

## STATEMENT PURSUANT TO SECTION 22A-6(H) OF THE CONNECTICUT GENERAL STATUTES REGARDING PROPOSED REGULATIONS

Pursuant to section 22a-6(h) of the Connecticut General Statutes, the following statement is entered into the public administrative record in the matter of the proposed adoption of the Connecticut Water Quality Standards as regulations at §§ 22a-426-1 through 22a-426-9 of the Regulations of Connecticut State Agencies.

The proposed regulations will codify Connecticut's existing Water Quality Standards (Standards) as required by § 22a-426 of the Connecticut General Statutes. Prior to the amendment of Conn. Gen. Stat. § 22a-426 by Public Act 10-158, the Department adopted and amended the Standards using a public process different from rule-making. The current Standards were adopted using the former process and are currently in full force and effect pursuant to Conn. Gen. Stat. § 22a-426(d). There are no substantive changes being made to the current Standards as part of this rulemaking exercise.<sup>1</sup>

Although the federal government has adopted regulations regarding water quality standards, it has *not* adopted *specific* water quality standards or procedures from which Connecticut's Standards differ. Federal regulations regarding water quality standards are promulgated at 40 CFR 131. The federal rules describe "the requirements and procedures for developing, reviewing, revising and approving water quality standards" developed by states. 40 CFR § 131.1. These federal provisions set out basic elements against which specific standards adopted by a state are evaluated rather than specific standards that would provide a basis for comparison between state and federal standards.<sup>2</sup>

For example, 40 CFR § 131.6 requires that state standards, among other things, contain elements known as "use designations", "anti-degradation policies" and "water quality criteria". Within these elements the federal regulations provide considerations for use by a state in adopting specific water quality standards. See 40 CFR § 131.10, which states that a state classification of waters must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in an on the water, agricultural industrial and other purposes including navigation.

In short, unlike other federal programs, the federal water quality standard regulations do *not* dictate or contain the actual standards or requirements that a state must adopt. The actual standards or requirements adopted are left to states whose standards or requirements are evaluated using the federal regulations. That is the case with the Standards to be codified in the proposed regulations; while they have no federal

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<sup>1</sup> Even though the Standards are already in full force and effect, codification of all of the existing Standards will simplify matters in the future. Any future amendment of the existing standards is required by Conn. Gen. Stat. § 22a-426 to be codified in regulation. Without wholesale codification of the existing Standards first, future changes would be codified as regulations while the those standards remaining unchanged would not.

<sup>2</sup> Except in situations not applicable here where the U. S. Environmental Protection Agency ("EPA") actually promulgates state-specific water quality standards for states that fail to do so – see 40 CFR Part 131, subpart D.

counterpart, they remain subject to evaluation in accordance with the more generalized provisions of the federal regulations.<sup>3</sup>

It is also noted that the federal regulations only apply to the development of surface water quality standards. The federal government does not require states to enact water quality standards applicable to ground water. Connecticut's Standards have included ground water since 1980. The groundwater standards recognize the interrelation between surface waters and ground waters in Connecticut in terms of water quantity and quality and focus on the protection of ground water as a significant source of drinking water for the state. Approximately one-third of the current population relies on ground water as a public and private drinking water source and approximately 90% of groundwater is designated as existing or potential drinking water supply use. Ground water is also a primary source for future drinking water supplies in Connecticut.

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<sup>3</sup> The Standards to be codified in the proposed regulations were previously approved by EPA in February 2011.