



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 31 2010

Dear Sir/Madam:

I am writing in response to the March 4, 2010 letter in which you express the concerns of a number of non-governmental organizations regarding the pathogen criteria the New Jersey Department of Environmental Protection (NJDEP) and the New York State Department of Environmental Conservation (NYSDEC) have proposed to use to control pathogens in the waters of the New York-New Jersey Harbor Estuary (Harbor) system. I share your concerns regarding pathogen reductions in Harbor waters.

In the enclosed letter to Commissioner Alexander B. Grannis, of NYSDEC and Commissioner Bob Martin of NJDEP, I have presented the Environmental Protection Agency Region 2's (EPA) concerns with the States choice of pathogen criterion and proposed a two phase approach to addressing pathogen reductions. EPA also intends to present this proposed approach at the New York-New Jersey Harbor Estuary Program (HEP) Policy Committee meeting scheduled for April 12, 2010.

EPA continues to support the use of a 30-day maximum geometric mean of 35 enterococci per 100 mL, as published in the November 2004 Federal BEACH Act Rule, for all waters of the Harbor, where attainable. The use of this criterion would result in pathogen TMDLs requiring reductions in most Harbor waters.

With respect to the direct harvest of shellfish, both NJDEP and NYSDEC have requested that HydroQual (EPA's contractor) calculate the pathogen load reductions necessary to achieve the direct harvest criteria. HydroQual is currently working on this and a number of other pathogen related scenarios. We expect HydroQual to complete this work and submit a report to EPA some time in mid-May, 2010.

It is my sincerest hope that EPA, NJDEP and NYSDEC will agree on an aggressive program to reduce pathogen loadings to the NY/NJ Harbor system.

If you have any questions or wish to discuss this further, please feel free to call me at (212) 637-5000.

Sincerely,

A handwritten signature in black ink that reads "Judith A. Enck".

Judith A. Enck
Regional Administrator

Enclosure