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ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT

Notice of Opportunity for Public Comment on Certain Topics Related to the Surface Water Quality Standards

Take notice that the Department of Environmental Protection is seeking public comment on possible revisions to the Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B, to establish an antidegradation policy for nonpoint source discharges for all surface waters except those located in the Highlands Region. The Department anticipates proposing antidegradation requirements for nonpoint sources for all Highlands open waters in connection with its Highlands Water Protection and Planning Rules, N.J.A.C. 7:38, rulemaking initiative. Accordingly, the Department is only seeking public comment on the requirements for non-Highlands waters. Elsewhere in this issue of the New Jersey Register, the Department is proposing to readopt the SWQS with amendments.

Since the passage of the Clean Water Act, and subsequent State legislative enactments, New Jersey has made significant progress in protecting and restoring the physical, chemical, and biological integrity of the State's waters. Much of that progress is attributable to efforts to control pollution from industrial and municipal wastewater treatment facilities. However, New Jersey's 2004 Integrated Water Quality Monitoring and Assessment Report indicates that threats to the health of New Jersey's surface waters remain from sources including non-point source pollution, air deposition of pollutants, base flow depletion, headwaters destruction, and habitat degradation.

The restoration, maintenance, and preservation of the State's water resources is impacted by land use decisions. Buildings, roads, lawns, driveways, and other development activities impact water quality by preventing or reducing the percolation of water into the soil. These activities result in increased non-point source pollution and sedimentation in streams; increased stormwater runoff and faster and higher flood peaks; increased scour and erosion of

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streambanks; reduced recharge to ground water and lower stream base flow; and destruction of critical wildlife habitats. Increased impervious surface and reduced recharge degrade the physical, chemical, and biological integrity of the State's streams, rivers, lakes, wetlands, and estuaries. Although water is a renewable resource, the increasing demands for water to serve the expanding population and the provision of adequate water supply on a sustainable basis is becoming of critical concern.

The changes in hydrology from reduced base flow and increased stormwater runoff affect aquatic habitat. Reduced water in freshwater streams can compromise aquatic habitat due to the lack of depth necessary to sustain fish, and the reduction of freshwater inputs into estuaries can result in salt front movement, which alters both plant and animal estuarine communities. Increased runoff can also degrade aquatic habitats by increasing erosion and sediment load in streams and altering stream channels. Stream channel alteration includes direct loss of habitat and widening that can result in temperature increases that affect viability of temperature sensitive species such as trout. Sediment load may be deposited over critical spawning habitats making them unsuitable or in impoundments where they can significantly alter water depth, clarity, and temperature.

The Department believes it is necessary and appropriate to take a more active approach to the prevention of nonpoint source water pollution associated with development. Furthermore, the Department believes that the most cost-effective solution to minimizing the impact of nonpoint sources is by maintaining a riparian zone. A riparian zone is a linear area adjacent to a water body that provides a unique transition zone between aquatic and upland environs. It is widely accepted that a vegetated riparian zone can protect water quality, habitat, wildlife and fisheries from degradation from anthropogenic activities. Literature shows that riparian zones adjacent to water bodies play a critical role in the reduction of erosion and sedimentation, removal of nutrients and other contaminants, moderation and fluctuations in water temperature, maintenance of habitat diversity, maintenance of ground water recharge and base flow to

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streams, maintenance of stream hydrology, stream bank stabilization, and flood storage and control. The effectiveness of a riparian zone is based upon its size, the sensitivity of the resource being protected, the intensity and type of adjacent land use, and the natural conditions of the corridor, including soils, slope, vegetation, wetlands, and floodplain. A list of references on riparian zones evaluated by the Department prior to this notice is available upon request.

There is significant overlap between the goals and objectives of the State Planning Act (N.J.S.A.52:18A-196 *et seq.* and the goals and objectives of the Water Quality Planning Act (N.J.S.A. 58:11A-1 *et seq.*). Both statutes contain policies designed to protect water quality and conserve natural resources in the context of a Statewide planning framework. The Department believes it is necessary and appropriate under the Water Quality Planning Act to require coordination and integration of water quality management planning with the State Development and Redevelopment Plan (SDRP). The Department believes that it is appropriate to coordinate the allowance of lower water quality associated with development with the overall planning objectives articulated in the State Plan. Therefore, if a proposed project is located in an area of the State identified for growth in the SDRP, the Department believes that it is appropriate to reduce the riparian zone and allow some degradation of the water quality. This approach is consistent with Federal antidegradation policies that allow degradation to accommodate necessary and justifiable social or economic development (See 40 CFR 131.12). In addition, the Department believes that it is reasonable to establish minimum widths for riparian zones based upon stream classification and location. This approach protects water resources, provides predictability and accommodates appropriate development adjacent to waterbodies.

The Department is considering proposing to regulate non-point source pollution associated with new or expanded development that will disturb one or more acres of land or increase impervious surface by one-quarter acre or more by establishing a requirement to maintain a riparian zone. As mentioned above, the Department is planning to propose that development along Highlands open waters in the Preservation Area, tributaries to Highlands

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open waters in the Preservation area in the same HUC14, and Highlands open waters in the Planning area would be required to maintain a 300 foot buffer. The potential riparian zones on which comment is sought have been tiered based upon stream classification listed in the SWQS and the location specified in the SDRP. Development along streams classified as FW1, PL, Category One, Category Two tributaries upstream of a Category One water in the same HUC14, and FW2-TP streams would be required to maintain a minimum riparian zone of 300 feet. This is consistent with the existing Stormwater Management Rule at N.J.A.C.7:8-5.5(h), where the Department requires new major development along a Category One stream or upstream in the same subwatershed (HUC14) to maintain a 300 foot buffer as an additional Best Management Practice (BMP). A similar provision is included for waters in the Pinelands Area in the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-6.14.

Development along Category Two streams which are not covered in the list of waters subject to the 300 foot riparian zone, would be required to maintain a minimum riparian zone of 150 feet unless the project qualifies as a “necessary and justifiable social or economic development”. The Department is proposing a new definition of “necessary and justifiable social or economic development” as part of the readoption of the SWQS which includes development in PA1, PA2 and designated centers, as well as projects needed to protect public health and new or expanded public institutions (see N.J.R. ; September 19, 2005). Development that qualifies as “necessary and justifiable social or economic development” which is located along a Category Two stream that is not subject to the 300 foot riparian zone, would be required to maintain a minimum width of 50 feet.

Riparian zones would be required along both sides of the waterway with the width of the riparian zone measured perpendicularly outward from the top of each bank. If no bank is discernable, then the riparian zone would be measured from the centerline of the stream. Along lakes, ponds, and reservoirs, the riparian zone is measured outward from the normal edge of water. This approach was also used in the Stormwater Management rules. These riparian zones

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5. Antidegradation policies for non-point sources associated with new or expanded development that will disturb one or more acres of land or increase impervious surface by one-quarter acre or more shall be achieved as follows:
- i. Riparian zones shall be established along freshwaters as follows:
 - (1) Along FW1 waters, PL waters, Category One waters, Category Two tributaries upstream of a Category One water within the same HUC 14, Highlands Open Waters located within the Preservation Area of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 *et seq.*) and Category Two tributaries upstream of Highlands Open Waters located within the Preservation Area of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 *et seq.*) within the same HUC 14, Highlands Open Waters in the Planning Area of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 *et seq.*), and FW2-TP waters, a riparian zone of at least 300 feet shall be maintained.
 - (2) Except as provided in (3) below, all other Category Two waters, a riparian zone of at least 150 feet shall be maintained.
 - (3) Along Category Two waters, where the proposed project qualifies as a necessary and justifiable social or economic development and the waters are not listed in (1) above or FW2-TM, a riparian zone of at least 50 feet shall be maintained.
 - ii. Riparian zones shall be established along each side of a river or stream and measured perpendicular to the waterway from the top of each bank or from the centerline of the waterway where the bank is not defined. For lakes, ponds and reservoirs, the riparian zone is measured outward from the normal edge of water.
 - iii. The riparian zones apply to all freshwaters that are identified on the USGS Quadrangle Maps or identified through other more recent surveys.
 - iv. The applicant may request that the Department authorize a disturbance within the riparian zones specified in (d)5i above if:

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- (1) The development serves a compelling public need,
 - (2) The applicant qualifies for a hardship waiver pursuant to N.J.A.C. 7:7A-6.5, N.J.A.C. 7:13-4.8 or N.J.A.C. 7:38-6.4, or
 - (3) The development within the Highlands Region of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 *et seq.*), must be consistent with the Highland Regional Master Plan adopted by the Highlands Council. Development within the Pinelands Area established in the Pinelands Protection Act (N.J.S.A. 13:18-1 *et seq.*) must be consistent with the Pinelands Comprehensive Management Plan. All other development must be consistent with a Department approved amendment to an areawide Water Quality Management Plan (N.J.A.C. 7:15) adopted after (effective date of the rule).
- v. The Department shall authorize a disturbance pursuant to (d)5iv (1) or (2) above within the riparian zone if:
- (1) The applicant demonstrates to the Department that it is not possible to maintain the required riparian zone;
 - (2) The applicant demonstrates through an alternatives analysis that the requested disturbance minimizes impacts to the riparian zone; and
 - (3) The applicant demonstrates that the proposed mitigation protects the functional value of the riparian zone to the maximum extent practicable.
- vi. Amendments to areawide Water Quality Management Plan (N.J.A.C. 7:15), or permits issued pursuant to Flood Hazard Area Control rules (N.J.A.C. 7:13), Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38), or NJPDES rules (N.J.A.C. 7:14A) shall be consistent with the antidegradation policies at (d)5.
6. Compliance with this section shall not relieve the applicant from complying with all other regulatory requirements including the Stormwater Management Rule at N.J.A.C. 7:8.

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Public Comment

Interested persons may submit written comments until October 19, 2005 to:

Gary J. Brower, Esq.
Attn: DEP Docket No. 32-05-08
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department recommends that commenters submit comments on disk or CD as well as paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used.

Date

Lisa Jackson
Assistant Commissioner
Land Use Management