

February 25, 2002. Upon receipt of this certification EPA took final action on all new and revised provisions of the 1990 PRWQSR on March 28, 2002. These revisions included 11 separate new or revised provisions. The 1990 revisions to the PRWQSR, however, did not include any changes to the designation of specific waterbody segments, including upgrades from Class SC to SB.

On March 28, 2003, EQB submitted additional revisions to the PRWQSR that EPA approved on June 26, 2003. These revisions included the reclassification of ten bays/estuaries, previously classified as Class SC waters, to Class SB (Article 2.1.3). These included: Aguadilla Bay (from Punta Boquerón to Punta Borinquen); Arecibo Bay (from Punta Maracayo to Punta Caracoles); Fajardo Bay (from Playa Sardinera to Playa de Fajardo); Roosevelt Roads (from Punta Cabra de Tierra to Punta Cascajo); Port of Naguabo (from Playa de Naguabo to El Morrillo); Jobos Bay and Laguna de la Mareas (from Punta Rodeo to Punta Colchones); Guánica Bay inland waters north of the mouth of the river; Port of Dewey in Culebra; and Port of Isabel Segunda in Vieques and Puerto Real in Vieques between Cayo de Tierra and Cayo Real.

While the March 28, 2003, revisions to the PRWQSR did address ten bays/estuaries that were previously classified as Class SC waters by reclassifying them to Class SB, Puerto Rico recognized that it still needed to address the Subject Waterbodies. In an effort to do so, EQB, in its State Fiscal Year 2003 CWA Section 604(b) Consolidated Workplan, committed to develop a plan to outline a schedule for data collection and analysis and identify the applicable regulatory actions for these waters. EQB is currently completing this plan.

## 2. Summary of Legal Actions

On February 20, 2002, a complaint was filed in the U.S. District Court for the District of Puerto Rico by three environmental groups: CORALations, American Littoral Society, and the American Canoe Association. In this action, the plaintiffs alleged, among other things, that certain actions by EPA personnel had triggered a mandatory duty under section 303(c) of the CWA for EPA to prepare and propose regulations setting forth a revised water quality standard for any coastal waters that remained classified SC. The Court, in its August 11, 2003, Opinion and Order, ordered EPA to prepare and publish new or revised water quality standards for those coastal waters which are currently classified as Class SC waters.

## III. Use Designations and Criteria for Waters Currently Designated as Class SC

### A. Proposed Use Designations and Criteria for the Subject Waterbodies

EPA evaluated all available data and information to determine whether the swimmable use is attainable in the Subject Waterbodies. EPA's analysis was informed by the regulatory provisions at 40 CFR part 131 and technical guidance that EPA provided to States for developing use attainability analyses. The information that EPA used in its evaluation of the coastal ring component of the Subject Waterbodies shows that the swimmable use is attainable in these waters. That information included all available Quarterly Reports of the 301(h) Waiver Demonstration Studies for five Regional Wastewater Treatment Plants that discharge to the waters comprising the coastal ring. The ambient water quality data collected as part of these quarterly reports showed that the applicable bacteria criteria to protect primary contact recreation (fecal coliform and enterococci) were being attained in the waters of the coastal ring outside of the designated mixing zones. The quarterly reports also demonstrated that the bacteria criteria to protect primary contact recreation are being met at the edge of the mixing zone (based on the measured end-of-pipe concentrations of bacteria at each Regional Wastewater Treatment Plant and the critical initial dilution that is achieved at each ocean outfall).

As discussed in the *Puerto Rico Water Quality Inventory and List of Impaired Waters—2002 305(b)/303(d) Integrated Report Final Version* (February 2003), there is currently little or no data available on which to determine the attainability of the swimmable use in the bay components of the Subject Waterbodies. According to this report, there is insufficient data to determine the use attainment for 38% of the coastal miles and 89% of the estuarine acres. The Subject Waterbodies with insufficient data to make a use attainment determination include Yabucoa Port, portions of Guayanilla and Tallaboa Bays, and San Juan Port. The EQB determined that the following Subject Waterbodies were attaining water quality standards: Mayaguez Bay, Ponce Port, and portions of Guayanilla and Tallaboa Bays. However, EPA's regulations at 40 CFR part 131 require that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable, which effectively creates a rebuttable presumption of attainability.

If the Commonwealth takes into account the appropriate biological, chemical, and physical factors in completing a sound analysis of use attainability and concludes that the swimmable use is not attainable in these waterbodies, EPA would expect to approve the Commonwealth's action (if it meets all requirements of EPA's regulations at 40 CFR part 131). In an effort to properly characterize the attainability of the bays which remain classified SC, EQB is developing a plan to outline a schedule for data collection and analysis in order to provide the information necessary for EQB to demonstrate whether the swimmable use is attainable in these waters.

The last broad category of information considered by EPA in its decision-making process was monitoring data from a sample of potentially affected dischargers to the water bodies (as reflected in Discharge Monitoring Reports or DMRs). As discussed in section V, EPA analyzed the extent to which the proposed Federal use designations and criteria may lead to the development of more stringent NPDES permit limits and, if so, what types of controls would be needed by potentially affected facilities to meet such limits. Discharger information was used in one of two ways by the Agency. First, EPA used monitoring data to assess point sources to the affected water bodies and to help determine whether their pollutant discharges could contribute to ambient exceedances of criteria. Second, the Agency used the monitoring data to determine whether potentially affected dischargers would need to make significant alterations to their operations (or if they could, in fact, meet permit limits for bacteria that would be associated with the swimmable use). Information indicating that potentially affected dischargers could generally meet such revised limits based on the proposed bacteria criteria would support the presumption that the swimmable use is attainable.

Based upon this approach, EPA evaluated all available data and information to determine whether the swimmable use is attainable for the Subject Waterbodies. As a result, EPA is proposing to include primary contact recreation as a specified designated use for the Subject Waterbodies. In addition, EPA is proposing to include bacteria criteria which are protective of primary contact recreation for the Subject Waterbodies. The proposed bacteria criteria are the same as the Commonwealth's criteria associated with the Class SB use for fecal coliform and enterococci, set out at Section 3.2.2 of the PRWQSR. If Puerto Rico classifies