C1 Rules are designed to reduce pollution, ensure adequate 300 foot buffers, and protect natural waters from degradation. The new definition defeats the “*primary objective* of the Clean Water Act [, which] is to *restore* and maintain the chemical, physical, and biological integrity of the nation’s waters.”¹ NOAA and EPA must demand that NJDEP correct this significant undermining of the C1 definition prior to approving NJ’s CNPCP.

b) Wetlands, Riparian Areas, and Vegetated Treatment Systems Management Measures Met on Paper But Not in Practice and Sea Level Rise Impacts Need Assessment

Although more stringent development standards were incorporated into the Flood Hazard Area Control Act and Coastal Permit Program rules, these standards are not necessarily being applied to permit applications in coastal areas.

NOAA and EPA must also update these management measures to address projected sea level rise and require consideration of its impacts to wetlands and riparian areas and waterways. Moreover, there are numerous underground storage tanks and contamination sites in flood prone coastal areas which will introduce contaminants and increase nonpoint pollution.

c) The NJ Integrated Report Needs Improvement and Indicates Water Quality Problems

According to EPA 1993 guidelines, the non-point source program requires “identification of coastal waters that are not attaining or maintaining water quality standards” and use monitoring to “in assessing the effectiveness of the (g) measures.”² NJ continues to have a long list of impairments to coastal waters. The biannual Integrated Report on Water Quality, which is an important and comprehensive assessment of monitoring results of NJ’s waterways, should be included in the draft approval document’s rationale for the Monitoring section and should also be used for assessing changes in water quality over time. COA submitted formal comments on the 2008 303(d) list of impaired waters ([Right click here](#)) and informal comments on the Draft 2008 report ([Right click here](#)). Low dissolved oxygen has been a problem in NJ coastal waters since the 1970’s and has been repeatedly recognized since 2000 as an aquatic life impairment in the state’s Integrated Reports. Little has been done though to address this problem. Again in response to this long-term coastal eutrophication-related problem, COA called for nitrogen criteria based on NOAA Assessment Methods for coastal waters and for immediate actions to reduce nitrogen loading, including fertilizer use restrictions and stormwater best management practices specific for nitrogen which are currently lacking. Many of the impairments that are on the 303(d) lists are there for too long, and TMDL requirements lack any timeframes for completion. Even though a few corrections were

¹ 39 N.J.R. 1846 (May 21, 2007) (emphasis added).

² NOAA and USEPA 1993 Coastal Nonpoint Pollution Control Program Development and Approval Guidance p.23

made, NJDEP has not taken many of the actions that we recommended. COA also submitted comments to improve the methodology of the 2010 Integrated Report, including the need for assessment for flame retardants in fish and shellfish ([Right click here.](#)).

d) WQM Plans are *NOT* in Affect

The WQM Plans have not been submitted to the state as stated in the draft approval document, therefore the NOAA and EPA requirements as stated in the draft approval document for nitrogen reductions from new and existing and inspections of Onsite Disposal Systems (OSDS) are not in affect. WQM Plans also affect approval of permits, so delayed implementation is a concern. Counties and municipalities demanded more time to complete the plans and NJDEP extended the deadline to the end of 2009 and beyond. Ocean County recently received an extension to April 2010. The draft approval document does not mention these extensions and implies that WQM Plans were submitted in April 2009. It is uncertain whether the new deadlines will be met or extended further. Therefore, approval of this CNPCP should be used to pressure and ensure that WQM Plans are submitted and approved.

e) OSDS Inspections are Still Not Required and Rule Language is Ambiguous

The WQM Plan deadline extension means that no additional maintenance programs for septic systems or on-site disposal systems beyond the Highlands region are in place. In addition, the draft approval claims that “*On July 7, 2008, New Jersey adopted changes to its Water Quality Management Planning Rules N.J.A.C. 7:15 that satisfy this condition to develop a process for inspection of OSDS at a frequency adequate to determine whether these systems are failing.*”

However, the rule (N.J.A.C. 7:15-5.25(e)3) states that a WQM Plan must:

Demonstrate that areas to be served by individual subsurface sewage disposal systems are subject to a mandatory maintenance program, such as an ordinance, which ensures that all individual subsurface sewage disposal systems are functioning properly. This shall include requirements for periodic pump out and maintenance, as needed.

This ambiguous language does not necessarily require professional inspections at any frequency or at all. This rule should have been written to also include requirements for professional inspections on a three year basis.

The draft approval document also incorrectly claims that “*OSDS within the Pinelands are required to be inspected every three years.*” While this has been in the Pinelands Comprehensive Management Plan and was included in the NJ 1995 Nonpoint Pollution Control Program plan, the authority to implement the plans requirements does not yet exist. The Pinelands Commissions has proposed a rule this summer for these inspections which COA and others environmental groups supported. However, there is local resistance to this rule. The rule has not yet been adopted.

The draft approval document states that “All onsite wastewater systems with a design capacity of greater than 2000 gallons per day must be inspected.” Again, professional inspections are only required prior to initial use and for property transfer. Routine professional inspections are not required by NJ regulations. Even though, the 1995 NJ

Nonpoint Source Pollution Control Plan Management Measure for operating OSDS stated intentions to “*establish and implement policies and systems that existing OSDS are operated and maintained to prevent the discharge of pollutants*” and “*inspect OSDS at a frequency adequate to ascertain whether OSDS are failing,*” it is now 2009 and these measures have not been implemented in a meaningful way.

f) Parts of Stormwater Permits Weakened

Some aspects of the stormwater permits have been weakened which has not been recognized. COA submitted comments to maintain and strengthen these permits to no avail ([Right click here](#)). The draft approval document Roads, Highways, and Bridges Rationale Section states that “*Additionally, Tier A municipalities must identify and repair erosion along their roads and highways and regularly inspect and maintain the stability of shoulders, embankments, ditches and soils along these roads.*” However, the **Road Erosion Control Best Management Practice provision** was **not** included in the 2009 reissue of stormwater permits, because this program was shown to be ineffective. In addition, the 2009 permits now allow yard waste to be left of on roads indefinitely, as the previous 7-day requirement has been removed from the permits. Catch basin cleaning requirements were significantly reduced. For example, municipalities with more than 5,000 catch basins and highways with more than 10,000 catch basins no longer have annual minimum cleaning requirements and only have a deadline of 2014 to clean all basins.

g) Stronger Stormwater Controls are Needed

NOAA and EPA should be demanding more and improved stormwater controls and best management practices, especially for existing developed areas. No sediment reductions are required for existing development areas and rules need to be modified to require this. NJ’s Stormwater Best Management Practices do not include controls for nitrogen. Fertilizer ordinances and structural and non-structural control methods are needed for nutrients, especially nitrogen. Although NJDEP did recognize recommendations to strengthen nutrient controls in this spring’s stormwater rule changes, NJDEP did not include such requirements in proposed changes. While it is useful that most municipalities now have stormwater management plans in place, their success ultimately depends on implementation and enforcement. Clearly, municipalities need more financial support for implementing and enforcing stormwater controls. If stormwater controls were properly enforced, more improvements in water quality would be evident.

h) Pollution Controls at Marinas Strengthened – but Enforcement is Questionable

NJDEP has made important improvements to marina regulations as indicated in the draft approval document. Enforcement of the new rules will be key to their success in reducing pollution. Given staff and budget limitations at NJDEP, we are very concerned that the new rules will not be adequately enforced.

3.) Insufficient Nutrient Criteria and Water Quality Standards

It is *inexcusable* for NOAA and EPA to propose to approve this plan without addressing or even acknowledging the nutrient-related problems and the NJ's lack of nitrogen criteria, given that NOAA has recently identified **Barnegat Bay and NJ bays as the 2nd and 3rd worst of coastal lagoons** that have been studied for eutrophic conditions.³ The EPA and NOAA should be using these nonpoint source plans as a way to ensure compliance with EPA's repeated call for adopting and implementing nutrient criteria. COA commented on the statewide problem of nitrogen-related eutrophication and again called for nitrogen criteria in response to NJ's Nutrient Criteria Enhancement Plan which failed to address the nitrogen issue ([Right click here.](#)) NJ has only a phosphorous criteria and limited nitrate criteria for fresh water. There are no nitrogen criteria beyond ammonia, which is monitored for its toxicity to aquatic life, for marine water. Narrative criteria for total nitrogen are needed for marine waters and would also be useful fresh waters. The enhancement plan did not include any actions other than additional study to address the nitrogen problem. Without such criteria, waters cannot be listed as impaired for excessive nitrogen loadings and resulting eutrophic conditions. Our requests for nitrogen criteria were again ignored.

COA also contributed to comments with other NJ environmental groups on water quality standards concerns (Comments attached, but not available online.). Limitation on public review on comment was noted on some of the proposed changes. Proposed changes to NJ's antidegradation policy were found to fail to protect water quality and to be in violation of the terms of the Clean Water Act and NJ Water Pollution Control Act. The Proposed Rule continues to apparently authorize certain discharges, such as new discharges, renewal of existing discharges, and approval of stormwater plans that may allow for increased nonpoint sources of pollution, from antidegradation review. This is unacceptable. These comments again addressed problems in NJ's nutrient criteria and policy. Many additional items are covered in these comments that pertain to nonpoint source pollution including the need for adequate testing requirements for the beneficial reuse of reclaimed water and insisting that the bioassays and biomonitoring provisions not be deleted as proposed by the state. These comments again highlight the importance of the C1 program and the adoption of "troublesome" definition of Category One waters.

Conclusion

As described above, it appears that either the bar is really low for compliance, or the state's assertions of compliance have not been adequately examined. Therefore, we strongly urge the NOAA and EPA to withhold final approval of the CNPCP and maintain conditional approval until the improvements described above are implemented and the program is fixed and functional.

We look forward to a written response.

³ Bricker, S. Chapter 11. The Coastal Bays in Context *In* Dennison *et al.* 2009. *Shifting Sands Environmental and Cultural Change in Maryland's Coastal Bays* Univ. of Maryland Center for Environmental Science, Cambridge, MA.

Sincerely,

Handwritten signature of Cindy Zipf in black ink.

Cindy Zipf
Executive Director

Handwritten signature of Heather Saffert in black ink.

Heather Saffert, PhD
Staff Scientist