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**ENVIRONMENTAL PROTECTION**

**WATER RESOURCE MANAGEMENT**

**WATER MONITORING AND STANDARDS**

**Surface Water Quality Standards**

**N.J.A.C. 7:9B-1.14 and 1.15**

**Take notice** that the Department of Environmental Protection has discovered administrative errors in the Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B-1.14 and N.J.A.C. 7:9B-1.15 and is correcting them through this Notice of Administrative Correction.

**N.J.A.C. 7:9B-1.14**

**N.J.A.C. 7:9B-1.14(d)**

The Department adopted amendments to temperature criteria for freshwater stream classifications on December 21, 2009 (see 41 N.J.R. 4735(a)). In response to comments received on the rule proposal (see response to comment 104 at 41 N.J.R. 4756), the Department explained that the temperature values listed at N.J.A.C. 7:9B-1.14(d)11 represent ambient temperature criteria and not thermal alterations. To reflect this more clearly, the Department deleted “No thermal alterations which would cause temperatures to” and replace it with “Temperatures shall not” for freshwater criteria at N.J.A.C. 7:9B-1.14(d)11i, ii, and iii upon adoption. In correcting N.J.A.C. 7:9B-1.14(d)11 on adoption to reflect that all temperature values listed there are intended to represent ambient temperature criteria and not thermal alterations, the Department neglected to amend the saltwater criteria at N.J.A.C. 7:9B-1.14(d)11iv and v. Through this Notice of Administrative Correction, the Department is correcting this oversight by revising saltwater criteria at N.J.A.C. 7:9B-1.14(d)11iv and v to delete the phrase “No thermal alterations which would cause temperatures to” and replace it with “Temperatures shall not.” This correction will assure that the language for temperature criteria for all classifications is consistent. The Department further notes that through an editorial error, the 1-18-11 Code Update inadvertently deleted N.J.A.C. 7:9B-1.14(d)11iv in its “uncorrected” form; this subparagraph is not being “corrected” via this notice of administrative correction as noted above,

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but, rather, is being added as a new subparagraph (d)11iv to correctly read as noted above and below.

In addition, as part of the December 21, 2009 adoption, the Department determined that it would be preferable to eliminate any confusion in the temperature criteria values contained in N.J.A.C. 7:9B-1.5(c)8 and 1.14(d)11 caused by listing temperatures both in Fahrenheit and Celsius by deleting the values listed in Fahrenheit. (see Summary of Agency-Initiated Changes at 41 N.J.R. 4761). However, the Department neglected to make this change throughout N.J.A.C. 7:9B-1.14(d). To correct this oversight, for the reasons expressed in the December 21, 2009 adoption the Department is deleting the criteria listed as “(85 degree Fahrenheit)” and “(80 degree Fahrenheit)” at N.J.A.C. 7:9B-1.14(d)11iv and v respectively.

#### N.J.A.C. 7:9B-1.14(h)

N.J.A.C. 7:9B-1.14(h) specifies surface water quality criteria for waters under the jurisdiction of the Delaware River Basin Commission (DRBC) and was recodified from N.J.A.C. 7:9B-1.14(d) to N.J.A.C. 7:9B-1.14(h) as part of amendments to the SWQS adopted in 2006 (see 38 N.J.R. 4449(a), October 16, 2006). However, the Department did not amend the cross-reference at N.J.A.C. 7:9B-1.14(h)3 which continues to indicate that, “where criteria are not established in the DRBC Water Quality Regulations, or at (c) above, the Department shall use criteria based upon the best available scientific information, in accordance with (d)1ii above and N.J.A.C. 7:9B-1.5(c)5, to establish water quality-based effluent limitations.” Through this notice of administrative correction, the Department is correcting the cross-reference to (d)1ii to reflect the recodification of this provision at N.J.A.C. 7:9B-1.14(h)1ii.

#### **N.J.A.C. 7:9B-1.15**

##### N.J.A.C. 7:9B-1.15(c)

On December 21, 2009, the Department adopted amendments to the definition of ‘shellfish waters’ at N.J.A.C. 7:9B-1.4 (see 41 N.J.R. 1565(a); 41 N.J.R. 4735(a)). The new definition specified that shellfish waters are those classified as Approved, Seasonally Approved,

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Special Restricted, Seasonally Special Restricted or Condemned in accordance with the Shellfish Growing Water Classification rules, N.J.A.C. 7:12. This change was made to ensure that the exact locations of these waters are kept up to date without the need to update the SWQS on each change to the Shellfish Growing Water Classification rules as the exclusion areas change based on annual evaluations. (see 41 N.J.R. 1566).

While the Department changed the definition to assure that outdated descriptions of the shellfish waters did not continue to appear in the SWQS, the Department neglected to modify the surface water classification listings at N.J.A.C. 7:9B-1.15(c) under Atlantic Ocean, Beach Haven to eliminate the description of exclusion areas 1 through 4. These exclusionary areas do not accurately represent “shellfish waters” as the boundaries have changed at N.J.A.C. 7:12.

Consistent with the ‘shellfish waters’ definition at N.J.A.C. 7:9B-1.4, the portion of the Atlantic Ocean listing for Beach Haven identifying exclusion areas 1 through 4 at N.J.A.C. 7:9B-1.15(c) is being deleted through this notice of administrative correction as the description of these prohibited shellfish waters, described at N.J.A.C. 7:12, is unnecessary and inaccurate. The Department is revising the Beach Haven portion of the Atlantic Ocean listing as follows: “Waters of the Atlantic Ocean out to the State's three mile limit from Beach Haven Inlet to Cape May Point, excluding waters classified as Prohibited in accordance with N.J.A.C. 7:12.”

#### N.J.A.C. 7:9B-1.15(e)

On June 16, 2008, the Department adopted amendments to the stream classification of Maurice River at N.J.A.C. 7:9B-1.15(d) to designate part of the Maurice River from Willow Grove Road to the confluence with Green Branch as Category One (see 40 N.J.R. 3708 - 3709). In order to reflect that only this portion of the river was being upgraded to Category One, the Willow Grove listing under Maurice River was divided into three different listings (two listings under Willow Grove and one listing under Brotmanville). These changes were reflected in the New Jersey Administrative Code effective June 16, 2008. In December 2009, the Department split N.J.A.C. 7:9B-1.15(d) into upper and lower Delaware River basins to accommodate other

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changes being proposed at that time to pH criteria for southern coastal waters. The surface water classifications for waters of the Lower Delaware River Basin below Trenton, including the Maurice River, were recodified to N.J.A.C. 7:9B-1.15(e) and further amendments to the stream classification of Maurice River were made at N.J.A.C. 7:9B-1.15(e) to identify the fresh and saline portions of the river (see 41 N.J.R. 1565(a); 41 N.J.R. 4735(a)). No changes were proposed impacting the Willow Grove or Brotsmanville listings (see proposal at 41 N.J.R. 1577-1578). However, due to an administrative error, the classification of the stream segment of Maurice River listed under Willow Grove in the rule text portion of the April 20, 2009 proposal was incorrect (see 41 N.J.R. 1598). This error was not identified when the proposed amendments were adopted in December 21, 2009 (see 41 N.J.R. 4770). The Department is correcting the stream classification listing of Maurice River by replacing the incorrect Willow Grove listing with the correct two listings of Willow Grove and one Brotmanville listing as reflected in the June 18, 2008 adoption.

Full text of the corrections follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 7:9B-1.14 Surface water quality criteria

(a) – (c) (No change.)

(d) Surface Water Quality Criteria for FW2, SE and SC Waters:

1. – 10. (No change.)

- |     |             |          |   |    |
|-----|-------------|----------|---|----|
| 11. | Temperature | i. - iii | (No change.)  |    |
|     |             | iv.      | <b>Temperatures shall not exceed 29.4 degrees Celsius Summer seasonal average</b>   | SE |
|     |             | v.       | [No thermal alterations which would cause temperatures to] <b>Temperatures shall not exceed 26.7 degrees Celsius [(80 degree Fahrenheit)] Summer seasonal average</b> | SC |

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12. – 13. (No change.)

(e) – (g) (No change.)

(h) Surface water quality criteria for waters under the jurisdiction of the DRBC:

1. – 2. (No change.)

3. For all waters under the jurisdiction of the DRBC where criteria are not established in the DRBC Water Quality Regulations, or at (c) above, the Department shall use criteria based upon the best available scientific information, in accordance with [(d)1ii] **(h)1ii** above and N.J.A.C. 7:9B-1.5(c)5, to establish water quality-based effluent limitations.

7:9B-1.15

(a) – (b) (No change.)

(c) The following surface water classifications are for waters of the Atlantic Coastal Basin:

Waterbody	Classification
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...

ATLANTIC OCEAN

...

(Beach Haven) - Waters of the Atlantic Ocean out to the State's three mile limit from Beach Haven Inlet to Cape May Point, excluding [the following] waters [:]**classified as Prohibited in accordance with N.J.A.C. 7:12**

SC(C1)

[1. (Atlantic City) - All of the Ocean waters inshore of a line that begins at the center of Convention Hall, Atlantic City bearing approximately 153 degrees T (True North) and extends 2.0 nautical miles to a point with coordinates of latitude 39 degrees 19.4 minutes N., longitude 74 degrees 25.1 minutes W., from this point, approximately 2 nautical miles offshore, the line runs parallel to the shoreline in a southwesterly direction for approximately 2.1 nautical miles to a point with

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coordinates of latitude 39 degrees 18.4 minutes N., longitude 74 degrees 27.5 minutes W., then bearing approximately 333 degrees T (reciprocal 153 degrees T) for approximately 1.9 nautical miles to the outermost tip of the Ventnor City Fishing Pier located at the Boardwalk and South Cambridge Ave., City of Ventnor, then along that pier to the shore and terminating.

2. (Ocean City) - All of the ocean waters inshore of a line which begins at the City of Ocean City's Beach Patrol, First Aid and Rest Room building located on the beach at 34th Street, with coordinates of latitude 39 degrees 15.0 minutes N., longitude 74 degrees 36.6 minutes W., and bears approximately 126 degrees T (True North) for approximately 1.5 nautical miles from the shoreline to a point with coordinates of latitude 39 degrees 14.1 minutes N., longitude 74 degrees 35.0 minutes W., then bears approximately 216 degrees T along the shoreline in a southwesterly direction 1.5 nautical miles offshore, for approximately 2.3 nautical miles to a point with coordinates of latitude 39 degrees 12.3 minutes N., longitude 74 degrees 36.7 minutes W., then bears approximately 306 degrees T for approximately 1.4 nautical miles to the outermost tip of Anglers Fishing Club's Pier, 5825 Central Ave., Ocean City, then along that pier to the shoreline.
3. Seven mile beach outfall exclusion
4. Wildwood outfall exclusion]

...

(d) (No change.)

(e) The following surface water classifications are for waters of the Lower Delaware River Basin:

Waterbody

Classification

...

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MAURICE RIVER

MAIN STEM

(Willow['s] Grove) - Source to [the boundary of Union Lake Wildlife Management Area] **Willow Grove Road**

FW2-NT

**(Willow Grove) - Willow Grove Road to the confluence with Green Branch**

**FW2-NT(C1)**

**(Brotmanville) - Confluence with Green Branch to northern boundary of the Union Lake Wildlife Management Area**

**FW2-NT**

...

TRIBUTARIES, MAURICE RIVER

(Willow['s] Grove) - Those portion of tributaries that are within the boundaries of the Pinelands Protection and Preservation Area

PL

...

(f) – (k) (No change.)

Date: \_\_\_\_\_

\_\_\_\_\_  
Jill Lipoti, Director

Water Monitoring and Standards

Department of Environmental Protection