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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

DIVISION OF WATER QUALITY

New Jersey Pollutant Discharge Elimination System

Proposed Readoption with Amendments: N.J.A.C. 7:14A

Proposed Amendments: N.J.A.C. 7:1-1.3, 7:9A-2.1 and 7:14-8.2

Proposed New Rules: N.J.A.C. 7:14A-2.15 and 20.12

Proposed Repeals: N.J.A.C. 7:1C and 7:14A-5

Proposed Repeals and New Rules: N.J.A.C. 7:14A-20.9 and 22.24

Authorized By: Lisa P. Jackson, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq.,

58:11-64 et seq., 13:1D-1 et seq., 13:1D-29 et seq., 13:1E-1 et seq., 58:12A-1 et seq.,

13:1B-3 et seq., 26:2C-1 et seq., 40:55D-1 et seq., 58:11-23 et seq., and 26:3A2-21

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

DEP Docket Number: 01-08-01/555

Proposal Number: PRN 2008-60

Public hearings concerning this proposal will be held on:

Monday, April 21, 2008 at 10:00 A.M. to 1:00 P.M. or the close of testimony
Rutgers Labor Education Center
50 Labor Center Way
New Brunswick, NJ 08903

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Rutgers EcoComplex
Environmental Research and Extension Center
1200 Florence-Columbus Rd.
Bordentown, NJ 08505

Submit written comments by May 16, 2008 to:

Alice A. Previte, Esq.

Attn: DEP Docket Number 01-08-01/555

Office of Legal Affairs

Department of Environmental Protection

P.O. Box 402

Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on 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. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's website at <http://www.state.nj.us/dep>.

The agency proposal follows:

Summary

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As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The New Jersey Pollutant Discharge Elimination System (NJPDES) rules are developed under the National Pollutant Discharge Elimination System, including surface water, sludge management and industrial pretreatment programs, as authorized by the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., under the underground injection control program, as authorized under the Federal Safe Drinking Water Act, 42 U.S.C. §§300(f) et seq., and under ground water monitoring and corrective action portions of the municipal solid waste landfill and hazardous waste programs as authorized under the Resource Conservation and Recovery Act, (42 U.S.C. §§6901 et seq. The applicable Federal requirements for surface water, sludge management, industrial pretreatment, underground injection control (UIC), municipal solid waste landfills, and hazardous waste are found at 40 CFR Parts 104, 109, 110, 112, 116, 117, 121 through 125, 129, 130, 131, 133, 136, 140, 144 through 148, 239, 258, 264, 271, 40 CFR chapter I, subchapter N (Parts 400 through 471) and 40 CFR Parts 501 and 503. On April 13, 1982, New Jersey was delegated authority to administer the National Pollutant Discharge Elimination System program. The requirements for delegated state programs are contained at 40 CFR 123, 145, 239, 271, 403 and 501. In accordance with 40 CFR 123, 145, 239, 271, 403 and 501, a delegated state, such as New Jersey, must include in the rules governing the permitting program specific provisions that are at least as stringent as the corresponding Federal provisions. The NJPDES rules also implement the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., which authorizes the Department to promulgate rules to prevent, control or abate water pollution (N.J.S.A. 58:10A-4).

In accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the NJPDES rules were due to expire on June 5, 2008. The expiration date was extended by 180

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The readoption of N.J.A.C. 7:14A is necessary to ensure continued implementation of the NJPDES program. These rules govern the discharge of pollutants to waters of the State, including discharges to surface water and groundwater, stormwater discharges, significant indirect user discharges and residual management. The rules also cover Treatment Works Approvals.

Because of the limited scope of USEPA's jurisdiction under the Federal Clean Water Act and the Federal Safe Drinking Water Act, the Federal NPDES discharge permit program is limited to discharges from point sources to "waters of the United States" as defined in 40 CFR 122.2 (most surface waters), and the Federal UIC Program is limited to underground injection through wells. In these rules proposed for readoption, however, the Department is continuing to exercise its broader authority under the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., to regulate not only those point source discharges and underground injection, but also certain discharges from nonpoint sources, certain discharges to other waters of the State including groundwater with or without underground injection, indirect discharges, and building, installing, modifying, and operating treatment works.

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The Department has identified five major areas of amendments in the NJPDES rules as proposed for readoption that are highlighted below, and are described in greater detail within this Summary.

1) Reclaimed Water for Beneficial Reuse or “RWBR”: The Department is proposing a new rule at N.J.A.C. 7:14A-2.15 concerning reclaimed water for beneficial reuse (RWBR). Potential sources of water to be reclaimed include domestic wastewater, process wastewater, and non-contact cooling water.

The proposed new rule provides for the establishment of permit conditions for facilities producing or proposing to produce RWBR. These requirements are intended to ensure that RWBR is managed in an environmentally sound manner that does not pose a threat to the public health, safety, or welfare. Requirements for a reuse feasibility study (RFS) are also specified at proposed new N.J.A.C. 7:14A-2.15(b). A RFS evaluates the reasonable ability of a facility to implement RWBR. The Department is proposing to require an RFS in certain applications for individual NJPDES discharge to surface water (DSW) and discharge to ground water (DGW) permits for facilities in the coastal counties of Monmouth, Ocean, Atlantic, and Cape May, and the critical water supply areas delineated under the Areas of Critical Water Supply Concerns rules at N.J.A.C. 7:19-8.

2) Revised Ground Water Fee Method: It has become apparent to the Department that the Environmental Impact formula for DGW facilities at N.J.A.C. 7:14A-3 is overly sensitive to some of the component factors used in the fee calculation. Under the proposed amendments, the method for determining the Environmental Impact used in the annual fee formula for discharges to groundwater, including landfills, will be updated and simplified. The proposed new fee formula results in fees that are less volatile and less sensitive to slight changes to facility rating

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3) Residuals: The Department is proposing new and amended conditions at N.J.A.C. 7:14A-20, Standards for the Use or Disposal of Residual. These proposed amendments demonstrate the Department's strong support for the beneficial use of residuals while recognizing that such use presents potential sources of nuisance and nutrient contamination of ground and surface waters.

The proposed amendments prohibit the use as fill of residual or marketable residual products, which include material derived from blending exceptional quality residual with soil. The proposed amendments also impose standards on all surface disposal sites, and specify that new surface disposal sites will not be permitted by the Department.

Finally, the proposed amendments establish new permit requirements for residual blending and distribution operations for storage of more than 100 cubic yards of exceptional quality residual or 2,500 cubic yards of exceptional quality residual and material derived from exceptional quality residual. The proposed amendments exempt from the requirement to obtain a NJPDES permit those operations where all phases of handling, storage or blending occur in an enclosed building.

4) Effluent Standards: Subchapter 5 establishes effluent standards for acute whole effluent toxicity (WET) and phosphorus. The Department is proposing to repeal and reserve N.J.A.C. 7:14A-5. The Department has determined to delete the acute WET effluent standard of an $LC50 \geq 50$ percent at N.J.A.C. 7:14A-5.3(a), as explained in the Summary for Subchapter 13, and instead adopt the $LC50 \geq 50$ percent as an action level at proposed new N.J.A.C. 7:14A-13.18(f). The phosphorus effluent standard at N.J.A.C. 7:14A-5.3(b) is being moved to N.J.A.C.

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5) Ninety-Day Construction Permits: The Ninety-Day Construction Permits rules at N.J.A.C. 7:1C establish certain application and review conditions for treatment works approvals. The Department is proposing to move all provisions relating to the TWA program into the NJPDES rules at N.J.A.C.7:14A-22 and to repeal N.J.A.C. 7:1C. This will incorporate all application requirements within the same chapter and will make it easier for the regulated public to understand and comply with these rules.

N.J.A.C. 7:1 Department Organization

The Department proposes to amend N.J.A.C. 7:1-1.3(e) regarding the DEP Bulletin. Because the Department makes the DEP Bulletin available on its website, it no longer offers new subscriptions to the public, nor does it provide hard copies to municipal clerks or county planning boards. The proposed amendment is consistent with N.J.S.A. 13:1D-34, which requires the Department to publicly distribute a bulletin at least monthly, but does not specify the manner of that distribution.

In light of the proposed repeal of N.J.A.C. 7:1C, discussed below, the Department proposes to amend N.J.A.C. 7:1-1.3(e) to advise the public that publication in the DEP Bulletin constitutes constructive notice of the Department's action on construction permits. This language is taken from existing N.J.A.C. 7:1C-1.6(a).

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N.J.A.C. 7:1C Ninety-Day Construction Permits

The Ninety-Day Construction Permits rules at N.J.A.C. 7:1C establish certain application and review standards for the Treatment Works Approval program, such as application fees and default issuance of permits if the Department does not render timely decisions on applications.

The Department is proposing to move all provisions relating to the Treatment Works Approval program into the NJPDES rules at N.J.A.C.7:14A-22 and to repeal N.J.A.C. 7:1C. A more detailed discussion of the proposed amendments can be found in the summary for N.J.A.C. 7:14A-22. Consolidating all the application and review standards into the NJPDES rules will make it easier for the regulated public to understand and comply with the rules.

In light of the proposed repeal of N.J.A.C. 7:1C, the Department proposes to amend N.J.A.C. 7:1-1.3(e), as discussed above, to advise the public that publication in the DEP Bulletin constitutes constructive notice of the Department's action on construction permits.

N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

Subchapter 2. Definitions

Subchapter 2 contains the definitions used by the Department in its implementation of the Standards for Individual Subsurface Sewage Disposal Systems program. The Department is proposing amendments to the subchapter, as discussed below.

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N.J.A.C. 7:9A-2.1 Definitions

The Department is proposing to amend the Standards for Individual Subsurface Sewage Disposal Systems by adding definition for “common plan of development or sale” and “property” to maintain consistency between these rules and the NJPDES rules at N.J.A.C. 7:14A as proposed for readoption with amendments. These terms are used in both chapters for purposes of determining if a subsurface sewage disposal system is regulated as an individual subsurface sewage disposal system under N.J.A.C. 7:9A, or under the underground injection control rules at N.J.A.C. 7:14A-8. These changes are necessary to reduce confusion with regard to which rules are applicable to a particular facility. This amendment is being proposed as well in the definitions section of the NJPDES rules at N.J.A.C. 7:14A-1.2.

N.J.A.C. 7:14 Water Pollution Control Act

Subchapter 8. Civil Administrative Penalties and Requests for Adjudicatory Hearings

N.J.A.C. 7:14-8 sets forth the procedures for the assessment, payment and settlement of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and implementing rules, violations of the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-49 et seq., and implementing rules, and the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and implementing rules. The Department is proposing amendments to the subchapter, as discussed below.

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N.J.A.C. 7:14-8.2 Definitions

The Department proposes to amend the definition of “serious violation.” The 1997 re-adoption of the NJPDES rules at N.J.A.C. 7:14A-13.14(a)1ii specified that no observed adverse effect concentration (NOAEC) would replace no measurable acute toxicity (NMAT) for acute biomonitoring, and inhibition concentration (IC₂₅) would replace the no observable effect concentration (NOEC) for chronic biomonitoring. NOAEC and IC₂₅ are terms related to whole effluent toxicity (WET). The proposed amendment, which adds NOAEC and IC₂₅ to the definition of “serious violation,” updates the existing definition to include these newer whole effluent toxicity test terms that are already found in the NJPDES rules at N.J.A.C. 7:14A-13.14(a)1ii. This amendment is being proposed as well in the definitions section of the NJPDES rules at N.J.A.C. 7:14A-1.2.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

The Department proposes to amend the chapter heading of N.J.A.C. 7:14A. The Department’s program is referred to as the New Jersey Pollutant Discharge Elimination System (NJPDES) program, and throughout the rules the Department refers to NJPDES permits. The proposed amendment includes “New Jersey” in the chapter heading to make the chapter heading consistent with the rules and common usage.

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Subchapter 1. Abbreviations, Acronyms, and Definitions

N.J.A.C. 7:14A-1 contains many of the abbreviations, acronyms, and definitions used by the Department in its implementation of the NJPDES permit program. The Department proposes to readopt the subchapter with the amendments summarized below.

N.J.A.C. 7:14A-1.1 Abbreviations and acronyms

The Department is proposing to amend N.J.A.C. 7:14A-1.1 to provide new abbreviations and acronyms for terms used in N.J.A.C. 7:14A.

The Department is proposing to add or amend the following abbreviations and acronyms.

“DSAM” means department sanctioned analytical method. DSAMs are methods that laboratories may be certified to perform if they qualify under the requirements of the Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18.

“EDI” means electronic data interchange. EDI is an alternative reporting option offered by the Department to allow for the electronic submission of environmental data.

“GWQS” means Ground Water Quality Standards, which were recodified to N.J.A.C. 7:9C from N.J.A.C. 7:9-6. The Department proposes to correct the cross reference in the explanation of the acronym.

“MRSF” (Monitoring Report Submittal Form), “RTR” (Residuals Transfer Report) and “WCR” (Waste Characterization Report) are forms currently required by the Department to be submitted to report monitored data.

“NSCIU” means non-significant categorical indirect user. This is a term to describe a proposed new subset of categorical indirect users. This term is used in proposed N.J.A.C. 7:14A-19.3(e)5 and 21.9(g), and is consistent with the Federal criteria under 40 CFR 403.3(v)(2).

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“RWBR” means reclaimed water for beneficial reuse, which is used in proposed N.J.A.C.

7:14A-2.15 and 4.3(a)26.

N.J.A.C. 7:14A-1.2 Definitions

The Department is proposing new and amended definitions for terms used in N.J.A.C.

7:14A.

The Department proposes to amend the language of the opening clause of N.J.A.C.

7:14A-1.2 to conform the language to other Department rules. The amendment specifies that the definitions shall have the meanings indicated in this section, unless the context clearly indicates otherwise.

The new definition of “common plan of development or sale” is proposed to clarify this term as it is used in the definitions of “stormwater discharge associated with industrial activity” and “stormwater discharge associated with small construction activity,” and in the proposed amendment to the definition of “property.” The term refers to a contiguous area where multiple separate and distinct development activities have occurred, are occurring, or are proposed to occur under one plan (that is, under any one announcement, piece of documentation, or physical demarcation). The definition is consistent with section 5.1.3 of the USEPA Storm Water Phase II Compliance Assistance Guide (USEPA 833-R-00-002, March 2000), and section K2 of USEPA’s National Pollutant Discharge Elimination System (NPDES) Storm Water Program Questions and Answers (January 21, 2004, revised December 17, 2004).

The Department proposes to recodify the provisions of the Ninety-Day Construction rules, N.J.A.C. 7:1C, that pertain to the Treatment Works Approval (TWA) program to N.J.A.C. 7:14A-22. The definition of “construction cost” in the Ninety-Day Construction rules is

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Specifically, “construction cost” means the project cost, not including financing or insurance charges, of that portion of a project that is subject to review for a treatment works approval, and is used to determine the application fee for the treatment works approval under N.J.A.C. 7:14A-22.25.

The Department proposes a definition for the term “Department sanctioned analytical method.” The Department will certify a laboratory to use a Department sanctioned analytical method if the laboratory qualifies under the requirements of the Regulations Governing the Certification of Laboratories and Environmental Measurements rules at N.J.A.C. 7:18. This proposed definition is consistent with the definition at N.J.A.C. 7:18-1.7. A mandatory method, as published or referenced in the Code of Federal Regulations, becomes a Department sanctioned analytical method on its effective date.

The Department proposes to amend the definition of “disposal” to limit its application to the management of residuals, including sewage sludge and of solid and hazardous waste. In 1997, the Department amended this definition to comport with the Department's standards for the use or disposal of residual at N.J.A.C. 7:14A-20. Specifically, this definition was amended to be consistent with the New Jersey Solid Waste Management Act definition of “disposal” at N.J.S.A. 13:1E-3(c). See 28 N.J.R. 380(a), 397-398. The definition, which does not mention any pollutants other than “solid or hazardous waste,” is appropriate for management of residuals including sewage sludge, because “residual” is defined in this section as a type of “solid waste.” This definition of “disposal” is also appropriate for other NJPDES rule provisions that expressly refer to disposal of solid or hazardous waste (N.J.A.C. 7:14A-2.4(b)13, for example). This definition is not, however, applicable to other NJPDES rule provisions that are intended to apply

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or “hazardous waste” as defined in this section. Examples of such rule provisions include N.J.A.C. 7:14A-2.11(b), 6.17(a), 7.3(b)7, and 7.8(a)4, and this section’s definition of “individual subsurface sewage disposal system.”

The Department proposes to amend the definition of “domestic treatment works” or “DTW” by changing “privately owned treatment works” to “other treatment works,” and by changing “domestic wastewater” to “domestic sewage,” so that the defined term includes all treatment works processing primarily “domestic sewage” and “domestic pollutants” as defined elsewhere in this section. This proposed amendment eliminates the existing definition's circular reference to “domestic wastewater,” which is defined as “the liquid waste or liquid borne wastes discharged into a domestic treatment works.” Under the existing definition, a domestic treatment works must either be a “publicly owned treatment works” (that is, a “POTW” owned by a State or by a public body defined in N.J.A.C. 7:14A-1.2 as a “municipality”), or a “privately owned treatment works.” As defined in N.J.A.C. 7:14A-1.2, “privately owned treatment works” has a specialized definition, based on the Federal definition at 40 CFR 122.2, that is limited to any device or system which is not a publicly owned treatment works, and which is “used to treat wastes from any facility whose operator is not the operator of the treatment works.” Some privately owned sewage treatment plants do not “treat wastes from any facility whose operator is not the operator” of the sewage treatment plant. Suppose, for example, that a private college operates a sewage treatment plant that treats “domestic sewage” from that college, but does not treat wastes from any facility other than that college. This sewage treatment plant is not a publicly owned treatment works or a “privately owned treatment works.” Accordingly, the proposed amendment broadens the definition to include all treatment works that process

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The Department proposes a definition for the term “exceptional quality,” for purposes of determining whether sewage sludge or material derived from sewage sludge meets the ceiling concentrations in 40 CFR 503.13(b)1, the pollutant concentrations in 40 CFR 503.13(b)3, the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)1 through 8, all of which are incorporated by reference. The Department proposes to define the term “exceptional quality” to describe a residual that meets these same regulatory conditions and to replace each presentation of the list of regulatory conditions with the term “exceptional quality.” See proposed N.J.A.C. 7:14A-20.2, 20.5 and 20.7.

The Department proposes to amend the definition of “individual subsurface sewage disposal system” to add the term “sanitary,” to make the definition of this term in N.J.A.C. 7:14A consistent with the definition of the term in the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A.

The Department proposes to amend the definition of “monitoring report form” to list types of forms (for example, Discharge Monitoring Report, Residuals Transfer Report, Waste Characterization Report) used by permittees to report data to the Department.

The Department proposes a definition for the term “Monitoring Report Submittal Form” to reflect that the Department includes a specific certification page (to be submitted with a monitoring report form) for each of its monitoring report forms. A Monitoring Report Submittal Form must be completed and signed by the permittee or authorized representative in accordance with N.J.A.C. 7:14A-6.9.

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The Department proposes a definition for the term “non-significant categorical indirect user.” This is a new subset of categorical indirect users. This term is used in N.J.A.C. 7:14A-19.3(e)5 and 21.9(g), and the definition is consistent with the Federal criteria under 40 CFR 403.3(v)(2).

The Department proposes to amend the definition of “oil and grease” to reference both a USEPA method under 40 CFR Part 136 and a Department sanctioned analytical method (DSAM). The existing definition makes reference to 40 CFR Part 136 and to the USEPA methods manual (Methods for Chemical Analysis of Water and Wastes). The Department is proposing to delete reference to the methods manual that manual no longer includes the oil and grease analytical method. By referencing 40 CFR Part 136, as well as specifying analysis by a DSAM, the Department will not need to update this definition each time the methods manual or a DSAM is revised. The Department is deleting the reference to USEPA certified laboratories because the USEPA does not have a laboratory certification program for wastewater. The Department also proposes to replace “EPA” with “USEPA” for consistency with N.J.A.C. 7:14A-1.1, which identifies “USEPA” as an acronym.

The Department proposes to delete the reference to the USEPA methods manual in the definition of “petroleum hydrocarbons” or “petroleum-based oil and grease,” and in its place specify that a Department sanctioned analytical method (DSAM) shall be used. By referencing a DSAM, the Department will not need to update this definition each time a DSAM is revised. The Department is deleting the reference to USEPA certified laboratories because the USEPA does not have a laboratory certification program for wastewater.

The Department proposes to amend the definition of “pretreatment program significant noncompliance” to substitute the defined term “an indirect user” for the undefined term “source

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The Department proposes to amend the definition of “property.” The proposed amendments include clarifications and improvements to the definition. The same amendments are proposed to the definition of “property” in the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A-2.1, to maintain consistency between these rules. Through the amendment, the Department intends to make it clear that a “property,” for purposes of determining if a subsurface disposal system is regulated as an injection activity under Subchapter 8, can be a single lot (unless the property has two or more contiguous lots under paragraph 2 of the definition) or a right of way. Also for clarity, the Department is proposing to replace the potentially confusing phrase “all the contiguous block(s) and lots(s)” with the simpler phrase “two or more contiguous lots,” and eliminate the unnecessary reference to vacant land. The proposed amendments provide that two or more contiguous lots are considered to be within a single property if, for any part of each of those lots, there is a shared substantial common interest by one or more persons (such as common ownership and/or operation or a common plan of development or sale).

The Department proposes a definition for the term “reclaimed water for beneficial reuse.” This is a new term used in the proposed new rule and amendment concerning RWBR at N.J.A.C. 7:14A-2.15 and 4.3(a)26, respectively. The term describes a type of water that can be directly

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used for non-potable applications as a substitute for potable water, diverted surface water, or diverted ground water. For water to be considered RWBR, such direct use must be authorized in a NJPDES permit that specifies restricted access or public access reuse requirements that the water must meet, and a method of disposal if these requirements are not met. RWBR does not include water that is reused indirectly, such as effluent discharged to a river that has instream uses and downstream water supply intakes, or effluent discharged (without reuse at the discharge location) to an aquifer used for water supply elsewhere.

The Department proposes a definition for the term “residual additives,” for the purpose of clarifying the proposed language in N.J.A.C. 7:14A-20.7(a) that requires that “residual additives” utilized in the residual stabilization process or in development of a marketable residual product be tested for certain characteristics.

The Department proposes a definition for the term “residual blending and distribution.” This proposed definition supports the Department’s regulation of residual blending and distribution sites at proposed new N.J.A.C. 7:14A-20.12.

The Department proposes a definition of “Residuals Transfer Report,” which is a form used by permittees to report data to the Department. The residuals transfer report is used to track quantities of residual volumes transferred inter- and intra- facility.

The Department proposes a definition for the term “reuse feasibility study.” This is a new term used in proposed N.J.A.C. 7:14A-2.15. The term describes a study that evaluates the feasibility of implementing a RWBR program, conducted in accordance with the Department's “Technical Manual for Reclaimed Water for Beneficial Reuse.”

The Department proposes to amend the definition of “serious violation.” The 1997 re-adoption of the NJPDES rules at N.J.A.C. 7:14A-13.14(a)1ii specified that no observed adverse

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effect concentration (NOAEC) would replace no measurable acute toxicity (NMAT) for acute biomonitoring, and inhibition concentration (IC₂₅) would replace the no observable effect concentration (NOEC) for chronic biomonitoring. The proposed amendment adding NOAEC and IC₂₅ to the definition of “serious violation” updates the existing definition to include these newer whole effluent toxicity test terms which are already found in NJPDES at N.J.A.C. 7:14A-13.14(a)1ii. The same amendment is proposed to the New Jersey Water Pollution Control Act regulations at N.J.A.C. 7:14-8.2. In addition, the Department is proposing to add the language “at a discharge point source, of an effluent limitation, except color,” to make this definition consistent with the definition in the Water Pollution Control Act regulations at N.J.A.C. 7:14-8.2, and the Water Pollution Control Act, N.J.S.A. 58:10A-3.

The Department proposes to amend the definition of “significant indirect user” only to update the cross-references to the Federal General Pretreatment regulations under 40 CFR Part 403, which were adopted October 14, 2005.

The Department proposes to amend the definition of “slug discharge” in order to be consistent with the Federal General Pretreatment regulations at 40 CFR 403.8(f)(2)(vi). This amendment will add the phrase “...that has a reasonable potential to cause interference or pass through, or in any other way violate the POTW’s regulations, local limits or permit conditions.” to the end of the existing definition of “slug discharge.”

The Department proposes to amend the definition of “solid waste” so that the term means a solid waste as defined in either the Solid Waste Management Act, N.J.S.A. 13:1E-3, or Section 1004 of the Resource Conservation and Recovery Act, RCRA (42 U.S.C. §§6903), incorporated by reference, rather than a solid waste as defined in the Department’s Solid Waste rules at N.J.A.C. 7:26-1.6. The definition at N.J.A.C. 7:26-1.6 excludes certain food waste, recyclable

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materials, materials approved or categorically approved for beneficial reuse, spent sulfuric acid, dredged material, and hazardous wastes that are not regulated under N.J.A.C. 7:26, but that are solid waste as defined in the Solid Waste Management Act and/or RCRA. For purposes of the NJPDES rules, including N.J.A.C. 7:14A-4.2(a), 24.7(a), and 24.10(a)2, and the N.J.A.C. 7:14A-1.2 definitions of “disposal,” “industrial treatment works,” “leachate,” “pollutant,” “residual,” and “surface impoundment” or “impoundment,” the broader statutory definitions of “solid waste” are more appropriate.

The Department proposes to amend the definition of “stormwater discharge (or stormwater DSW) associated with industrial activity” by adding a new paragraph 3, which provides that for purposes of subparagraphs 1ii, 1iii, 1vi, 1viii, and 1xi of the definition, a facility is classified as or under a Standard Industrial Classification if that facility, as its primary or other activity, provides any of the products or services that describe that Standard Industrial Classification. This amendment reflects the Department’s interpretation of the existing definition.

Under the Standard Industrial Classification (SIC) system, a facility’s primary activity is determined by that facility’s single principle product or group of products produced or distributed, or services rendered. For facilities that also produce, distribute, or render other products, groups of products, or services, the facility’s primary activity does not fully identify all of that facility’s activity. (That a single SIC code does not adequately characterize some facilities for water pollution regulatory purposes is recognized to some extent by existing N.J.A.C. 7:14A-4.3(a)3 and Federal NPDES regulations at 40 CFR 122.21(f)(3), which require permit applications to include “up to four SIC codes which best reflect the principle products or services provided by the facility.”) The proposed amended definition is designed to allow the

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The Department proposes to amend the definition of “surface disposal site” to change the words “sewage sludge” to “residual.” This change is consistent with the proposed amendments to N.J.A.C. 7:14A-20.8.

The Department proposes a definition for the term “Waste Characterization Report,” which is a form used by permittees to report data to the Department. The Waste Characterization Report is used to record data from “monitor and report only” parameters as the result of special surface water sampling events or studies, such as priority pollutant scans and stream studies. The Waste Characterization Report is also used to record ground water monitoring well results and, in the case of residual, to report residual use and disposal on a dry weight basis, residual quality information on priority pollutants and for the self monitoring program for land application permits.

Subchapter 2. General Program Requirements

Subchapter 2 contains general NJPDES program permitting requirements that apply to all NJPDES permits, unless the rules specifically indicate otherwise. This subchapter sets forth the purpose and scope of the NJPDES rules, including the intent of the rules. The NJPDES rules address both the NJPDES permit program and the treatment works approval program. This subchapter also includes a liberal construction and severability provision, and incorporates Federal and interstate agency requirements by reference.

Subchapter 2 enumerates activities that the Department regulates and for which it issues NJPDES permits, and lists activities that are exempted from the requirements of obtaining a

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interest exists between permit holders or applicants and any board or body that must approve a permit. In addition, this subchapter includes provisions concerning permit duration (fixed term not to exceed five years) and the requirement that permittees apply for permit renewal.

Subchapter 2 also provides that a NJPDES permit may be modified, revoked and reissued, renewed, suspended, or revoked in accordance with Subchapter 16, and that the Department may stay a permit condition in accordance with Subchapter 17. Subchapter 2 sets forth the causes and procedures for, and consequences of, “administrative expiration” of a NJPDES permit and conditions under which an expired permit continues in effect until a new permit is obtained.

Subchapter 2 includes provisions concerning enforcement action and permit noncompliance, and provides that the Department may issue subpoenas for witnesses and documents. It also outlines the Department's authority to require, from any person whom the Department has reason to believe has, or may have, information relevant to a discharge or potential discharge of a pollutant, information regarding that discharge. This subchapter provides that the Department may enter premises, have access to and copy records, and conduct inspections, sampling, and monitoring; and that permittees have a duty to submit correct information if they become aware that they previously submitted incorrect information or omitted relevant facts. As discussed below, the Department proposes at N.J.A.C. 7:14A-2.11(a) to expressly allow applicants, permittees and other interested persons to submit applications, reports, and other information electronically, with the Department's consent and in the manner prescribed by the Department, via the Department's web portal.

Subchapter 2 also includes provisions concerning ambient water quality studies, and specifies criteria for determining whether a facility is a concentrated animal feeding operation

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Finally, as discussed below, proposed new N.J.A.C. 7:14A-2.15 sets forth requirements concerning reclaimed water for beneficial reuse or RWBR, defined in N.J.A.C. 7:14A-1.2.

The Department proposes to readopt Subchapter 2 with the amendments described below.

N.J.A.C. 7:14A-2.11 Duty to provide information

The Department proposes new N.J.A.C. 7:14A-2.11(b) to expressly allow applicants, permittees and other interested persons to submit applications, reports, and other information electronically, with the Department's consent and in the manner prescribed by the Department, via the Department's web portal. In order to submit a document (other than a monitoring report) via the web portal, the applicant or permittee must open an account with the Department and obtain an authorization code. To submit a monitoring report electronically, the permittee must execute an EDI Agreement.

An EDI Agreement requires contact information from the permittee. Also, the permittee must meet the NJPDES requirements in a timely manner, even if the electronic submittal is not available. For example, if a monitoring form is due, but cannot be submitted electronically, the permittee must submit the form on paper in the time period specified in the NJPDES rules.

Permittees and other interested persons will be notified via e-mail, the Department's web portal, written correspondence and by various other outreach methods, when a particular Department form or report has been made available for electronic submission.

In the future, applicants and permittees may access the Department's web portal and apply for their permit or approval online, and/or upload information their permit or approval requires, which could include image files, diagrams, studies and/or reports. In some instances, a

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Electronic submission provides many benefits, such as timely access to the latest Department forms, cost efficiencies such as saving the cost of postage and envelopes, improved quality of submitted information, timely acknowledgement by the Department of information receipt, and efficiency of electronic file storage.

The Department may require an applicant or a permittee to submit information on paper, rather than electronically, for failure to comply with the terms cited above, or if the Department determines that the data being submitted have compromised, or might compromise the Department's database system (for example, viruses). The Department may also temporarily discontinue electronic submission as a result of an infrastructure breakdown that prevents the service from functioning in an optimal manner. The Department will, whenever feasible, notify an applicant in writing or electronically if electronic submission is not possible.

N.J.A.C. 7:14A-2.12 Studies

The Department is proposing the addition of N.J.A.C. 7:14A-2.12(c), which applies to all studies that are conducted for the purposes of implementing the requirements of N.J.A.C. 7:14A. Therefore, the Department is proposing to change the name of this section from "Ambient Water Quality Studies" to "Studies."

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The Department is proposing to amend N.J.A.C. 7:14A-2.12(b) to remove the phrase “along with related quality assurance/quality control project plan requirements in accordance with 40 CFR 30.503.” Federal rule 40 CFR 30.503 was rescinded on March 18, 1996 (see 61 Fed. Reg. 6066; February 15, 1996), making the reference obsolete.

The Department proposes new N.J.A.C. 7:14A-2.12(c), which requires that all studies conducted for the purposes of implementing the requirements of N.J.A.C. 7:14A must be performed in accordance with a Department approved Work/Quality Assurance Project Plan (Work/QAPP). This rule is consistent with Department policy, as recently identified in the Fiscal Year 2007-2010 “Departmental Quality Management Plan” (Departmental QMP), available at (<http://www.nj.gov/dep/oqa/>) that, with the exception of circumstances requiring immediate action, no projects involving environmental data collection activities be performed by or for the Department until after a Work/QAPP covering those activities has been approved by the appropriate/designated Office of Quality Assurance representatives. This policy is consistent with various USEPA quality assurance regulations and other quality assurance requirements that apply to programs over which USEPA has partial or full jurisdiction through regulation, delegation, or funding. Such regulations and requirements include USEPA Order 5360.1 A2 (EPA 2000), Policy and Program Requirements for the Mandatory Agency-Wide Quality System, as well as 48 CFR Part 46 and 40 CFR Parts 30, 31, and 35.

Work/QAPPs are the blueprint by which individual projects involving environmental data are implemented and assessed. The Work/QAPP also details how specific Quality Assurance (QA) and Quality Control (QC) activities will be applied during a particular project. In recognizing the importance of quality assurance, the Department applies USEPA’s quality assurance project plan requirements to all of the Department’s environmental programs,

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data collection activities begin helps to ensure that the data collected are of sufficient quality for their intended use.

N.J.A.C. 7:14A-2.12(c) applies to various studies, including ambient studies, local limit development by a local agency as part of pretreatment program development under N.J.A.C. 7:14A-19.2, headworks analyses and development of local limits by delegated local agencies as required under N.J.A.C. 7:14A-19.7(b), and any study conducted for removal credits in accordance with 40 CFR 403.7. New N.J.A.C. 7:14A-2.12(c) identifies several components that, at a minimum, must be included in the Work/QAPP. In addition, this subsection requires that the Work/QAPP must be consistent with the “New Jersey Department of Environmental Protection Field Sampling Procedures Manual,” dated August 2005 as supplemented or amended, available from the Department’s Site Remediation Program website (<http://www.nj.gov/dep/srp/>); and USEPA Region II’s “Guidance for the Development of Quality Assurance Project Plans for Environmental Monitoring Projects,” dated April 2004 as supplemented or amended, available from USEPA Region II’s website (<http://www.epa.gov/region02>) or the USEPA “Guidance for Preparation of Combined Work/Quality Assurance Project Plans For Environmental Monitoring” (OWRS QA-1), dated May 1984 and available upon request from the USEPA. The above documents are incorporated by reference.

The “New Jersey Department of Environmental Protection Field Sampling Procedures Manual,” dated August 2005, is a technical guidance manual associated with procedures and equipment utilized for the collection of environmental samples. The USEPA Region II’s “Guidance for the Development of Quality Assurance Project Plans for Environmental Monitoring Projects,” dated April 2004, presents guidance for the development of a Quality

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conducted by or for EPA Region 2. It is based on, and is consistent with, “EPA Requirements for Quality Assurance Project Plans, EPA QA/R-5, EPA/240/B-01/003” and “EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA/240/R-02-009.” The document provides a detailed description of the elements that should be addressed in the QAPP. Similar to the April 2004 document, the USEPA “Guidance for Preparation of Combined Work/Quality Assurance Project Plans For Environmental Monitoring” (OWRS QA-1), dated May 1984, also identifies elements that should be included in the QAPP, but provides an underlying focus on projects involving ambient data collection.

N.J.A.C. 7:14A-2.15 Reclaimed water for beneficial reuse

Proposed new N.J.A.C. 7:14A-2.15 sets forth requirements concerning reclaimed water for beneficial reuse or RWBR, defined at N.J.A.C. 7:14A-1.2. RWBR involves taking water that would otherwise be considered a waste product, giving it a specialized level of treatment, and using the resulting high-quality reclaimed water for public uses. This high-quality reclaimed water can be used for applications such as irrigation in place of potable water or as a supplement to potable water. RWBR reduces demands on valuable ground water supplies by recycling some of the water already drawn; helps reduce pollutant loading to surface waters; may postpone costly investment for development of new water sources and supplies; and can be an economical alternative to potable water. The institution of an RWBR program at a facility will not enable a facility to expand its sewer service area or capacity to accept wastewater. The Department began to develop a voluntary RWBR program in the 1990s. Currently, over 60 facilities have NJPDES permits with RWBR provisions. Potential sources of RWBR include domestic wastewater,

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requires persons that produce or propose to produce RWBR to refer to the Department's Technical Manual for Reclaimed Water for Beneficial Reuse (RWBR Technical Manual) and comply with the RWBR limitations and conditions in their NJPDES permits.

N.J.A.C. 7:14A-2.15(a)1 and 2 describe the two broad classifications of RWBR: restricted access and public access. Restricted access RWBR is the classification of reclaimed water for which there is a minimal possibility of exposure to the general population and/or worker exposure is controlled. As discussed in the RWBR Technical Manual, examples of restricted access RWBR include reclaimed water directly used for irrigation of sod or pastures, sewer jetting, industrial equipment cooling, boiler makeup, street sweeping, dust control, fire protection, road milling, or similar uses where public access to the application area is restricted and there is no application to edible crops.

Public access RWBR is the classification of reclaimed water for which there is a high possibility of exposure to the general population, thereby requiring better than secondary treatment effluent requirements listed in N.J.A.C. 7:14A-12.2. Typical examples include reclaimed water used directly for spray irrigation of golf courses, athletic fields, playgrounds, parks, landscaped areas, highway median strips, or edible crops that are peeled or thermally processed before consumption, or for commercial car washes or decorative outdoor fountains.

The RWBR Technical Manual contains a summary table of requirements of various reuse applications and addresses such matters as concentrations of fecal coliform, total nitrogen and total suspended solids; treatment processes such as disinfection, secondary treatment, and filtration; and other matters such as hydraulic loading rate, user/supplier agreements, operation protocols, on-line monitoring, annual usage reporting, worker contact with RWBR, and

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environmentally sound manner that does not pose a threat to the public health, safety, or welfare.

The full text of and additional background about these requirements are provided in the RWBR Technical Manual, which is available from the Department's Division of Water Quality, PO Box 029, 401 East State Street, Trenton, New Jersey 08625; telephone (609) 292-4543, or from the Division's website (<http://www.nj.gov/dep/dwq/>).

At N.J.A.C. 7:14A-2.15(b) and (c), the Department is proposing to require an applicant for an individual NJPDES DSW permit for a facility discharging into a receiving water body classified in the Surface Water Quality Standards at N.J.A.C. 7:9B as SE or SC waters of the State, or an individual NJPDES DSW or DGW permit for a facility located in the critical water supply areas delineated under the Areas of Critical Water Supply Concerns rules at N.J.A.C. 7:19-8, to evaluate the feasibility of implementing RWBR through a reuse feasibility study (RFS). These areas are the regions of New Jersey where the expected benefits of RWBR are projected to be the greatest. For new or expanding discharges, the RFS must be submitted with the water quality management plan amendment request, where applicable. For existing discharges with individual permits, the RFS is to be submitted with the permit renewal application. Requests for authorization (RFAs) under general NJPDES DSW or DGW permits will also be required to include an RFS unless the general permit specifies otherwise (see N.J.A.C. 7:14A-6.13(d)2). Facilities that are outside the areas listed in proposed N.J.A.C. 7:14A-2.15(b), or that are listed as exempt in proposed N.J.A.C. 7:14A-2.15(d), will not be subject to RWBR conditions in their NJPDES permits. Any NJPDES permit applicant or permittee that is not required to conduct an RFS may voluntarily conduct a RFS. Each RFS shall

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The Department is proposing to exempt certain facilities under proposed new N.J.A.C. 7:14A-2.15(d) from the requirement to perform an RFS. The Department proposes to exempt facilities with a monthly average flow of less than 0.1 million gallons per day (MGD), because reduced economies of scale make including these facilities impractical. The Department also proposes to exempt facilities for which 75 percent or more of the monthly average flow is directly reused, because the facilities already make use of a significant amount of their wastewater. The Department proposes to exempt facilities where removal of any wastewater flows to the receiving surface water would result in unsatisfactory passing flows due to adverse impacts of wastewater removal on water resources. The Department also proposes to exempt concentrated animal feeding operations, agricultural facilities with irrigation return flows, facilities that are separate storm sewers or discharge only stormwater, and facilities that discharge to an individual subsurface sewage disposal system.

Proposed new N.J.A.C. 7:14A-2.15(e) requires applicants producing or proposing to produce RWBR to include, in their permit application or under the RWBR NJPDES General Permit (NJ0142581), certain RWBR-related information, such as lists of current and proposed users (and amounts) and, if applicable, an engineering report, operating protocol, and user/supplier agreement in accordance with the RWBR Technical Manual. Additionally, since public participation and acceptance are critical to the institution of public access RWBR activities, a requirement that the applicant documents public education and outreach efforts and any public response is required. These efforts can take the form of a non-adversarial public hearing, conducted in a manner that is consistent with public hearings held on draft NJPDES

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The requirements in N.J.A.C. 7:14A-2.15 are in addition to other requirements of the NJPDES rules that may be applicable to a facility. For example, if effluent is applied to the land, then DGW requirements in N.J.A.C. 7:14A-7 are applicable, whether or not N.J.A.C. 7:14A-2.15 is also applicable; or, if RWBR is directly used for cooling water that is subsequently discharged to surface water, then the discharge of cooling water is subject to N.J.A.C. 7:14A-11.

Subchapter 3. Determination of Permit Fees

Subchapter 3 sets forth the applicability and procedures for establishing a fee assessment methodology to cover the cost of processing, monitoring and administering the NJPDES permit program. This includes, in part, the general conditions and applicability of a fee schedule, content of an annual report, formula used to determine environmental impact and the list of minimum fees. The Department proposes to readopt the subchapter, with the proposed amendments discussed below.

N.J.A.C. 7:14A-3.1 Fee schedule for NJPDES permittees and applicants

The Department proposes to amend N.J.A.C. 7:14A-3.1(a)7 to reference the broader term “Monitoring Report Forms,” and delete reference to the specific term “Discharge Monitoring Reports,” which are considered monitoring reports under this proposal.

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The Department is proposing at N.J.A.C. 7:14A-3.1(b)2ii to send permittees a notice that the complete Fee Report is available on the Department's website. Historically, each NJPDES permit holder subject to an annual fee has been mailed a copy of the Annual NJPDES Fee Schedule Report (Fee Report). The most recent Fee Reports have exceeded 110 pages. Preparing and mailing the Fee Report to approximately 4,500 permittees represent a sizable work effort and mailing cost. This change will significantly reduce the cost to the Department in both time and postage. The Department will continue to provide, free of charge, a paper copy of the Fee Report upon request, in accordance with proposed amended N.J.A.C. 7:14A-3.1(b)2ii.

The Department administers the New Jersey Pollutant Discharge Elimination System (NJPDES) fee program under the authority of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and in accordance with the NJPDES Rules at N.J.A.C. 7:14A-3.1. The NJPDES fees for fiscal year (FY) 2007 cover the period July 1, 2006 to June 30, 2007. For FY2007, the total cost for the NJPDES program was \$19.8 million. Dischargers to surface water were assessed \$10.9 million; significant indirect users (SIUs) were assessed \$0.5 million; dischargers to ground water (including landfills) were assessed \$2.6 million; residuals dischargers were assessed \$0.2 million and dischargers of stormwater were assessed \$5.6 million.

Individual permit fees are based on the facility's environmental impact times the billing rate for the category of discharge plus the minimum fee for the category of discharge. The billing rate for the category of discharge is calculated as follows:

Rate = (Budget – Sum of Minimum Fees)/Total Environmental Impact, where

1) Budget is the total budget for the category of discharge;

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2) Sum of Minimum Fees is the total amount of minimum fees to be paid by all dischargers in the category of discharge; and

3) Total Environmental Impact is the sum of the Environmental Impact for all dischargers in the category of discharge.

The billing rate enables the Department to equitably distribute the costs of the program among the dischargers relative to the environmental impact of the respective types of discharges.

At proposed amended N.J.A.C. 7:14A-3.1(d), the Department is proposing to update and simplify the method for determining the environmental impact used in the annual fee formula for discharges to ground water, including landfills, which are currently covered under N.J.A.C.

7:14A-3.1(f). The existing ground water environmental impact formula relies on some factors, such as “ground water monitoring status,” that are only relevant to ground water permitted discharges requiring post closure, post remediation, detection or remediation monitoring. During the major overhaul of the NJPDES program in May 1997, the emphasis for the ground water program was shifted to focus on active ongoing discharges, as opposed to past discharges that require post closure, post remediation, detection or remediation monitoring. However, the fee calculation for these discharges at N.J.A.C. 7:14A-3.1 was not changed to reflect this shift in emphasis.

Based on the type of discharges regulated under NJPDES discharge to ground water permits, the factors and the formula currently in use result in a very small total environmental impact. The existing formula for determining the rate for a category of discharge, found at N.J.A.C. 7:14A-3.1(a)9ii, is as follows:

$$\text{Rate} = (\text{Budget} - \text{Sum of Minimum Fees}) / \text{Total Environmental Impact}$$

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The existing formula for calculating an individual environmental impact, found at

N.J.A.C. 7:14A-3.1(d)1, is as follows:

$$\text{Environmental Impact} = (\text{Risk} \times \text{Quantity} \times \text{Ground Water Rating Factor})$$

The individual environmental impact calculated is then multiplied by the rate for the category of the discharge plus any minimum fee.

Under the existing rate formula, the total environmental impact that can be calculated is such that a small increase in the environmental impact for a facility results in a significant increase in the fee for that facility.

In developing the new ground water fee formula, the Department wanted to achieve several goals:

1. The rating formula should generate a higher environmental impact per facility, which would result in a higher total overall environmental impact value for ground water facilities. This would further reduce the sensitivity of slight facility changes on the fee calculation. For example, changes due to permit revocations, minor changes in flow, or other facility factor changes.
2. The environmental impact equation should be simpler.
3. Fees should be more predictable and relatively stable from year to year.
4. Fees should be easier to administer by the Department.

The Department is, therefore, proposing to implement a new environmental impact formula for all ground water permits covered by the NJPDES rules. The Department anticipates

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The proposed formula for calculating environmental impact is as follows:

$$\text{Environmental Impact} = (\text{Pollution Potential Factor}) \times (\text{Discharge Control Factor})$$

The pollution potential factor is a number based on the nature and quantity of pollutants being discharged. The discharge control factor is a number based on the potential of a discharge to affect ground water based upon how a discharge occurs, with consideration given to any engineering design intended to minimize pollutant load to ground water. See proposed N.J.A.C. 7:14A-3.1(d)1iii through vi for the values assigned.

The proposed amended environmental impact equation is the product of a pollution potential factor times a discharge control factor. Each factor is based on characteristics of a facility and/or its operations. The pollution potential factor determined in accordance with N.J.A.C. 7:14A-3.1(d)1i and ii or listed in subparagraph (d)1v is a number based on the nature and quantity of pollutants being discharged.

The pollution potential factor is derived in two ways. For landfills and facilities discharging sanitary sewage wastewater, the pollution potential factor is the sum of a pollution rating factor listed in proposed new N.J.A.C. 7:14A-3.1(d)1iii and a pollution loading factor set forth in proposed N.J.A.C. 7:14A-3.1(d)1iv. For other types of facilities, the applicable pollution potential factors are set forth in proposed N.J.A.C. 7:14A-3.1(d)1v. The pollution rating factor is a number based on the relative risk associated with the pollutant source. For example, a quantity of hazardous wastewater will have a higher pollution rating factor than an equivalent quantity of

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non-hazardous or sanitary sewage wastewater. Thus, discharges of sanitary sewage have a

pollution rating factor of one, whereas the pollution rating factor for sanitary landfills is 20 and for hazardous landfills, 50. The higher the pollution rating factor, the greater the relative risk.

The pollution loading factor is calculated based upon either the annual mass of solid waste deposited at a landfill facility or the flow (Q) for a sanitary sewage facility, both for the target year upon which the billing is based. For a sanitary sewage facility, flow (Q) is the NJPDES permitted flow limit, or in the absence of a NJPDES permitted flow limit, flow (Q) is the facility design flow rate. For facilities discharging stormwater runoff, non-contact cooling water, potable water plant filter backwash, food processing wastewater, discharge from quarry operations including sand and gravel operations, and other industrial process wastewater, the pollution potential factors are listed in proposed N.J.A.C. 7:14A-3.1(d)1v. Due to the fact that these types of facilities do not have discrete point source discharges, it is difficult to determine flow that can be used to derive the pollutant loading factor. Therefore, the Department established pollution potential factors based upon the potential risk associated with the different waste types discharged.

The discharge control factors at proposed N.J.A.C. 7:14A-3.1(d)1vi effectively replace the ground water rating factors at existing N.J.A.C. 7:14A-3.1(d)1. The discharge control factors set forth at N.J.A.C. 7:14A-3.1(d)vi are values based on the potential of a discharge to affect ground water based upon how a discharge occurs, with consideration given to any engineering design intended to minimize pollutant load to ground water. The discharge control factors are based upon whether or not the discharge from the pollutant source has commenced, or if it passes through to a discharge to surface water or POTW, or if it discharges directly to the ground. It is also based on the degree of basin lining, the nature and degree of wastewater treatment, or if the

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source is a landfill. A higher discharge control factor is assigned as the risk associated with the pollutant source for each type of waste stored, treated and/or discharged increases. A discharge control factor of zero applies if the discharge has not commenced. The discharge control factor increases as the integrity of the basin lining and degree of wastewater treatment decrease and the pollution potential of the wastewater (for example, sanitary, industrial, landfill) increases.

The Department considered fairness and appropriateness to environmental risk when developing the factors in N.J.A.C. 7:14A-3.1(d)1iii through vi. The Department listed in a matrix all ground water permittees with individual permits. Values for each of the relevant factors were assigned to each permit based upon information about the facility that was available to the Department. The Department performed an analysis of different factor values and formulae on the matrix until it established the proposed factors listed at N.J.A.C. 7:14A-3.1(d)1iii through vi. A summary table listing the values assigned for the factors established for each permittee with an individual ground water permit can be found on the Department's website at <http://www.nj.gov/dep/dwq/njpdesfees.html>.

The proposed environmental impact equation is not as complicated as the existing formula, since it relies on fewer factors. Since these factors are based on characteristics that are more readily available to the Department than some of the previously used data, the ground water fee system will be easier to administer. The revised rating system is scaled higher than the existing system, so it yields a higher individual environmental impact per facility than does the existing rating system. Higher individual facility environmental impacts result in the total environmental impact for ground water facilities being significantly higher than under the existing rules. For example, the maximum environmental impact is over 1,700,000 in the proposed rating scale, versus approximately 210 under the existing rating scale. A direct result

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of this higher total environmental impact is that the sensitivity of the fee formula to slight

changes in a facility's rating characteristics is greatly reduced. The benefits to permittees are less volatile fees and greater predictability and stability from year to year.

The proposed ground water fee formula does not result in the generation of additional fees. The same total amount would be assessed to discharges of ground water under the proposed system as under the existing system. The category assessment is based upon the workplans and resulting budget for the category. The revised equations affect only the sensitivity of the formula and how the category assessment is apportioned. Following analysis of the data presented in the summary table mentioned above, the Department has determined that the proposed revised formula for ground water environmental impact results in fees that are fair, balanced, and predictable.

Existing N.J.A.C. 7:14A-3.1(f) discusses the calculation of permit fees for sanitary landfills. As explained above, the Department is proposing to calculate permit fees for sanitary landfills based on the new formulas at N.J.A.C. 7:14A-3.1(d). The Department is, therefore, proposing to delete and reserve N.J.A.C. 7:14A-3.1(f).

At N.J.A.C. 7:14A-3.1(j), the Department is proposing to modify the fee for NJPDES Permit No. NJ0088323 (referred to as the category 5G3 "construction activity" stormwater general permit) by establishing a two-tier fee schedule. As proposed, construction activities that disturb less than five acres of land will be subject to a permit fee of \$450.00, and construction activities that disturb five or more acres will be subject to a permit fee of \$650.00. This is an increase from the existing flat fee of \$300.00, which is necessary to address an increase in the Department's costs to administer this construction permit program.

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The NJPDES Stormwater Permitting Program was originally established in 1992. At that time, the construction general permit was required for construction activities that disturbed five or more acres of land. The fee for this general permit was \$200.00 per authorization. In 2004, the Department modified the construction general permit in response to the USEPA's Phase II Stormwater Rules, which required permits for "stormwater discharge associated with small construction activities," for example, activities that disturb from one acre to less than five acres of land, and increased the fee to \$300.00 per authorization under the general permit. This additional requirement increased the number of authorizations issued under the general permit for construction activities from approximately 1,000 in 2003 to approximately 4,000 today. In addition, the Phase II Stormwater regulations added new site waste management control requirements that must be applied to all new authorizations issued for construction activities under this general permit.

Although the Department is the issuing authority for NPDES permits in the State of New Jersey, and issues those permits as part of the NJPDES program, requests for authorization under the general permit are certified by individual Soil Conservation Districts within New Jersey, or by the New Jersey Department of Transportation (NJDOT). Over the years the Department has had to spend increasing amounts of time on the coordination and enforcement of this general permit and have therefore required substantially more involvement by the Department's permitting and enforcement personnel to ensure compliance. The small fee increase in 2004 did not adequately account for the increased workload associated with the expanded permit program.

In addition to the increased workload, it is necessary to include these general permit authorizations in the Department's electronic permitting database, New Jersey Environmental Management System (NJEMS). The Department is currently designing an enhancement to

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general permit electronically or through a local Soil Conservation District office. The information input through this process will automatically be stored in NJEMS and provide an up-to-date database of permitted construction activities, resulting in better customer service and permit management by the Department. Part of the fee increase will be used to pay for the NJEMS upgrade needed to offer the construction permit electronically and maintain the system.

The Department is also proposing new N.J.A.C. 7:14A-3.1(j)2 to establish that Federal government entities, such as the US Department of Defense, shall pay for services provided by soil conservation districts to the Treasurer, State of New Jersey, which funds will be transferred by the State, through the New Jersey Department of Agriculture (NJDOA), to the appropriate soil conservation district. The NJDOA will be proposing a fee schedule for soil conservation districts' review of Federal facilities under a separate action. This change allows Federal facilities to resolve concerns regarding sovereign immunity.

N.J.A.C. 7:14A-3.1 Table II

Table II of existing N.J.A.C. 7:14A-3.1 is used in the calculation of environmental impact for discharges to ground water. The Department proposes to revise the method for calculating environmental impact of discharges to ground water, as discussed above, and will not rely on Table II for the calculation of environmental impact. Accordingly, Table II is proposed to be deleted and reserved.

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Subchapter 4. Permit Application Requirements

Subchapter 4 sets forth the NJPDES permit application process. The rules identify the parties who should apply for a NJPDES permit, and set forth application deadlines and submission requirements. The information required in this subchapter helps the Department determine what requirements must be placed in the NJPDES permits if issued. The Department proposes to readopt this subchapter, with the amendments described below.

N.J.A.C. 7:14A-4.2 Application requirements

N.J.A.C. 7:14A-4.2 identifies who is required to submit an application for a discharge permit, and sets forth deadlines to apply, the duty to reapply, requirements for application completeness, and the sequential order of the application process.

The Department proposes to amend N.J.A.C. 7:14A-4.2(a) by adding its website address to the other contact information provided.

The Department also proposes to delete existing N.J.A.C. 7:14A-4.2(e)5 regarding the time frame for significant indirect users to submit applications, because the time to comply with this requirement has passed. The Department proposes a new N.J.A.C. 7:14A-4.2(e)5, which states that, if the Department revokes a delegated local agency's industrial pretreatment program, the Department shall notify each affected SIU of the deadline to submit an application to the Department for an individual NJPDES-SIU permit.

N.J.A.C. 7:14A-4.3 Application information requirements

N.J.A.C. 7:14A-4.3 describes the general components of the NJPDES permit application.

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The Department is proposing a new condition at N.J.A.C. 7:14A-4.3(a)26 that requires an applicant to submit RWBR information. As a result of the proposed new condition at N.J.A.C. 7:14A-4.3(a)26, the existing N.J.A.C. 7:14A-4.3(a)26 is proposed to be recodified to N.J.A.C. 7:14A-4.3(a)27.

N.J.A.C. 7:14A-4.4 Additional application requirements for discharges to surface water

N.J.A.C. 7:14A-4.4 is applicable to all NJPDES DSW discharges, except where specifically noted otherwise in the rules.

The Department proposes to amend N.J.A.C. 7:14A-4.4(b)3ii(2) to require applicants to report effluent data for both N.J.A.C. 7:14A-4 Appendix A Table II and Table III pollutants, except as specifically noted in the rule text. The existing rule requires reporting only for those pollutants in Table II. The Department will review the reported effluent data for these pollutants and include appropriate requirements in the permit.

The Department proposes to amend N.J.A.C. 7:14A-4.4(b)3vi to replace references to USEPA forms with the appropriate NJPDES forms. The Department no longer uses the referenced Federal forms.

N.J.A.C. 7:14A-4.9 Signatory requirements for permit applications and reports

N.J.A.C. 7:14A-4.9 is applicable to all entities that file an application for a discharge permit, a report required by a permit, or any other information requested by the Department. It describes the requirements for signatures on the application or other documents.

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At N.J.A.C. 7:14A-4.9(a), the Department proposes to replace “DMR” with the newly defined term monitoring report forms (MRFs) to refer to the three different types of forms that the Department uses, depending on the nature of the data collected.

The Department is proposing to amend the signatory requirements at N.J.A.C. 7:14A-4.9(a)1iii to conform to 40 CFR 122.22(a)1ii. As amended, N.J.A.C. 7:14A-4.9(a)1ii eliminates the quantitative (for example, employees or annual sales or expenditure) criteria for designating responsible corporate officers who manage one or more manufacturing, production, or operating facilities. The USEPA considers those criteria as less useful in the face of changing management organization of many facilities. Therefore, the Department is proposing to replace numeric criteria with more flexible narrative criteria, which specify the authority and responsibilities of the appropriate signer without specifying the resource levels that the signer manages.

N.J.A.C. 7:14A-4 Appendix A-Permit Application Testing Requirements/Pollutant Listings

At N.J.A.C. 7:14A-4 Appendix A, Table I, footnote, the Department proposes to include a reference to the instructions to the Department’s NJPDES Form C and Form L.

The Department proposes to amend the pollutant lists in Table II (Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC/MS)) and Table III (Other Toxic Pollutants (Metals and Cyanide) and Total Phenols) to include additional toxic parameters. The Department proposes to amend Table II to include 2,4,5-Trichlorophenol, Chloride, N-Nitrosodiethylamine, N-Nitrosodi-N-butylamine, N-Nitrosopyrrolidine, Pentachlorobenzene, 1,2,4,5-Tetrachlorobenzene, Demeton, Endosulfans, Total (alpha and beta), Mirex, Polychlorinated biphenyls (PCBs) and 2,3,7,8-

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(Trivalent), Chromium ⁺⁶, Total (Hexavalent), Cyanide, Free. The Department also proposes to amend N.J.A.C. 7:14A-4 Appendix A, Table V by relocating toxic pollutants, Guthion, Malathion, Methoxychlor, Mirex, Parathion to Table II, and amend Table IV to include the pollutants E. coli and Enterococci. These changes are being made to Table II and III to include additional toxic pollutants for which New Jersey has adopted surface water criteria (N.J.A.C. 7:9B) since the NJPDES rules were last amended.

These proposed amendments will require the applicants to monitor and report the data for these additional pollutants in the application forms. The Department will review the data to determine the appropriate requirements to include in the permit.

Subchapter 5. Wastewater Discharge Requirements

Subchapter 5 establishes effluent standards for acute whole effluent toxicity (WET) and phosphorus. These standards were originally recodified from the former N.J.A.C. 7:9-5.7 to N.J.A.C. 7:14A-5.1, 5.2 and 5.3 on September 19, 2005 (37 N.J.R. 3648(a)). The Department is now proposing to repeal N.J.A.C. 7:14A-5 in its entirety. Rather than the acute whole effluent toxicity (WET) effluent standard of LC50 \geq 50 percent at N.J.A.C. 7:14A-5.3(a), the Department is proposing LC50 \geq 50 percent as an action level at new N.J.A.C. 7:14A-13.18(f), as explained in the Summary for Subchapter 13. The phosphorus effluent standard at N.J.A.C. 7:14A-5.3(b) is proposed to be moved to N.J.A.C. 7:14A-12.7(a), as it is more appropriately located in Subchapter 12 with the other effluent standards applicable to NJPDES/DSW permits. N.J.A.C. 7:14A-5.1 and 5.2 contained the scope of rules and definitions, respectively, which are proposed for repeal. N.J.A.C. 7:14A-5.1 is no longer necessary and is also redundant with the provisions

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The minimum State effluent standard of LC50 \geq 50 percent effluent was promulgated in 1981, early in the State program implementation, in order to prevent the introduction of toxic substances in toxic concentrations into waters of the State and to prevent mortality of aquatic organisms in the immediate vicinity of the discharge. The effluent standard was considered essential at that time due to the general lack of information necessary to perform a mixing zone analysis for purposes of calculating water quality based effluent limitations (WQBELs) for WET. The only limitation in most permits for the regulation of toxics in the early to mid 1980s was LC50 \geq 50 percent, the State minimum effluent standard for acute WET.

Since 1981, many changes in permitting, regulations and available treatment have occurred on both the State and Federal level. In 1984, USEPA issued the Policy for the Development of Water Quality Based Permit Limitations for Toxic Pollutants (49 Fed. Reg. 9016, March 9, 1984). The USEPA policy addressed the use of biological and chemical methods to assure that toxic whole effluent discharges were regulated consistent with Federal and State requirements. In 1985, the Department adopted provisions in N.J.A.C. 7:9-4 that authorized the imposition of WQBELs for WET. In 1989, USEPA revised the Federal regulations, which contained non-specific requirements that NJPDES permits contain more stringent requirements necessary to achieve State water quality standards (54 Fed. Reg. 23868 June 2, 1989). These revisions were codified in the existing 40 CFR 122.44(d) and require WQBELs for specific toxicants and WET where necessary to achieve State water quality standards. The preamble of these regulatory revisions and the 1984 Policy, provide a detailed explanation for the legal and policy support for WET testing and effluent limitations. In 1991, USEPA issued the revised

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March 1991, (TSD), which provided an explanation for the technical support for WET testing and detailed guidance on the development of WQBELs for WET. On July 7, 1994 USEPA issued an updated policy in 40 CFR 122.44(d)(1) (59 Fed. Reg. 37494, July 22, 1994) governing the development of limitations for WET, reaffirming USEPA's strong commitment to control WET under existing regulations, through the continued use of WQBELs for WET. In October 1995 and November 2002 (67 Fed.Reg.69951), USEPA promulgated WET test methods. On December 28, 2004, USEPA released comprehensive draft implementation guidance on the use of WET in the NPDES program.

Given the regulatory evolution of WET, the Department's implementation of WQBELs for WET has become routine. On May 5, 1997, the Department proposed comprehensive revisions to the NJPDES rules, which at N.J.A.C. 7:14A-13.6 included provisions to implement the procedures contained in the TSD to calculate acute and chronic WET WQBELs. (See 29 N.J.R. 1704(a).) The Department's experience over the last 10 years is that water quality based WET limitations ensure compliance with the narrative surface water quality criteria for toxicity.

The effluent toxicity standard applies only in those cases where it is more stringent than a WET WQBEL or no WET WQBEL is necessary in accordance with N.J.A.C. 7:14A-13.5.

Where the effluent standard remains in permits, the current compliance rate is greater than 98 percent for facilities discharging to surface water. For most municipal facilities, the upgrade to secondary treatment resulted in consistent compliance with the WET effluent standard. Of the small group of dischargers who are unable to consistently meet the effluent standard, most are working to identify and remediate the cause of toxicity. For many permittees, the effluent standard has already been replaced with a more stringent WQBEL for WET. Therefore, since

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Subchapter 6. Conditions Applicable to All NJPDES Permits

N.J.A.C. 7:14A-6 specifies the general conditions applicable to all NJPDES permits. This subchapter sets forth the requirements for such topics as schedules of compliance, monitoring, recordkeeping, monitoring result reporting, signatory requirements for MRFs, noncompliance reporting, general permits, and residuals management, along with general conditions. It also sets forth conditions for notice requirements for facility alterations, affirmative defenses, operation, maintenance and emergency conditions, and emergency permits. The format of this subchapter is similar to that of the Federal regulations at 40 CFR Parts 122 and 144.

The Department proposes to readopt Subchapter 6 with amendments as outlined below. In addition to the specific amendments highlighted below, the Department proposes to make amendments throughout the subchapter that reflect the monitoring report forms currently in use by the Department, specifically at N.J.A.C. 7:14A-6.4(e); 6.5(d)3; 6.8(a); (h) and (i); 6.9; and 6.10(j). It also proposes to update Department contact information.

N.J.A.C. 7:14A-6.5 Monitoring

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The Department is proposing to amend N.J.A.C. 7:14A-6.5(b)2ii as a result of significant changes to the Department's surface water quality criteria for bacterial indicators and their application (38 N.J.R. 4449(a), October 16, 2006), and USEPA's adoption of new methods in 40 CFR Part 136 for bacterial indicators (72 FR 11212, March 17, 2007). The recent amendments to the Surface Water Quality Standards, N.J.A.C. 7:9B, include the deletion of fecal coliform criteria for waters designated "FW2," "SE1" and "SC," the deletion of enterococcus criteria for waters designated "FW2," the addition of an E. coli criteria for "FW2" waters, and clarification that the geometric mean values (not the single sample maximum value) will be used to assess water quality, to develop total maximum daily loads (TMDLs) and to regulate wastewater discharges. USEPA recently adopted new methods in 40 CFR Part 136 for enterococcus and E. coli in wastewater.

The Department is proposing to add "E. coli" to the first sentence of N.J.A.C. 7:14A-6.5(b)2ii, because the Department has adopted surface water quality criteria for E. coli. In addition, the Department is proposing to delete the provision at N.J.A.C. 7:14A-6.5(b)2ii that "Discharge permits shall contain a monitoring-only requirement for enterococci organisms, unless the Department determines that it is appropriate to require enterococci effluent limitations and publishes a public notice in the New Jersey Register with supporting reasons to this effect." This provision was included in the NJPDES rules in response to concerns raised by permittees about enterococcus methods, including single sample variability and false positives. Those concerns have since been addressed, so this provision is no longer necessary. First, the 2006 amendments to the Surface Water Quality Standards clarified that geometric means, not single sample maximum values, will be used to regulate wastewater discharges. Second, the new method for enterococcus at 40 CFR Part 136 was adopted in part to address data quality concerns

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FR 48255, August 16, 2005). To further address permittee concerns, the Department is including a “monitor only” requirement in the permits at this time, including split sample testing with fecal coliform. This is intended to allow the permittees and the Department to evaluate and address the impacts of the new criteria prior to implementing changes to their disinfection regime, which has the potential for significant environmental impacts.

N.J.A.C. 7:14A-6.8 Reporting monitoring results

The Department is proposing to amend N.J.A.C. 7:14A-6.8 to reflect the monitoring report forms currently used by the Department. Therefore, language referring to a discharge monitoring report (DMR) is being replaced with monitoring report form (MRF). Proposed amended N.J.A.C. 7:14A-6.8(a) requires monitoring results to be submitted to the Department in accordance with Department instructions and/or guidance and that results must be submitted for specified monitoring periods. MRFs are mailed directly to a permittee or are available electronically at <http://www.state.nj.us/dep/online>.

The Department is proposing to amend N.J.A.C. 7:14A-6.8(d) to set forth the Department’s requirements for electronic reporting of monitoring report forms. A permittee wishing to participate in the NJPDES EDI program must sign and submit an NJPDES EDI Agreement, which is available from the Department’s website at www.nj.gov/dep/online. The NJPDES EDI Agreement outlines the terms and conditions for participation in the NJPDES Electronic Data Interchange (NJPDES EDI) program.

The benefits of electronic reporting include timely access to the latest monitoring report forms; timely acknowledgement from the Department upon certification; immediate information

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on the status of forms submitted; improved accuracy of data, as a result of one-time data entry;

cost efficiencies, such as the cost of postage and stationery; and storage efficiency, because files are stored electronically, rather than in hard copy.

Electronic reporting can be discontinued by the Department at any time in accordance with N.J.A.C. 7:14A-2.11(b). Reasons for suspending or revoking access to electronic reporting are outlined in N.J.A.C. 7:14A-2.11(b).

N.J.A.C. 7:14A-6.9 Signatory requirements for MRSF and BR

The Department proposes to amend N.J.A.C. 7:14A-6.9 to delete “DMR” from the heading and replace it with the acronym “MRSF,” which is the certification page of a monitoring report form.

In proposed amended N.J.A.C. 7:14A-6.9(a) and (c), MRSF is inserted, replacing DMR, to clarify that it is this portion of the monitoring report form that is signed by the permittee or authorized representative.

The Department proposes to amend N.J.A.C. 7:14A-6.9(a) to incorporate the signatory requirements of the Water Pollution Control Act at N.J.S.A. 58:10A-6f(5). The proposed amendments will specify, consistent with the statute, those local agency personnel that are authorized to sign the monitoring report submittal form (MRSF). Rather than a general reference to a title, such as “plant manager or plant operator,” the amendments describe an authorized signatory based on job descriptions, such as the highest ranking licensed operator having day-to-day managerial and operational responsibilities, including the responsibility to authorize capital expenditures and hiring personnel for the discharging facility. The proposed new language also

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N.J.A.C. 7:14A-6.10 Noncompliance reporting

The Department proposes to amend N.J.A.C. 7:14A-6.10(a)5, (d), and (e) to conform to 40 CFR 122.41, with respect to residual use or disposal practices. An exceedance of a standard for residual use or disposal is a reportable event, even if a discharge has not occurred. The Federal regulation at 40 CFR 122.41 requires an oral report within 24 hours, and a written submission within five days for such instances of noncompliance.

Subchapter 7. Requirements for Discharges to Ground Water (DGW)

Subchapter 7 provides minimum requirements for persons who discharge pollutants to ground waters of the State. In accordance with N.J.S.A. 58:10A-6, any person responsible for a discharge to ground water is required to have a discharge to ground water (DGW) permit, unless that person is exempted by regulation. The purpose of the DGW permit is to restore, enhance, and maintain the ground water quality of the State, in accordance with the New Jersey Water Pollution Control Act and the Ground Water Quality Standards (GWQS) in N.J.A.C. 7:9C. The regulation of discharges to ground water is crucial to protect human health, the environment, and underground sources of drinking water.

Subchapter 7 requires DGW permits for facilities operated by a wide variety of governmental entities and industrial, commercial, nonprofit, and other private entities. This subchapter provides the following examples of activities, pollution sources, or units regulated by this subchapter: surface impoundments, spray irrigation, overland flow, infiltration/percolation

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8), and land disposal of dredged spoil. Persons responsible for DGW from sanitary landfills, hazardous waste facilities, and land application of residual are not subject to Subchapter 7, but are instead required to comply with Subchapters 9, 10, and 20, respectively.

Subchapter 7 lists persons who are exempt from the requirement to obtain a permit for certain DGW. This subchapter also lists persons who are deemed to have a permit-by-rule for certain DGW, and do not require individual or general permits. Subchapter 7 also identifies information that may be required in individual DGW permit applications, including project and site related information, pollutant characteristics, and soils, geologic, and hydrogeologic evaluation. This subchapter also identifies additional application information requirements for several special types of activities, pollution sources, and regulated units, such as surface impoundments, spray irrigation, and infiltration/percolation lagoons.

This subchapter also specifies the components of a DGW permit that provide adequate controls and that provide evidence of compliance with the GWQS. These controls are an organized set of actions, procedures, and devices for the purpose of demonstrating successful protection of ground water quality from discharges or pollution sources. Examples of these controls include a monitoring well system; effluent quality monitoring; engineering testing for structural integrity of dikes, berms, liners, and wells used as part of a treatment system; and a list of chemical parameters to be tested. This subchapter also specifies a process for evaluating data, and procedures for responding to contravention of the GWQS and permit conditions.

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N.J.A.C. 7:14A-7.7 Ground water sampling procedures and statistical analysis

requirements

The Department proposes to amend N.J.A.C. 7:14A-7.7(e) to update a cross reference.

Subchapter 8. Additional Requirements for Underground Injection Control (UIC)

Program

Subchapter 8 is applicable to underground injection wells, and implements USEPA requirements. This subchapter establishes a system of controls to ensure that underground injection practices do not endanger underground sources of drinking water, and is intended to prevent contamination of the State's ground water resources. The terms "injection well," "underground injection," "underground source of drinking water," "well," and "well injection" are defined at N.J.A.C. 7:14A-1.2. Examples of injection wells include, but are not limited to, air conditioning or cooling water return flow wells, certain ground water heat pump components, wells used to drain storm runoff or replenish an aquifer, salt water intrusion barrier wells, septic systems or other subsurface sewage disposal systems, wells for injection of swimming pool filter or water softener backwash, injection wells associated with studies necessary to obtain or comply with a water supply allocation or NJPDES permit, and injection wells used during site remediation or to dispose of hazardous or radioactive wastes.

The Federal Underground Injection Control Program (UIC) was created pursuant to Part C of the Federal Safe Drinking Water Act (SDWA), 42 U.S.C. §§300(f) et seq. The Federal rules (40 CFR Parts 144 through 148) were promulgated under the authority of the SDWA and, to the extent that they concern hazardous waste, under the authority of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 et seq. In 1983, USEPA delegated

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147.1550). Subchapter 8 is consistent with the Federal rules at 40 CFR Parts 144 through 148.

The New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., provides statutory authority for establishing the manner by which discharges into injection wells are regulated.

Subchapter 8 provides descriptions of underground injection well classes I through V that this subchapter regulates, and also identifies certain injection activities that this subchapter does not regulate. Subchapter 8 prohibits underground injection activities unless they are authorized by a UIC permit-by-rule or an individual or general UIC permit, or exempted by regulation. This subchapter also requires that injection wells shall not endanger underground sources of drinking water, and that UIC permit conditions shall prevent such endangerment. Subchapter 8 prohibits certain types of underground injection, such as injection of hazardous or radioactive wastes (with limited exceptions), cesspools with design flow greater than 2,000 gallons per day, and new motor vehicle waste disposal wells. This subchapter also lists persons who are deemed to have a UIC permit-by-rule for certain injection wells. Such persons do not require individual or general UIC permits, but are required to submit inventory information to the Department within 90 days of notification by the Department.

This subchapter also sets forth other requirements including information that may be required in individual UIC permit applications, monitoring and reporting requirements, operating criteria, construction standards, corrective or preventive action requirements, and requirements concerning well plugging or abandonment. This subchapter provides requirements that are applicable to injection wells in general, and requirements specific to particular injection well classes or certain seepage pits.

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The Department proposes to readopt Subchapter 8 with amendments. The proposed amendments are limited in scope, and are described below.

N.J.A.C. 7:14A-8.4 Prohibition of movement of fluid into underground sources of drinking water

The proposed amendments to N.J.A.C. 7:14A-8.4(a)3i and ii(1) replace cross-references to existing N.J.A.C. 7:14A-8.16(d)2 with cross-references to N.J.A.C. 7:14A-8.16(d), to reflect proposed amendments to the organizational structure of N.J.A.C. 7:14A-8.16(d).

N.J.A.C. 7:14A-8.5 Authorization of injection into Class V wells by permit-by-rule

The Department proposes amendments to N.J.A.C. 7:14A-8.5(b)4 to provide that, in regard to the permit-by-rule for certain air conditioning or cooling water return flow injection wells, the cooling water must be non-contact cooling water, and the injection wells must be constructed in accordance with all applicable well construction requirements of N.J.A.C. 7:9D, or all applicable seepage pit construction requirements of N.J.A.C. 7:14A-8.18. Requiring that the cooling water must be “non-contact cooling water” (as defined in N.J.A.C. 7:14A-1.2) will ensure that the cooling water quality is the same as the ambient ground water (except for heat content), as required under existing and proposed N.J.A.C. 7:14A-8.5(b)4. Because injection of cooling water other than non-contact cooling water poses a greater risk to the ground water resources of the State than does injection of non-contact cooling water, injection of cooling water other than non-contact cooling water warrants more intensive Department oversight through an individual or general UIC permit.

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Existing N.J.A.C. 7:14A-8.5(b)4 is proposed to be amended and recodified as N.J.A.C.

7:14A-8.5(b)4i and ii. The existing rule text at N.J.A.C. 7:14A-8.5(b)4 remains, but has been recodified for purposes of clarity. There are also two proposed amendments to the rule text. The first specifies that only non-contact cooling water return flows are permissible under this permit by rule. Contact cooling water discharges can be impacted by source materials that can substantially alter the pollutant content of the return flows that are more appropriately regulated by an individual NJPDES-DGW permit. The second proposed amendment incorporates language to allow injection wells to be constructed in accordance with the seepage pit construction requirements at the existing N.J.A.C. 7:14A-8.18 in addition to the well construction requirements at N.J.A.C. 7:9D. Seepage pits that receive air conditioning or non-contact cooling water return flows that satisfy proposed N.J.A.C. 7:14A-8.5(b)4ii, and that are designed and constructed in accordance with N.J.A.C. 7:14A-8.18, are not regulated under N.J.A.C. 7:9D because they do not endanger or threaten subsurface or percolating waters or endanger life (see N.J.A.C. 7:9D-1.3(b)). Underground injection of air conditioning or non-contact cooling water return flows with a quality that is the same as the ambient ground water poses a minimal risk to the ground water resources of the State, regardless of whether the injection well is constructed in accordance with all applicable well construction requirements of N.J.A.C. 7:9D, or applicable seepage pit construction requirements of N.J.A.C. 7:14A-8.18. Seepage pits that receive air conditioning or non-contact cooling water return flows that satisfy proposed N.J.A.C. 7:14A-8.5(b)4ii, and that are designed and constructed in accordance with N.J.A.C. 7:14A-8.18, are not regulated under N.J.A.C. 7:9D because they do not endanger or threaten subsurface or percolating waters or endanger life (see N.J.A.C. 7:9D-1.3(b)). Underground injection of air conditioning or non-contact cooling water return flows with a

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quality that is the same as the ambient ground water poses a minimal risk to the ground water resources of the State, regardless of whether the injection well is constructed in accordance with all applicable well construction requirements of N.J.A.C. 7:9D, or applicable seepage pit construction requirements of N.J.A.C. 7:14A-8.18.

N.J.A.C. 7:14A-8.12 General operating criteria and construction standards

The Department proposes amendments to N.J.A.C. 7:14A-8.12(d) in order that the plugging and abandonment requirements of the subsection do not apply to Class V wells. Plugging and abandonment requirements at N.J.A.C. 7:14A-8.16(d) apply to Class V wells, and the amendment is intended to eliminate any duplication or conflict between the provisions. In addition, the Department is proposing to remove the requirement at N.J.A.C. 7:14A-8.12(d)1 that the abandoned well is to be filled and sealed “in conformance with the requirements of N.J.A.C. 7:9A-12.8, if applicable.” N.J.A.C. 7:9A-12.8 does not apply to wells of Class I, II, III, or IV, which makes this language unnecessary. The Department is also proposing to delete the reference to N.J.S.A. 58:4A-4.1 et seq. because the reference to N.J.A.C. 7:9D sufficiently describes the requirements for closing wells.

The Department is also proposing to add to N.J.A.C. 7:14A-8.12(d)1 a requirement that Class I, II, III, and IV wells be closed in a manner that prevents fluid movement that may cause a violation of the State primary drinking water regulations, or Ground Water Quality Standards, or may otherwise adversely affect human health. This proposed amendment is in response to USEPA concerns that existing NJPDES injection well closure rules are not as stringent as USEPA regulations, such as 40 CFR 144.12(a). These USEPA regulations require closure in a manner that prevents the movement of fluid containing any contaminant into underground

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sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or other health based standards, or may otherwise adversely affect human health.

N.J.A.C. 7:14A-8.16 Specific operating criteria and construction standards applicable to Class V injection wells

The Department proposes to amend N.J.A.C. 7:14A-8.16(b). In the first sentence, the Department proposes to delete the references to N.J.A.C. 7:9 and 9A. The reference to N.J.A.C. 7:9 in the existing rules is incorrect. The correct reference is to N.J.A.C. 7:9D, which governs well construction and maintenance, and sealing of abandoned wells, and is proposed to be added to N.J.A.C. 7:14A-8.16(b)1i. The reference to N.J.A.C. 7:9A is not necessary, because the requirements are proposed to be set forth at N.J.A.C. 7:14A-8.16(b)2. The Department is also proposing to delete the reference to N.J.S.A. 58:4A-4.1 in N.J.A.C. 7:14A-8.16(b)1i because the reference to N.J.A.C. 7:9D sufficiently describes the requirements for closing wells.

A proposed amendment to N.J.A.C. 7:14A-8.16(b)2 replaces the words “individual subsurface sewage disposal systems, septic systems, or disposal beds” with the simpler phrase “subsurface sewage disposal systems.” This phrase, which is already used in, for example, existing N.J.A.C. 7:14A-8.5(b)1, includes all “individual subsurface sewage disposal systems” and septic systems, and is also broad enough to include any facility for which N.J.A.C. 7:9A sets forth construction requirements or specifications. Also, the term “disposal beds” in existing N.J.A.C. 7:14A-8.16(b)2 is superfluous because, as defined at N.J.A.C. 7:9A-2.1, a “disposal bed” is a component of an “individual subsurface sewage disposal system.”

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In addition, the proposed amendment recognizes that different construction requirements or specifications may be set forth in a treatment works approval (TWA) and/or NJPDES permit. Under the existing NJPDES rules and N.J.A.C. 7:9A, certain subsurface sewage disposal systems require a TWA and/or a general or individual NJPDES permit. (See, for example, N.J.A.C. 7:9A-1.8, 3.9, and 3.10.) Some construction requirements or specifications in N.J.A.C. 7:9A (some of the septic tank standards in N.J.A.C. 7:9A-8.2, for example) are not always appropriate for such systems. Moreover, NJPDES permits and/or TWAs may set forth different construction requirements or specifications in order, for example, to ensure that the discharge does not contravene the Ground Water Quality Standards at N.J.A.C. 7:9C, or to protect the environment or underground sources of drinking water (see, for example, existing N.J.A.C. 7:14A-7.6(a), 8.5(d), and 22.5(g)).

The Department is proposing to delete N.J.A.C. 7:14A-8.16(b)3 because application information requirements for Class V wells are more appropriately included at N.J.A.C. 7:14A-8.17, additional requirements for applications for individual UIC permits, and because the information required in N.J.A.C. 7:14A-8.16(b)3 is similar to information identified at N.J.A.C. 7:14A-8.17 and 7.9.

Amendments to N.J.A.C. 7:14A-8.16(d) are also proposed for improved structure and organization. The last sentence of existing N.J.A.C. 7:14A-8.16(d)1, which is the only sentence in that paragraph that pertains to a subset of Class V wells rather than to all Class V wells, is proposed to be rephrased and moved to N.J.A.C. 7:14A-8.16(d)1i. Existing N.J.A.C. 7:14A-8.16(d)2 and 3, which pertain to other subsets of Class V wells, are proposed to be recodified as N.J.A.C. 7:14A-8.16(d)1ii and iii.

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The Department is also proposing to add to N.J.A.C. 7:14A-8.16(d)1 a requirement that Class V wells be closed in a manner that prevents fluid movement that may cause a violation of the State primary drinking water regulations or any Ground Water Quality Standards, or may adversely affect public health or safety. The reference to these regulations and standards in existing N.J.A.C. 7:14A-8.16(d)2, which pertains to large-capacity cesspools and motor vehicle waste disposal wells only, is redundant to part of that added requirement. However, proposed N.J.A.C. 7:14A-8.16(d)1ii(1) includes an amendment to require that when such cesspools and wells are closed, most additional material within or surrounding such cesspools and wells shall be removed where necessary to prevent fluid movement that may adversely affect human health. These requirements are “at a minimum” due to the ability of administrative authorities to adopt ordinances pursuant to N.J.A.C. 7:9A-3.1, which are more stringent than the requirements of N.J.A.C. 7:9A-12.8.

The amendment to N.J.A.C. 7:14A-8.16(d) is proposed in response to USEPA concerns that existing NJPDES injection well closure rules are not as stringent as USEPA regulations, such as 40 CFR 144.12(a) and 144.82. These USEPA regulations require closure in a manner that prevents the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or other health based standards, or may otherwise adversely affect human health.

Under proposed amended N.J.A.C. 7:14A-8.16(d)1iii, subsection (d) is applicable only if the Class V well has a UIC permit. Some Class V wells are plugged and abandoned before a UIC permit is issued for them.

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Proposed amended N.J.A.C. 7:14A-8.16(d)1iii(1) specifies that when septic systems, seepage pits, dry wells and cesspools are abandoned, the gravel, stones, or soil material used for filling the cavities must be clean (as existing N.J.A.C. 7:14A-8.16(d)2i requires when certain other wells are abandoned). Proposed amended N.J.A.C. 7:14A-8.16(d)1iii(1) and (3) remove the requirement that certain plugging and abandonment activities be conducted in a manner acceptable to the administrative authority as defined in N.J.A.C. 7:9A-1 and establishes plugging and abandonment activities be completed in accordance with NJPDES-UIC closure requirements. The plugging and abandonment of injection wells that are regulated under N.J.A.C. 7:9A are subject to proposed new N.J.A.C. 7:14A-8.16(d)1i, rather than proposed N.J.A.C. 7:14A-8.16(d)1iii. Other proposed amendments to N.J.A.C. 7:14A-8.16(d)1iii(3) simplify the language regarding how to manage components or residuals from abandoned individual subsurface sewage disposal systems, and add the requirement that such components or residuals be managed in accordance with the NJPDES rules. The amended language is similar to existing N.J.A.C. 7:14A-8.16(d)2iii.

Subchapter 9. Ground Water Monitoring Requirements for Sanitary Landfills

Subchapter 9 specifies requirements to obtain a discharge to ground water (DGW) permit to conduct ground water monitoring and, where necessary, corrective action at sanitary landfills. This subchapter requires the permittee to perform such monitoring and corrective action in accordance with the requirements in the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and its implementing rules (N.J.A.C. 7:26-2A), and as required by 40 CFR 257 and 258 for municipal solid waste landfills (MSWLFs).

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More specifically, Subchapter 9 sets forth permit application information requirements for sanitary landfills, including requirements for maps, geologic cross sections, soil borings, a hydrogeologic report, and leachate generation calculations. This subchapter also provides the minimum requirements for conducting a ground water monitoring program at sanitary landfills, including the appropriate number of monitoring wells, their location, relevant point of compliance, well construction standards, and recordkeeping and reporting.

As part of this monitoring program, all sanitary landfills are required to conduct a leak detection monitoring program that is designed to determine if the landfill is leaking, and that consists of semi-annual sampling and statistical analyses of the constituents listed in Appendix A. A landfill that is determined to be leaking is required to conduct an assessment monitoring program to determine if the leak is causing contravention of ground water protection standards. A landfill that is leaking and contravening the ground water protection standards is required to implement a corrective action program that continues to assess the offsite migration of pollutants while selecting and implementing a remedial program to stop the leak or control the pollutant release.

The Department proposes to readopt Subchapter 9 without amendments.

Subchapter 10. Ground Water Monitoring Requirements for Hazardous Waste Facilities

Subchapter 10 specifies requirements to obtain a discharge to ground water (DGW) permit to conduct ground water monitoring and, where necessary, corrective action at hazardous waste facilities. In accordance with the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and its implementing rules, particularly N.J.A.C. 7:26G, and with Federal Resource

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ground water monitoring systems are required at all hazardous waste facilities, except when waived under N.J.A.C. 7:26G and 40 CFR Parts 264 and 265, or exempted under N.J.A.C. 7:14A-2.5(a)9.

Subchapter 10 provides monitoring and corrective action requirements that are substantially identical to the Federal rule (40 CFR 264.90 through 264.100), except for format, internal references and definitions. The purpose of this subchapter and the monitoring program is to detect, characterize and respond to releases to the uppermost aquifer from hazardous waste facilities. However, 40 CFR 264.101, entitled “corrective action for hazardous waste management units,” is not included in this subchapter. Only USEPA has the authority to issue permits for such facilities.

Subchapter 10 provides permit application information requirements, minimum requirements for conducting a ground water monitoring program, standards for sampling and analysis of data, requirements to conduct a compliance monitoring program if a hazardous constituent is detected at an established compliance point, requirements to implement a corrective action program if any ground water concentration limits are exceeded, and associated requirements for recordkeeping and reporting. The rules emphasize that it is essential that the monitoring program provide adequate data over a sufficient period of time to characterize the hazardous waste facility area.

In New Jersey, permits for operating hazardous waste facilities are issued pursuant to the New Jersey Hazardous Waste rules at N.J.A.C. 7:26G. Before July 5, 2005, the ground water monitoring required by the Federal RCRA rules for hazardous waste facilities was required in N.J.A.C. 7:26G to be in accordance with a NJPDES permit. As a result of amendments effective

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hazardous waste facility permit, under N.J.A.C. 7:26G, instead of both a hazardous waste facility permit and a NJPDES DGW permit.

The Department proposes to readopt Subchapter 10 without amendments.

Subchapter 11. Procedures and Conditions Applicable to NJPDES-DSW Permits

Subchapter 11 sets forth specific conditions and procedures that are applicable to DSW permits. These are required by the Federal Clean Water Act and relate to monitoring and reporting, requests by other governmental agencies, Federal criteria and standards, variances and modifications, requests and variances under section 316(a) of the Clean Water Act (33 U.S.C. §1326), and discharges from combined sewer overflows.

This subchapter establishes reporting and monitoring conditions for DSW permits, in addition to those under N.J.A.C. 7:14A-6.3, and establishes additional requirements for all existing manufacturing, commercial, mining, silviculture and research facilities. In addition, N.J.A.C. 7:14A-11.4 establishes a process whereby, based on the recommendation of the Army Corp of Engineers, a permit can be denied or conditions imposed if necessary to protect navigation waterbodies. This provision also provides that the District Engineer of the Army Corps of Engineers, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal Agency with jurisdiction over fish, wildlife or public health, may request that conditions be included. Further, the Department may consult with Federal agencies before issuing a draft permit.

Included in this subchapter are enumerated Federal criteria and standards that apply to DSW permits. This subchapter also contains the procedure for requesting a variance from

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certain effluent limitations, and the requirements for the Department to process and respond to a request for a variance associated with the thermal component of a discharge. Where there has been a request for a variance from the thermal requirements, the Department must provide public notice in addition to what would ordinarily be required, and must follow a specific procedure to decide whether to grant or deny the request for a variance.

Subchapter 11 sets forth requirements for permits issued for discharges from combined sewer overflows, which requirements include applicable provisions of the Federal Combined Sewer Overflow (CSO) Policy (59 Fed. Reg. 18688, April 19, 1994) and are incorporated at Appendix C to this subchapter.

Lastly, N.J.A.C. 7:14A-11.13 sets forth requirements pertaining to pollutant minimization plans (PMPs) for polychlorinated biphenyls (PCBs) and the monitoring for PCBs. This rule, along with N.J.A.C. 7:14A-14.4, requires major facilities discharging to PCB-impaired waters to monitor their discharge for PCBs, using a very sensitive method capable of measuring PCBs at levels that previous methods were unable to detect. Based on the results of the monitoring, some of those facilities will be required to develop and implement a PCB Pollutant Minimization Plan. The purpose of the PMP is to provide data to help identify and eliminate discrete sources of PCBs.

The Department proposes to readopt this subchapter with the amendments outlined below.

N.J.A.C. 7:14A-11.13 NJPDES/DSW PCB pollutant minimization plans for major facilities discharging to PCB-impaired waterbodies

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Proposed amendments to this section include language at N.J.A.C. 7:14A-11.13(c)2

regarding dry and wet weather sampling for the purpose of sampling PCBs. It is the Department's intent to be consistent with the sampling requirements imposed for the Delaware River Basin Commission (DRBC) Zones 2-5, and Zone 6 PCB TMDLs. Therefore, proposed amendments to N.J.A.C. 7:14A-11.13(c)2ii state that wet weather sampling conditions are triggered at the onset of a precipitation event of 0.1 inches or greater and an increase in wastewater flow, provided that no rainfall (defined as less than 0.1 inches) has occurred within the previous 72 hours. The amended rule also requires sampling to start no sooner than two hours prior to the start of the rising hydrograph or no later than 30 minutes after the start of the rising hydrograph for the discharge, consistent with the DRBC's Sample Collection Techniques at <http://www.state.nj.us/drbc/PCB-Techniques.pdf>.

Proposed amended N.J.A.C. 7:14A-11.13(c)2iii states that samples collected from continuous discharges during dry and wet weather flows will be taken as 24-hour time-weighted composite samples at a frequency not greater than one aliquot every hour for a nominal sample volume of two liters for both the sample and the field replicate to provide samples that are representative of the entire wet weather discharge. For short term wet weather discharges, the sample may be taken using a grab sample, as a 24-hour composite would not be feasible in such instances.

Proposed new N.J.A.C. 7:14A-11.13(d)4 requires permittees subject to N.J.A.C. 7:14A-11.13 to submit annual progress reports every 12 months from the implementation of PMPs. The annual reports will enable the Department to gauge progress in reducing PCBs and to determine if the PMP is effective as implemented or needs to be modified. At a minimum, the annual progress report shall detail specific progress and actions undertaken by the permittee during the

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PMP. This paragraph also requires that any revisions to a PMP be addressed in the annual report. These requirements are consistent with the requirements imposed by the DRBC's "Recommended Outline for Pollution Minimization Plan Annual Reports for Polychlorinated Biphenyls in the Delaware Estuary."

Subchapter 12. Effluent Standards Applicable to Direct Discharges to Surface Water and Indirect Discharges to Domestic Treatment Works

Subchapter 12 sets forth State and Federal effluent standards based on the Clean Water Act and Federal regulations at 40 CFR 122.44(d). The standards apply to direct discharges to surface water, including storm sewers and indirect discharges to domestic treatment works (DTWs). This subchapter establishes minimum effluent treatment standards for conventional pollutants, oil and grease, phosphorus and chemical specific toxic pollutants.

Subchapter 12 sets forth standards that apply to direct discharges from publicly or privately owned domestic treatment works included in a NJPDES permit, and includes special considerations applicable to effluent limitations for biochemical oxygen demand (BOD₅) or carbonaceous biochemical oxygen demand (CBOD₅), and total suspended solids (TSS), including relief from the standards in certain instances. For those direct discharges for which the Department has not specified a BOD₅ standard, this subchapter incorporates the Federal limitations at section 301 or 306 of the Federal Act and the limitations of the Delaware River Basin Commission, or the Interstate Environmental Commission, depending on the location of the discharge. Requirements for disinfecting wastewater, prohibitions on discharging foam, oil and grease (hydrocarbons), and toxics are also set forth in this subchapter. Indirect users are

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12.10. Appendix B to the subchapter establishes the effluent standards for site remediation projects; and Appendix C establishes conditional effluent standards for new sources, new discharges, or expanded direct discharges.

The Department proposes to readopt Subchapter 12 with the amendments discussed below.

N.J.A.C. 7:14A-12.7 Phosphorus effluent standard

Proposed N.J.A.C. 7:14A-12.7 sets forth the effluent standard for phosphorus, which is being moved verbatim from N.J.A.C. 7:14A-5.3(b). The standard is more appropriately located in Subchapter 12 with the other effluent standards applicable to NJPDES/DSW permits. It is unchanged from the existing rule, which has been implemented for more than 20 years.

Because the Department now routinely calculates water quality based effluent limitations (WQBELs) based on the Surface Water Quality Criteria for phosphorus, the effluent standard of 1.0 mg/L as contained in this rule is no longer typically applied. The Department is retaining the effluent standard as an appropriate tool to regulate discharges when deemed necessary. In addition, the standard is included in many older permits that may have been issued prior to the Department's calculation of WQBELs for phosphorus. At such time as a TMDL process for phosphorus is completed, the appropriate WQBELs will be incorporated into each affected individual DSW permit and the phosphorus effluent standard will be repealed.

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Subchapter 13. Effluent Limitations for DSW Permits

Subchapter 13 includes the conditions, assumptions, and procedures to be used by the Department in determining effluent limitations and permit conditions related to the establishment of effluent limitations. It is applicable to all direct discharges to surface water except stormwater. The procedures may, however, be used to determine effluent limitations for stormwater discharges on a site-specific basis. This subchapter describes the different types of effluent limitations that can be incorporated into a permit, which include technology based limitations in accordance with N.J.A.C. 7:14A-13.3 and 13.4, water quality based effluent limitations (WQBELs) in accordance with N.J.A.C. 7:14A-13.6, limitations based on State effluent standards at N.J.A.C. 7:14A-12, and limitations based on existing effluent quality (EEQ) in accordance with N.J.A.C. 7:14A-13.8.

In many cases, technology based effluent limitations are applicable to an industrial category of dischargers as promulgated under Section 301 of the Federal Clean Water Act. These include secondary treatment standards which are the minimum treatment standards that are imposed on domestic treatment works (DTW) for conventional pollutants pursuant to the State and Federal Clean Water Act. A WQBEL is an effluent limitation imposed when a determination has been made that a discharge will cause, have the reasonable potential to cause, or contribute to an excursion above the Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B. Limitations based on State effluent standards include effluent remediation standards, which are applicable to effluent from ground water remediation projects. An EEQ limitation is imposed when no other limitation is applicable and represents the current level of discharge of the pollutant. This subchapter specifically describes how to go about establishing these different types of effluent limitations and when each would be incorporated into a discharge permit. This

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Additionally, this subchapter discusses the appropriate effluent flow to use in calculating mass limitations, how to express the limitations in the permit, the averaging periods that should be used, and the point of compliance for the limitations, all of which are dependant on the type of parameter and type of discharge.

Other subjects covered in this subchapter are imposition of whole effluent toxicity (WET) limitations and/or action levels and toxicity reduction evaluations (TRE) that require a permittee to investigate the cause of toxicity when not meeting a WET limitation and/or action level. Furthermore, this subchapter contains requirements for imposing action levels in the permit for WQBELs and includes special requirements for non-continuous dischargers. Finally, this subchapter incorporates the Federal anti-backsliding regulations that mandate that when a permit is modified, renewed or reissued, all effluent limitations and standards must be at least as stringent as those in the existing permit.

The Department proposes to readopt Subchapter 13 with the amendments discussed below.

Cross references to N.J.A.C. 7:14A-5.3 contained at N.J.A.C. 7:14A-13.2(a)4, 13.3(c), 13.3(c)2, 13.16(a)6i, 13.21(b)1 and 13.21(c)4 are all proposed to be deleted, as the Department intends to repeal and reserve Subchapter 5 in its entirety. Further, all references to the acute WET effluent standard made in the above cited paragraphs are proposed to be deleted, as the Department is proposing to delete this standard. The reference at N.J.A.C. 7:14A-13.3(c)2 to the phosphorus effluent standard is proposed to be updated to N.J.A.C. 7:14A-12.7.

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N.J.A.C. 7:14A-13.6 Calculation of Water Quality Based Limitations

Proposed new N.J.A.C. 7:14A-13.6(b) allows for the use of a chlorine produced oxidant (CPO) demand adjustment when determining water quality based effluent limitations for CPO in discharge to surface water permits. However, use of the demand adjustment may only be applied within the approved regulatory mixing zone. CPO demand in receiving waters results from the oxidation of reduced chemicals (for example, manganese, iron, certain organics) and bacteria by CPO resulting in the conversion of CPO to chloride ions. Some of these substances react very quickly with CPO such that the conversion appears to occur immediately. The remainder of these substances reacts more slowly, with the conversion generally following first order kinetics. However, the overall effect of these fast-acting and slow-acting substances is to reduce the concentration of CPO in the receiving water, thereby reducing toxicity due to CPO.

The use of a CPO demand adjustment is supported by two scientific studies. In the spring of 1991, the New York Department of Environmental Conservation (NYDEC) completed a field study and evaluation of the fate and impact of chlorine disinfection upon aquatic life from treated wastewater discharges to freshwater streams. The findings of this study, as well as the resulting regulatory implications, are identified in the NYDEC's Division of Water Technical and Operational Guidance Series (section 1.3.1.E). One such finding of this study was that a "rapid decay of residual chlorine upon discharge to a waterbody takes place..." As such, under certain dilution related conditions, the NYDEC guidance allows for a chlorine demand related adjustment to be made in the calculation of water quality based effluent limitations for discharges into freshwater streams.

In 2002, a group of ocean dischargers located in New Jersey, identified as the New Jersey Coastal Group Facilities (the "Group"), conducted a study to evaluate the applicability of a CPO

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individual dischargers in the group. This study was conducted in accordance with a Department-approved work/quality assurance project plan. The study was completed by the Group and their consultants and a final report entitled, "Evaluation of Chlorine Demand in Coastal Waters of New Jersey" (the "report"), dated December 23, 2002 and prepared by Hall & Associates was submitted to the Department. The Department reviewed the results of the report and determined that a "CPO demand" did occur during the travel time that elapsed after the effluent exited the outfall pipe and when it reached the edge of the approved regulatory mixing zones.

The permittee must submit a written request to the Department to have this provision included in its permit and must provide justification for the demand adjustment to be used, which may include, but is not necessarily limited to, studies completed in accordance with a Department approved work/quality assurance project plan.

The Department will be developing a technical manual for CPO that will describe when CPO demand is applicable, how to perform the study, and how the results of the study will be utilized in permits.

N.J.A.C. 7:14A-13.16 Point of Compliance for Effluent Limitations

Proposed new N.J.A.C. 7:14A-13.16(a)8 allows for the use of chlorine decay factors in determining CPO effluent concentrations that are representative of levels being discharged at the end of long outfall pipes with significant travel time. CPO decay is the decrease in CPO concentration that occurs while chlorinated effluent travels through an outfall pipe prior to being discharged into a receiving waterbody.

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Allowing the use of a decay factor is important, because it will allow the permittee to report representative CPO concentrations discharged from the end of the outfall rather than the CPO concentrations leaving the treatment plant. Dischargers who meet certain criteria may request the Department to adjust the effluent CPO concentration that is measured at the treatment plant when it has been demonstrated to the satisfaction of the Department that it is impractical to sample for and measure the effluent CPO concentration directly. Based on previous studies approved by the Department, the effluent travel time in the outfall must be greater than or equal to 15 minutes during critical design conditions in order to qualify for the use of a CPO decay factor.

An example of a scenario where the use of a chlorine decay factor may be appropriate is in the case of some ocean dischargers, where obtaining a representative sample from the effluent outfall thousands of feet off-shore for permit compliance purposes is difficult and potentially dangerous. In such a scenario, sampling at the point of discharge is impractical. Use of a decay factor provides the dischargers with a safe method for predicting the effluent CPO concentration at the end of the pipe. The permittee must submit a written request to the Department to have this provision included in its permit and must provide justification for the factor to be used, which may include, but is not necessarily limited to, studies completed in accordance with a Department approved work/quality assurance project plan.

Since chlorine and chlorine compounds are commonly used to disinfect wastewater, this proposed amendment is important because it allows a discharger to optimize chlorine dosages to ensure adequate disinfection while minimizing the amount of chlorine being discharged to the environment.

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The Department will be developing a technical manual for CPO that will describe when CPO decay is applicable, how to perform the study and how the results of the study will be utilized in permits.

N.J.A.C. 7:14A-13.18 Inclusion of action levels for water quality based effluent limitations

The Department is proposing new N.J.A.C. 7:14A-13.18(f), which contains the requirements for imposition of an acute WET action level of $LC50 \geq 50$ percent in certain surface water permits. In conjunction with this action, the Department is also proposing to delete the $LC50 \geq 50$ percent effluent standard, located at existing N.J.A.C. 7:14A-5.3 (see summary of N.J.A.C. 7:14A-5.3 above for deletion of acute WET effluent standard).

For those permittees that currently have an existing and effective acute WET limit based on the effluent standard of $LC50 \geq 50$ percent, the Department is proposing to remove this permit requirement as an effluent limitation in a future permit action and retain the requirement as an action level, in most cases.

Proposed new N.J.A.C. 7:14A-13.18(f)1 describes how action levels for acute WET shall be established under three possible permit scenarios, and the resulting WET regulatory impacts. Proposed N.J.A.C. 7:14A-13.18(f)1i states that when the Department determines that an acute WET WQBEL is the appropriate limit in accordance with N.J.A.C. 7:14A-13.5, and is less stringent than an existing and effective WET effluent limitation of an $LC50 \geq 50$ percent, the Department shall include the WQBEL in the renewal permit, but retain the $LC50 \geq 50$ percent as an action level. Proposed N.J.A.C. 7:14A-13.18(f)1ii states that when the Department determines that the discharge from a facility fails to show cause or reasonable potential to cause an excursion above a surface water quality standard for WET, as determined by N.J.A.C. 7:14A-

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percent, the Department shall retain this value as an action level in the renewal permit. Proposed N.J.A.C. 7:14A-13.18(f)1iii states when the Department determines that a chronic WET WQBEL is the appropriate and proposed limit in accordance with N.J.A.C. 7:14A-13.5 and 6 and the permit contains an existing and effective WET effluent limitation of an $LC50 \geq 50$ percent, no WET action level will be included in the renewal permit. Proposed N.J.A.C. 7:14A-13.18(f)1iv states that an action level for WET established in a permit may be carried forward into a renewal permit as a permit condition, unless a more stringent WQBEL is included in the permit.

Proposed N.J.A.C. 7:14A-13.18(f)2 provides that if two out of six consecutive acute WET tests demonstrate that the effluent exceeds the acute WET action level, the permittee shall initiate a toxicity reduction evaluation in accordance with N.J.A.C. 7:14A-13.17. The purpose of the TRE is to investigate the causes of non-compliance and to implement corrective measures to ensure the discharge does not contain significant toxicity, which will further ensure that no degradation of the receiving waters occurs. Upon review of the TRE, the Department may require toxicity reductions in a permit action. The permittee may also choose to perform an antidegradation analysis to demonstrate that the toxicity of the effluent is not causing degradation of the receiving water.

The Department anticipates permittees' continued compliance with the $LC50 \geq 50$ percent test in almost all circumstances. By retaining the acute WET effluent standard of $LC50 \geq 50$ percent as an action level at N.J.A.C. 7:14A-13.18(f)1i and ii, the Department does not anticipate degradation occurring in any receiving waters of the State in accordance with the Surface Water Quality Standards at N.J.A.C. 7:9B-1.5(d).

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N.J.A.C. 7:14A-13.21 Implementation of Water Quality Based Effluent Limitations

The amendments proposed at N.J.A.C. 7:14A-13.21(b)1 and 13.21(c)4 deletes language referring to an acute whole effluent toxicity limitation in accordance with N.J.A.C. 7:14A-5.3, which is being repealed, and adds language referencing the new whole effluent toxicity action level provisions at N.J.A.C. 7:14A-13.18(f).

Subchapter 14. Monitoring Frequency Requirements Applicable to DSW and SIU Permits

Subchapter 14 sets forth the minimum monitoring frequency requirements for parameters included in DSW and SIU permits that are either monitored and limited, or monitored only. The intent of the subchapter is to provide meaningful and adequate information regarding effluent quality, while considering effluent variability. Inclusion of these minimum monitoring frequencies provides a consistent database for use in evaluating facility performance. This subchapter sets forth these frequencies for effluent monitoring that are required to be conducted in such a way as to be representative of the regulated activity. Reasons for an increase or decrease in monitoring frequency are also explained.

The Department proposes to readopt Subchapter 14 without amendments.

Subchapter 15. Procedures for Decision Making - NJPDES Permit Processing Requirements

Subchapter 15 sets forth the procedural stages that the Department shall follow when processing an individual NJPDES permit and, as applicable, a general NJPDES permit. These

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procedural stages include conducting a permit preapplication conference when requested, receiving a permit application, performing an administrative and technical review of the application, preparing a draft permit, issuing a public notice, inviting public comment, holding a public hearing on a draft permit as applicable, issuing a final permit decision, responding to comments and establishing an administrative record for the permit action. The procedural stages of the NJPDES permit application and decision process are outlined in Appendix A of this subchapter as a guide for permit applicants. The procedures for a stay and hearing request are codified separately at N.J.A.C. 7:14A-17, because these are actions which occur after a permit is issued.

The Department proposes to readopt Subchapter 15 with the amendment discussed below.

N.J.A.C. 7:14A-15.17 Administrative record for the final permit

At N.J.A.C. 7:14A-15.17(c), the Department is proposing to update the contact information for a review of the administrative record.

Subchapter 16. Transfer, Modification, Revocation and Reissuance, Renewal, Suspension, and Revocation of Existing Permits

Subchapter 16 sets forth the causes for and the procedures governing the transfer, modification, revocation and reissuance, renewal, suspension, and revocation of existing NJPDES permits. The procedures are applicable to all NJPDES permits. Specific procedures governing authorizations issued under general NJPDES permits are set forth at N.J.A.C. 7:14A-

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6.13. The procedure governing the revocation of permits is located in both Subchapter 16 and N.J.A.C. 7:14A-2.7(d).

The Federal National Pollutant Discharge Elimination System (NPDES) and Underground Injection Control (UIC) regulations, which are similar to those in Subchapter 16, may be found at 40 CFR 122.61, 122.62, 122.63, 122.64, 144.38, 144.39, 144.40, and 144.41. However, the counterpart to permit termination procedures in 40 CFR 122.64(b) that apply if a discharge is permanently terminated is contained in N.J.A.C. 7:14A-2.7, rather than in Subchapter 16.

The Department proposes to readopt Subchapter 16 without amendments.

Subchapter 17. Procedures for Decision Making - Adjudicatory Hearings and Stays of Permit Conditions

Subchapter 17 addresses the procedures for requesting an adjudicatory hearing and stay of permit conditions, and includes the criteria that the Department will use when evaluating such requests. The procedures described in this subchapter are applicable to NJPDES permits.

This subchapter describes the actions for which an adjudicatory hearing request may be made, the information a permittee or other interested person must submit when making a request for an adjudicatory hearing or requesting to be made a party to the action, and the procedure for making the request. This subchapter also describes the criteria that an interested person must meet in order to be considered a party to the action, describes the criteria the Department will use in determining whether to grant or deny a request for an adjudicatory hearing, addresses the notice and conduct of an adjudicatory hearing, and sets forth information requirements and the procedure for requesting a stay of permit conditions and the Department's decision making

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The Department proposes to readopt Subchapter 17 without amendments.

Subchapter 18. Public Access to Information and Requirements for Department Determination of Confidentiality

Subchapter 18 addresses the procedures for obtaining information from the Department's files and for a permittee to make a claim of confidentiality for proprietary information to protect trade secrets. The procedures described in this subchapter are applicable to all permits issued under the NJPDES permitting authority.

Information obtained by the Department is available to the public, although a permittee may assert a claim of confidentiality for certain types of information. This subchapter addresses the procedure for making a claim of confidentiality, the fees for such a claim, and the means and criteria by which the Department will make its determination of confidentiality. Under the circumstances identified in this subchapter, confidential information may be disclosed to an authorized agent of the Department, or a State, interstate, or Federal agency.

The Department proposes to readopt Subchapter 18 without amendments.

Subchapter 19. Pretreatment Program Requirements for Local Agencies

Subchapter 19 incorporates the pretreatment program requirements specified under the Federal General Pretreatment Regulations at 40 CFR Part 403, the New Jersey Water Pollution Control Act, and any other applicable regulations, statutes, and policy requirements. These rules specify the pretreatment program requirements for both delegated local agencies (such as local

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without an approved pretreatment program. The amendments proposed have been developed with and reviewed by the Pretreatment Task Force. The Pretreatment Task Force is comprised of representatives from industries, delegated and non-delegated local agencies, environmental associations, and Department personnel. This Task Force met on three occasions (once in 2004, 2005 and 2006) to discuss various aspects of these rules.

The Department proposes to readopt the subchapter with the amendments described below.

N.J.A.C. 7:14A-19.3 Industrial pretreatment program requirements for all local agencies

The Department proposes to amend N.J.A.C. 7:14A-19.3(b)1 to make it clear when local agencies must submit a copy of their rules and regulations or sewer use ordinances to the Department. Most local agencies have already provided these documents to the Department. As a result, the Department will require that a copy of the rules and regulations or sewer use ordinance be submitted only as required under an applicable permit, upon Department request, or when the local agency modifies its rules and regulations or sewer use ordinance.

Proposed amended N.J.A.C. 7:14A-19.3(b)2ii adds the requirement that the annual reports submitted by non-delegated local agencies (non-DLAs) must include information on whether the publicly owned treatment works (POTW) accepts hauled wastes and, if so, the types of wastes that it accepts. The Department is requiring submission of this information to determine which POTWs are currently accepting such wastes, and to track where such wastes are being disposed. These annual reports are to be submitted on forms provided by the Department.

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The Department proposes to amend N.J.A.C. 7:14A-19.3(c)7i to require DLAs to sample their influent, effluent, and sludge for molybdenum, ammonia, and phosphorus in addition to the priority pollutants listed at N.J.A.C. 7:14A-4, Appendix A, Tables II and III. Molybdenum and ammonia are newly listed as "pollutants of concern" under the USEPA's Local Limits Development Guidance (USEPA, Office of Wastewater Management, July 2004) and, therefore, including these parameters in the annual monitoring evaluation is consistent with the updated USEPA guidance. Further, the sampling will help the DLAs and the Department to determine if such pollutants are "of concern," requiring further sampling and analysis to develop local discharge limits. Phosphorus has been added to this list in an effort to derive municipal treatment works removal efficiencies for this pollutant. Based on input from the Pretreatment Task Force, the Department recognizes that it would be difficult for facilities to begin immediately monitoring for these additional parameters; therefore, at proposed new N.J.A.C. 7:14A-19.3(c)7iii, the Department is proposing to delay implementation of monitoring for these parameters for one year after the effective date of these amendments. The one-year time period would enable local agencies to modify and/or establish new contracts with certified laboratories, which generally conduct the monitoring and analysis for the treatment plants.

Proposed new N.J.A.C. 7:14A-19.3(e) is based on the Federal General Pretreatment Regulations at 40 CFR Part 403. On October 14, 2005, USEPA finalized revisions to these regulations as part of the "Streamlining Rule." Several changes made under the Streamlining Rule provided control authorities with the flexibility to reduce the burden of technical and administrative requirements without undermining the environmental objectives of the

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Program. USEPA does not require control authorities to adopt those changes under the Streamlining Rule that make the Federal rule less stringent. As a result of the non-mandatory requirements under the Streamlining Rule, the Department held a meeting with the Pretreatment Task Force to determine which, if any, streamlining changes should be incorporated into the sewer use ordinance or rules and regulations of the delegated local agencies in New Jersey. Specifying which changes need to be incorporated in the ordinance or rules of a delegated local agency will help ensure that the pretreatment program is implemented in a consistent manner throughout the State. Based on input from the Pretreatment Task Force meeting held October 2, 2006, the following streamlining changes were deemed to have sufficient potential to reduce some administrative and/or technical burden on the pretreatment staff and therefore should be required provisions within the sewer use ordinance or rules and regulations of a delegated local agency: the ability to grant sampling waivers to categorical industrial users, consistent with 40 CFR 403.12(e)(2); the ability to develop and utilize best management practices (BMPs) in lieu of numeric local limits, consistent with 40 CFR 403.5(c)(4) and 403.8(f)(1)(B)(3); the ability to use equivalent concentration limits, consistent with 40 CFR 403.6(c)(6); the ability to use equivalent mass limits, consistent with 40 CFR 403.6(c)(5); and the ability to define and classify “non-significant categorical industrial users” (NSCIUs), including the criteria, reporting, and oversight conditions consistent with 40 CFR 403.3, 403.8, and 403.12, respectively. The Department is proposing N.J.A.C. 7:14A-19.3(e)1 through 5 to specifically incorporate these changes in the local sewer use ordinance or rules and regulations.

The Department proposes new N.J.A.C. 7:14A-19.3(f) to specify a time frame wherein DLAs must submit an updated sewer use ordinance or rules and regulations that include the

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submit the required information no later than 180 days after the effective date of these proposed amendments. The Department anticipates that the 180-day time frame is sufficient for each DLA to make the necessary changes to its local sewer use ordinance or rules and regulations.

N.J.A.C. 7:14A-19.4 Enforcement response plan

The Department is proposing to delete N.J.A.C. 7:14A-19.4(f) and (g) because the submission dates specified therein have already passed and these subsections are no longer necessary.

N.J.A.C. 7:14A-19.5 Enforcement requirements in an industrial pretreatment program

The Department is proposing to delete N.J.A.C. 7:14A-19.5(c) and (d) because the submission dates have already passed and these subsections are no longer necessary.

N.J.A.C. 7:14A-19.6 Additional requirements for delegated local agencies

The Department proposes to amend N.J.A.C. 7:14A-19.6(a)7, consistent with the required Streamlining changes under 40 CFR 403.8(f)(2)(vi). Under the existing rule, each significant indirect user (SIU) had to be evaluated by a delegated local agency at least once every two years for the need for a slug control plan. Under the Streamlining Rule and as specified in this amendment, each SIU must now be evaluated by a delegated local agency within a specified time frame, and any SIU that needs a slug control plan must have the plan incorporated into its discharge permit.

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The Department also proposes to amend N.J.A.C. 7:14A-19.6(f) consistent with the streamlining changes under 40 CFR 403.12(m). This proposed amendment specifies the signatory requirement for the annual report submitted pursuant to 40 CFR 403.12(i).

Proposed new N.J.A.C. 7:14A-19.6(j) is consistent with the Streamlining Rule at 40 CFR 403.6(c)(5)(iii). This proposed new subsection establishes the conditions and criteria that DLAs must follow when establishing equivalent mass limits in industrial pretreatment program permits.

Proposed new N.J.A.C. 7:14A-19.6(k) is consistent with the Streamlining Rule at 40 CFR 403.6(c)(5)(iv). This new subsection identifies the pollutants for which equivalent mass limits would not be appropriate and, therefore, may not be utilized.

N.J.A.C. 7:14A-19.7 Development of local limits by local agencies

The Department proposes to amend N.J.A.C. 7:14A-19.7(a) to incorporate a reference to the headworks analysis exemptions under proposed new N.J.A.C. 7:14A-19.7(b) and (c).

The Department proposes to amend N.J.A.C. 7:14A-19.7(a)1 by updating the reference to USEPA guidance by incorporating by reference a guidance document on local limit development from USEPA, Office of Wastewater Management, that was published in July 2004.

Proposed new N.J.A.C. 7:14A-19.7(b) specifies the criteria that a local agency must meet in order to perform limited sampling in lieu of conducting a complete headworks analysis. These criteria are consistent with current Department policy whereby a local agency treating domestic-only waste, and whose NJPDES discharge permit does not include a water quality based effluent limit for a heavy metal, can conduct limited headworks-related sampling. A complete headworks analysis consists of a minimum of seven consecutive days of sampling for pollutants of concern in the influent, effluent, sludge, in-plant streams, and a domestic-only wastewater

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sample point in the collection system. The limited sampling allowed under the proposed rule will require only one sampling event for the specified pollutants in the influent, effluent, and sludge. Results of this limited sampling could be used by the local agency or the Department to formulate local limits, as necessary (such as for an SIU located within that local agency's service area). If a water quality based effluent limit for a metal is added to the local agency's discharge permit, the local agency will be required to follow the limit development requirements at proposed amended N.J.A.C. 7:14A-19.7(a).

Proposed new N.J.A.C. 7:14A-19.7(c) would exempt treatment works operated by schools and correctional facilities from the requirement to conduct pretreatment related headworks analysis monitoring, provided they do not treat any wastewaters generated offsite, and the local agency's NJPDES wastewater discharge permit does not have a water quality based effluent limit for a heavy metal. A headworks analysis is one of the steps necessary to develop local discharge limitations. Although these limitations apply to all indirect users, the primary purpose of developing limitations is to control wastewater discharges from industrial and non-domestic sources. Where a treatment works does not receive industrial or non-domestic wastewater into its collection system, development of local limitations is not necessary. Because treatment plants operated by schools and correctional facilities generally do not receive or have the potential to receive wastewater discharges from industrial or outside sources, the Department proposes to exempt these facilities from the requirement to conduct the monitoring associated with development of local discharge limitations. However, if such facilities become subject to a water quality based effluent limit for a heavy metal, a headworks analysis will become necessary. Influent and upstream monitoring will enable the permittee to identify sources that contribute pollutants for which the treatment works has a water quality based effluent limitation.

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The proposed amendment at N.J.A.C. 7:14A-19.7(f)2 requires that delegated local agencies submit the local limits re-evaluation within six months after the effective date of the delegated local agency's renewed NJPDES discharge permit. The Department believes that six months is sufficient for a local agency to complete a technical reevaluation because, under Federal regulations, a local agency is given one year (under 40 CFR 403.8(b)) to develop its entire pretreatment program, which would include development of local limits. The proposed amendments is consistent with 40 CFR 122.44(j)2ii. The proposed amendment will also allow a delegated local agency to complete a local limit re-evaluation upon renewal of its NJPDES discharge to surface water permit, rather than complete this activity as part of the permit renewal application process.

The proposed amendment at N.J.A.C. 7:14A-19.7(g) clarifies that the written technical re-evaluation of local limits must be completed by DLAs.

Existing N.J.A.C. 7:14A-19.7(g)5 has been recodified as (g)6, and has been amended to update a cross-reference.

Proposed new N.J.A.C. 7:14A-19.7(g)5 requires a DLA, as part of its local limit re-evaluation, to provide a list of all parameters that are regulated in the renewal permit. Local limits are designed to ensure that, among other things, the delegated local agency complies with all discharge limitations specified within its NJPDES discharge permit. Having the DLA generate this list with known environmental criteria (such as permit limits and sludge quality criteria) will help to identify pollutants that must be evaluated to determine the need for local limits to control them.

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The Department proposes additional language at N.J.A.C. 7:14A-19.7(h) (recodified current (f)) to make it clear that only delegated local agencies must complete the written technical re-evaluation of local limits.

N.J.A.C. 7:14A-19.8 Requirements for issuance of IPP permits by delegated local agencies

The proposed amendment to N.J.A.C. 7:14A-19.8(b)2 is a reference change as a result of the Streamlining Rule at 40 CFR Part 403, discussed above.

Existing N.J.A.C. 7:14A-19.8(d) requires that delegated local agencies include in their rules and regulations or sewer use ordinance the procedural and substantive requirements for an Industrial Pretreatment Program (IPP) permit application, permit renewal, modification, suspension or revocation. The Department is proposing to amend N.J.A.C. 7:14A-19.8(d)2 to require that the permit processing requirements for DLAs must be consistent with those followed by the Department under N.J.A.C. 7:14A-15.10 through 15.16. A DLA is required, under the existing rule, to have specific procedural requirements regarding permit issuance within its rules and regulations or local sewer use ordinance. The proposed amendments under N.J.A.C. 7:14A-19.8(d)2 will now require that those procedures be consistent with those under the NJPDES rules at N.J.A.C. 7:14A-15, resulting in uniform NJPDES permit procedures throughout the State.

The Department is proposing new N.J.A.C. 7:14A-19.8(d)3 to further specify and clarify that the permit renewal, modification, suspension, and revocation procedures must be consistent with those followed by the Department under N.J.A.C. 7:14A-16.3 through 16.6.

The Department proposes new N.J.A.C. 7:14A-19.8(d)5 to ensure that permittees regulated under a DLA-issued discharge permit, which are considered NJPDES permits in

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as those permittees regulated under a Department-issued permit. Inclusion of this requirement in the rules is consistent with the existing rules at N.J.A.C. 7:14A-15, Procedures for Decision Making, in which the Department set forth its procedure for issuance of discharge permits. The proposed amendment specifies that the appeal process must be consistent with Subchapter 17. In this way, the Department intends to assure that the appeal by a permittee that receives a permit from a DLA is handled in the same way as the appeal by a permittee that receives a permit from the Department.

The Department proposes new N.J.A.C. 7:14A-19.8(e) to specify a time frame whereby DLAs must submit an updated sewer use ordinance or rules and regulations that include the criteria specified under N.J.A.C. 7:14A-19.8(d). After the effective date of the amendments to these rules, the Department will initiate a review of all DLA rules and sewer use ordinances to determine consistency with the criteria at proposed amended N.J.A.C. 7:14A-19.8(d). Where the Department determines that a DLA's rules, regulations, or sewer use ordinance must be modified, the Department will notify the DLA in writing and the DLA will have 90 days from the date of notification to submit the required modifications. The Department anticipates that a DLA needing to update its local sewer use ordinance or rules and regulations to address these modifications will insert the language at N.J.A.C. 7:14A-15 and 16 into its rules. As such, a 90-day time frame for submission of a draft local sewer use ordinance or rules and regulations to the Department for review should be sufficient.

N.J.A.C. 7:14A-19.10 Public notice and public hearing requirements for delegated local agencies

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The proposed amendments to N.J.A.C. 7:14A-19.10(b) are consistent with the changes under the Streamlining Rule. These changes include a reference change, and revised language consistent with 40 CFR 403.8(f)(2)(viii) regarding the newspaper that can be used for public notice regarding facilities that meet the Federal significant non-compliance criteria. Under the existing rule, this publication was to be made in the “official daily newspaper designated by the local agency.” This amendment will now allow the publication to occur in any newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the delegated local agency.

The Department proposes new N.J.A.C. 7:14A-19.10(f) to specify the public hearing requirements that would apply to a proposed permit action. Public hearings, when held, must be conducted consistent with N.J.A.C. 7:14A-15.12. As a result of adding the public hearing requirements under this section, the Department is proposing to amend the section heading to indicate that the section addresses both public notice and public hearing requirements.

N.J.A.C. 7:14A-19 Appendix A - Enforcement Response Plan

The Enforcement Response Plan (ERP) describes how a delegated local agency will investigate and respond to instances of indirect user noncompliance, and includes time frames by which a DLA must respond to noncompliance situations. Under "Unauthorized Discharges," in cases where a user discharges without a permit, the Department proposes to amend the Enforcement Response to include a public notice requirement whereby the DLA must publish notice of the discharge in the newspaper when there is harm to the POTW or the environment. This requirement is consistent with the Federal regulations at 40 CFR 403.8(f)(2)(viii), and the public notice requirements at N.J.A.C. 7:14A-19.10(b). Various parts of the ERP are proposed

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DLA issue a notice of violation (NOV) for certain violations. Likewise, the Department is proposing amendments in the Time Frame column to require a 60-day time frame for issuance of the NOV. These proposed amendments make the ERP consistent with N.J.A.C. 7:14A-19.3(c)4.

Subchapter 20. Standards for the Use or Disposal of Residual

Subchapter 20 is applicable to all facilities that generate residual as a function of the treatment of wastewater. Pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Department is responsible for administering a regulatory program for the use and management of residual generated by domestic and industrial treatment works in a manner that protects public health and the environment.

On February 19, 1993, under Sections 405(d) and (e) of the Federal Clean Water Act, the USEPA promulgated regulations (40 CFR Part 503) to protect public health and the environment from any reasonably anticipated adverse effects of certain pollutants that may be present in sewage sludge. In May 1997, the Department adopted standards for use or disposal of sludge in the NJPDES rules at N.J.A.C. 7:14A-20 to bring the existing State sludge program requirements into conformance with the 1993 Federal sludge program requirements. (See 28 N.J.R. 380(a) and 29 N.J.R. 1704(a).) The Department incorporated into its rules at N.J.A.C. 7:14A-20 the standards, management practices, monitoring, reporting, and recordkeeping requirements specific to sewage sludge land application found in 40 CFR Part 503, and applied the requirements to all residual.

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The Department strongly supports the beneficial use of exceptional quality and non-exceptional quality residuals, and recognizes that such use presents potential sources of nuisance and nutrient contamination when not managed properly.

The Department proposes to readopt N.J.A.C. 7:14A-20 with amendments. A description of the proposed amendments follows.

N.J.A.C. 7:14A-20.1 Purpose

The Department proposes to amend N.J.A.C. 7:14A-20.1(a)2 to state that the subchapter establishes permit application requirements, standards, prohibitions and requirements for the operation and closure of all surface disposal sites. The existing rule focuses only on sewage sludge surface disposal sites and does not address industrial (non-sewage) residual surface disposal sites. There are, however, active, industrial residual impoundments which are, due to the size and volume of residual that has accumulated, essentially, surface disposal sites. Such facilities are not consistent with the intent of N.J.S.A. 13:1E-42. Therefore, the Department proposes amendments to N.J.A.C. 7:14A-20.1(a)2 to clarify that this subchapter imposes standards on all surface disposal sites, and prohibits, under proposed amended N.J.A.C. 7:14A-20.8, new surface disposal sites. In addition, the Department proposes to amend the definition of “surface disposal site” at N.J.A.C. 7:14A-1.2 so that the term is applicable to both sewage sludge and non-sewage sludge surface disposal sites.

The Department proposes new N.J.A.C. 7:14A-20.1(a)3 to refer to requirements and standards for residual reed beds, which are proposed at amended N.J.A.C. 7:14A-20.9. The Department proposes new N.J.A.C. 7:14A-20.1(a)4 to refer to requirements for residual blending and distribution, which are proposed at amended N.J.A.C. 7:14A-20.12.

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The Department proposes to recodify existing N.J.A.C. 7:14A-20.1(a)3 and 4 as N.J.A.C.

(a)5 and 6, respectively.

N.J.A.C. 7:14A-20.2 Applicability

The Department proposes to amend N.J.A.C. 7:14A-20.2(a)2 to state that the subchapter no longer applies only to the closure of a surface disposal site, but also to the operating entity of a surface disposal site, to residual placed on a surface disposal site, and to the surface disposal site. The Department proposes to add N.J.A.C. 7:14A-20.2(a)3 to state that the subchapter applies to reed beds (see proposed N.J.A.C. 7:14A-20.9) and N.J.A.C. 7:14A-20.2(a)4 to state that the subchapter applies to residual blending and distribution (see proposed N.J.A.C. 7:14A-20.12).

The Department proposes to recodify existing N.J.A.C. 7:14A-20.2(a)3 as (a)5.

The Department proposes to amend N.J.A.C. 7:14A-20.2(b)1 and 2 and (c)1 through 4 by replacing a repetitive list of regulatory conditions with a newly defined term, “exceptional quality.” Existing N.J.A.C. 7:14A-20.2(b)1 and (b)2 and N.J.A.C. 7:14A-20.2(c)1 through (c)4 condition the applicability of certain requirements on whether or not sewage sludge or material derived from sewage sludge meets the pollutant concentrations in 40 CFR 503.13(b)3, the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)1 through 8. The Department proposes to define the term “exceptional quality” to describe a residual that meets these same pollutant concentrations, pathogen requirements, and vector attraction reduction requirements. See the summary of proposed N.J.A.C. 7:14A-1.2.

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The Department is frequently presented with the question whether the exemption at N.J.A.C. 7:14A-20.2(b) applies to the use of material derived from residual (such as soil blends made with sewage sludge) as fill and as the structural body of berms. The answer is that it does not. The key to this exemption is that the material derived from sewage sludge must be applied to the land. If a material derived from sewage sludge is not being used for land application (that is, to condition the soil or fertilize vegetation), it is not being applied to the land and would be subject to regulation under 40 CFR Part 503 and N.J.A.C. 7:14A-20. For example, making a topsoil blend and then placing the topsoil blend at depths below any reasonable root zone would be considered surface disposal, not land application.

In order to clarify this point, the Department has strengthened certain requirements within Subchapter 20 regarding the management of material derived from residual, such as soil blends. Specifically, and as explained further below in the relevant sections of the summary, the Department proposes to state at N.J.A.C. 7:14A-20.8(b) that the use of residual or material derived from residual as fill is prohibited. The Department also proposes new requirements for residual blending and distribution operations at N.J.A.C. 7:14A-20.12.

N.J.A.C. 7:14A-20.5 Establishing limitations, standards and other permit conditions

The Department proposes to amend N.J.A.C. 7:14A-20.5(a)3ii by replacing a cross-reference to N.J.A.C. 7:14A-20.7(h)1 with the phrase “exceptional quality residual” which employs the newly defined term “exceptional quality.”

The Department proposes to further amend N.J.A.C. 7:14A-20.5(a)3ii to expand the list of reasons for which the Department may require exceptional quality residual land application programs to comply with the general requirements in N.J.A.C. 7:14A-20.7(b)1 and the

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the Department to act if the general requirements or management practices are needed “to protect public health and the environment.” Proposed N.J.A.C. 7:14A-20.5(a)3ii adds another explicit reason, which is “to prevent the loss of excess nutrients to the waters of the State, or to address the release of air contaminants consistent with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.” Although the existing language is broad enough that it includes the proposed new enumerated reasons, the proposed language more specifically denotes that runoff and odors are causes for action under N.J.A.C. 7:14A-20.5(a)3ii.

The Department proposes to amend N.J.A.C. 7:14A-20.5(a)3iii by adding the word “all” to clarify that for both exceptional quality and non-exceptional quality residual, the Department may require additional steps to prevent odors and other air pollution. The Department also proposes to expand the areas of activity addressed in N.J.A.C. 7:14A-20.5(a)3iii from “treatment” to “treatment, delivery, storage, and land application” since, in the Department’s experience, odors and other air pollution can be generated at any point along the continuum from treatment of residual to land application of residual.

The Department proposes to amend N.J.A.C. 7:14A-20.5(a)3iv to add to the list of specific reasons for which the Department may require a permit or a Letter of Land Application Management Approval. Existing N.J.A.C. 7:14A-20.5(a)3iv allows the Department to act if a permit or Letter of Land Application Management Approval is needed “to protect public health and the environment.” Proposed amended N.J.A.C. 7:14A-20.5(a)3iv adds “to prevent the loss of excess nutrients to the waters of the State, or to address the release of air contaminants consistent with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.” to the list. Although the existing language is broad enough to include the proposed new enumerated reasons, the

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7:14A-20.5(a)3iv.

The Department proposes to amend N.J.A.C. 7:14A-20.5(b) to replace a reference to N.J.A.C. 7:14A-20.9 with a reference to N.J.A.C. 7:14A-15.8. This is necessary since the Department proposes to repeal existing N.J.A.C. 7:14A-20.9, which is duplicative of existing N.J.A.C. 7:14A-15.8.

N.J.A.C. 7:14A-20.6 Environmental assessment

The Department proposes to amend N.J.A.C. 7:14A-20.6(a) to delete the sentence, “Where the permitted activity shall not require the construction of additional infrastructure the Department shall waive this requirement.” This provision is incorporated into proposed new N.J.A.C. 7:14A-20.6(b)2.

The Department proposes new N.J.A.C. 7:14A-20.6(b) to address those operations that are exempt from the requirement to submit an environmental assessment.

The Department proposes new N.J.A.C. 7:14A-20.6(b)1 and 2 as a clarification and consolidation of existing requirements. When proposing existing N.J.A.C. 7:14A-20.6, the Department stated that “environmental assessment requirements at proposed N.J.A.C. 7:14A-20.6 do not extend to the residual land application site unless otherwise specifically stated.” (See 28 N.J.R. 380(a), 476 (February 5, 1996).) This is because the act of applying residual to land does not change the fundamental nature of the land to which it is applied. A farm fertilizing crops remains a farm, with or without the use of residual as a fertilizer. An environmental assessment is instead required for the location where a residual will be processed (that is, where it will be prepared to be land applied). Processing of residual involves infrastructure and activity

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Proposed N.J.A.C. 7:14A-20.6(b)1 specifies that an environmental assessment is not required for land to which residual is or will be applied. This exemption applies to land where either exceptional or non-exceptional quality residual is applied. However, if the residual to be land applied is non-exceptional quality then a Letter of Land Application Management Approval (LLAMA) must be obtained. The LLAMA process includes a review of the suitability of the proposed site for the land application of non-exceptional quality residual and establishment of appropriate setbacks and other site controls, as necessary. A LLAMA application must be submitted to the Department and copied to the local municipality. See the discussion of N.J.A.C. 7:14A-20.7(a)3 below, and also existing N.J.A.C. 7:14A-20.7(a)3ii.

Proposed N.J.A.C. 7:14A-20.6(b)2 is a reiteration of part of existing N.J.A.C. 7:14A-20.6(a). Both the existing and proposed provisions exempt from the environmental assessment requirement those applications for approval to conduct a new activity at an existing treatment works that does not include proposed new infrastructure.

The Department proposes new N.J.A.C. 7:14A-20.6(b)3 to exempt from the requirement for an environmental assessment those operations that qualify for authorization under a residual use or disposal general permit. The Department develops general permits for discharge categories that require similar operating and monitoring conditions. The Department has determined that facilities that operate in compliance with the conditions of a general permit are unlikely to cause negative environmental impact. Facilities that exceed the design capacities and standards of a general permit are not eligible for general permit authorization and must, instead, apply for an individual permit where the requirement to submit an environmental assessment

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would not lead to more protective conditions (since the conditions of the general permit apply uniformly to all that qualify for authorization) and would, in fact, discourage smaller operations from applying for the general permit.

N.J.A.C. 7:14A-20.7 Land application

N.J.A.C. 7:14A-20.7(a) describes additional application requirements for those seeking NJPDES permits for the land application of residual. Under N.J.A.C. 7:14A-20.7(a)1, all applicants for a NJPDES permit for land application of residual must submit information on the characteristics of the residual proposed to be land applied to the extent known at the time. The Department proposes to amend N.J.A.C. 7:14A-20.7(a)1, 1i, 1ii and 1iv to require characterization of residual additives used in the production or development of marketable residual products. Because residual additives have a direct impact on the quality of marketable residual product, the Department proposes to require characterization of residual additives to assure compliance with the quality standards at N.J.A.C. 7:14A-20.7(c). This rule as proposed for amendment requires information on the origin, volume and chemical characteristics of residual additives. The characterization must include, at a minimum, the same analyses that are required for residual intended for land application. The Department proposes to define the term “residual additives” at N.J.A.C. 7:14A-1.2. See also the discussion of proposed N.J.A.C. 7:14A-20.7(i)6 below.

The Department also proposes to amend N.J.A.C. 7:14A-20.7(a)1ii to expand the list of chemical constituents that must be tested in both residual and, as proposed, residual additives by an applicant. The Department proposes to add water extractable phosphorus (WEP), radium-226

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agronomic rate for residuals applied to the land. The Department proposes to add radium-226 and radium-228 to N.J.A.C. 7:14A-20.7(a)1ii because there is potential for impact to human health and the environment from the land application of residuals containing elevated radionuclide concentrations. (Interagency Steering Committee On Radiation Standards (ISCORS) Sewage Sludge Subcommittee, “ISCORS Assessment of Radioactivity in Sewage Sludge: Radiological Survey Results and Analysis” (NUREG-1775, USEPA 832-R-03-002, DOE/EH-0669) and “ISCORS Assessment of Radioactivity in Sewage Sludge: Recommendations on Management of Radioactive Materials in Sewage Sludge and Ash at Publicly Owned Treatment Works” (DOE/EH-0668, USEPA 832-R-03-002B).) Testing for radium-226 and radium-228 will enable the Department to evaluate whether a residual proposed to be land applied exhibits concentrations of radionuclides sufficient to trigger further review, restricted approval or denial.

The Department proposes to amend N.J.A.C. 7:14A-20.7(a)1iii to require the applicant for a NJPDES permit to prepare residual for land application to submit a 12-month summary of data collected pursuant to the Sludge Quality Assurance rules (SQAR), N.J.A.C. 7:14C. A summary will give the Department an overview of residual quality and quantity generated by the applicant without requiring resubmission of detailed data. The existing rule requires not summaries of data, but copies of all reports required to be submitted under SQAR for the previous 12 month period.

The Department proposes to amend N.J.A.C. 7:14A-20.7(a)1iv to include the characteristics of proposed residual additives as a basis for requiring additional analyses at the time of application for a NJDPES permit. This is appropriate because the nature or source of a

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proposed residual additive could give the Department reason to suspect that a particular contaminant, not otherwise addressed at N.J.A.C. 7:14A-20.7(a)1, is present, thereby necessitating analysis.

The Department proposes to clarify N.J.A.C. 7:14A-20.7(a)3 by replacing a list of regulatory conditions with a newly defined term, “exceptional quality.”

The Department proposes to amend N.J.A.C. 7:14A-20.7(a)3i in order to clarify that a person seeking a NJPDES permit to land apply non-exceptional quality residual must concurrently apply for a Letter of Land Application Management Approval (LLAMA). Existing N.J.A.C. 7:14A-20.7(a)3i requires the applicant to submit information regarding a proposed land application site, but does not use the term “Letter of Land Application Management Approval.” In practice, when the Department determines that a site is appropriate for land application of non-exceptional quality residual it issues the applicant a LLAMA. The Department proposes to amend N.J.A.C. 7:14A-20.7(a)3i so that it is clear to applicants that they are applying for a LLAMA.

N.J.A.C. 7:14A-20.7(a)3 describes the submission requirements for a person seeking approval to land apply a non-exceptional quality residual. These requirements do not apply to the land application of exceptional quality residual, unless determined necessary by the Department pursuant to N.J.A.C. 7:14A-20.5. See N.J.A.C. 7:14A-20.7(h)1 and 2.

The Department proposes to amend N.J.A.C. 7:14A-20.7(a)3i(1) to require applicants for a LLAMA to submit an evaluation of local transportation patterns, the design and location of any storage installations, and a delineation of fields where residual is proposed to be applied, with their acreages identified. The Department has determined that it is appropriate to evaluate how activities at a site may impact local transportation patterns. Existing N.J.A.C. 7:14A-20.7(a)3i(5)

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The Department proposes to amend N.J.A.C. 7:14A-20.7(a)3i(4) to delete the word “exact” from the existing requirement that applicants for a new LLAMA show on a topographic map the “exact location” of a proposed residual land application site. The Department proposes this deletion because of the difficulty of achieving the precision suggested by the word “exact.”

The Department proposes to amend N.J.A.C. 7:14A-20.7(a)3i(5) to replace the requirement that applicants for a new LLAMA submit a county tax map with the requirement to submit a municipal tax map, and delete the requirement to show the location of any residual storage installations on the tax map. The Department proposes the first amendment because tax maps are generated at the municipal and not the county level. The Department proposes the second amendment because the requirement to describe storage installations is proposed to be moved to N.J.A.C. 7:14A-20.7(a)3i(1), as described above.

The Department proposes new N.J.A.C. 7:14A-20.7(a)3i(6) to require applicants for a LLAMA to submit a clear copy of an aerial photograph showing the location of the proposed residual land application site. The aerial photograph is a common tool in farm conservation

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Department's review of conservation and nutrient management planning for a proposed site.

The Department proposes new N.J.A.C. 7:14A-20.7(a)3i(7) to present and rephrase the existing requirement at N.J.A.C. 7:14A-20.7(h)2 through 6 that applicants for a new LLAMA must implement a conservation plan for a proposed residual land application site, and to consolidate this requirement with existing LLAMA application requirements. In addition, by stating this requirement at N.J.A.C. 7:14A-20.7(a)3i(7) the Department intends to make it clear that conservation planning must be completed before the applicant applies for a LLAMA. Under the existing rule, only conservation plans prepared by the United States Department of Agriculture - Natural Resources Conservation Service (USDA-NRCS) and approved by a Soil Conservation District satisfy this requirement. The Department now proposes to accept LLAMA applications that include equivalent conservation plans prepared by a person qualified in nutrient management and conservation/erosion control planning. This change is intended to remove the existing reliance on the USDA-NRCS, since it is the Department's experience that the USDA-NRCS does not always have the resources to provide planning services for LLAMA applicants.

The Department proposes to amend N.J.A.C. 7:14A-20.7(a)3ii(2) to replace "Letter of Land Application Management Approval" with its acronym "LLAMA."

Proposed new N.J.A.C. 7:14A-20.7(a)3iv provides that a LLAMA expires or is revoked concurrent with the NJPDES permit under which it is issued. Because a LLAMA is issued in association with a NJPDES permit, the Department has determined that it should expire or be revoked with the NJPDES permit. Similarly, proposed new N.J.A.C. 7:14A-20.7(a)3iv specifies that the permittee must submit a LLAMA renewal application concurrent with the NJPDES permit renewal application, and that a LLAMA is administratively continued concurrent with the

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20.7(a)3iv provides that the Department may revoke a LLAMA for due cause, independent of the NJPDES permit.

The successful implementation of land application of residual other than sewage sludge requires an understanding of the impacts of the residual on soil fertility as well as its impact on soil's physical properties. The physical characteristics of soil that determine whether it can support vegetative growth include cohesion, aggregation, strength and texture. These parameters directly affect the hydraulic properties of soil, such as moisture-holding capacity, infiltration, permeability and drainage. Any adverse impact on these hydraulic soil characteristics from land-applied residual can ultimately degrade ground water quality and affect crop growth. Therefore, as part of the application for a permit to land apply residual other than sewage sludge, the Department already requires documentation that the proposed land application program will benefit soil properties, fertility or cover vegetation and that the program has been successfully demonstrated in a pilot program. See existing N.J.A.C. 7:14A-20.7(a)4i through iii.

The Department proposes to extend the application of N.J.A.C. 7:14A-20.7(a)4 to applicants for a stabilization process or technology not previously permitted in New Jersey. In the Department's experience, certain residual products, including exceptional quality residuals, have the potential to create a nuisance during manufacturing, distribution and use. It is also the Department's experience that certain marketable residual products do not perform well in the marketplace for a variety of reasons. As a result, the Department proposes to require that the applicant for a permit to operate a new residual stabilization process not only supply the information required in existing N.J.A.C. 7:14A-20.7(a)4i through iii, but also demonstrate that

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Proposed new N.J.A.C. 7:14A-20.7(a)4iv requires an applicant to successfully demonstrate in a pilot program that the new process achieves the standards applicable to the intended use of the residual processed. Proposed new N.J.A.C. 7:14A-20.7(a)4v requires the applicant to demonstrate control of the new process, and of product maintenance and handling, in a manner that prevents air contamination. The applicant will be required to prove that the system reliably produces the intended marketable residual product, that this product has viable and beneficial field applications, and that these field applications represent a viable market that can be reached without introducing air contaminants (including odors) to the public.

The Department proposes new N.J.A.C. 7:14A-20.7(a)5 to require the applicant for a NJPDES permit to prepare residual for land application to submit a sampling plan that incorporates detailed procedures consistent with the Department's Field Sampling Procedure Manual. Proposed new N.J.A.C. 7:14A-20.7(a)5 is consistent with the requirements outlined in the Sludge Quality Assurance rules (N.J.A.C. 7:14C) and in 40 CFR 503.8(a). The proposed rule ensures that sampling is not done randomly, and that the sampling technique, equipment and location will be outlined so sampling activities can be reproduced from one sampling event to the next.

The Department proposes to amend N.J.A.C. 7:14A-20.7(b)1vi and vii to clarify notification requirements.

The Department proposes to replace existing N.J.A.C. 7:14A-20.7(b)1ix and x, regarding requirements for generators transporting residual across State lines, with simpler and clearer language consistent with existing Department permits and practice. Existing N.J.A.C. 7:14A-

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In general, management practices are intended to restrict residual land application on certain areas and during periods that have a high risk of nutrient and sediment runoff or leaching, in order to minimize the loss of residual constituents (especially nutrients) to the waters of the State. To this end, the Department proposes to amend three existing management practices, add two new management practices and delete one existing management practice at proposed N.J.A.C. 7:14A-20.7(b)2ii(1) through (5).

The Department proposes at N.J.A.C. 7:14A-20.7(b)2ii to precede the management practices with the limitation that the practices apply unless otherwise specified by the Department in a permit or a LLAMA. It is the Department's experience that management practices are at times subject to site- or product-specific modification on a case-by-case or best professional judgement basis. Therefore, the Department proposes to make clear in N.J.A.C.

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The Department proposes to amend existing N.J.A.C. 7:14A-20.7(b)2ii and recodify it as N.J.A.C. 7:14A-20.7(b)2ii(1). Existing N.J.A.C. 7:14A-20.7(b)2ii states, “Bulk residual shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk residual enters a wetland or other waters of the State, as defined in N.J.A.C. 7:14A-1.2, except as otherwise provided in a permit issued pursuant to Section 402 or 404 of the CWA.” The Department proposes at N.J.A.C. 7:14A-20.7(b)2ii(1) to replace the words “agricultural land, forest, a public contact site, or a reclamation site” with the inclusive word “land”; and remove the words “except as otherwise provided in a permit issued pursuant to Section 402 or 404 of the CWA,” since a similar phrase proposed at N.J.A.C. 7:14A-20.7(b)2ii is applicable to proposed N.J.A.C. 7:14A-20.7(b)2ii(1). The Department proposes one new management practice at N.J.A.C. 7:14A-20.7(b)2ii(2), which prohibits the land application of bulk residual during or after precipitation on ground where water is ponded; where soils are saturated with water to within two feet of the ground surface; where soil depth is less than two feet over bedrock formations; or where land experiences seasonal flooding, in order to reduce the potential for runoff or leaching of residual constituents.

The Department proposes to amend existing N.J.A.C. 7:14A-20.7(b)2iii and recodify it as N.J.A.C. 7:14A-20.7(b)2ii(3). Existing N.J.A.C. 7:14A-20.7(b)2iii states, “Bulk residual shall not be applied to agricultural land, forest, or a reclamation site that is 10 meters or less from waters of the State, as defined in N.J.A.C. 7:14A-1.2, unless otherwise specified by the Department in a permit.” Proposed N.J.A.C. 7:14A-20.7(b)2ii(3) expands the 10-meter setback to 200 feet, the standard distance established in the Department’s land application approvals for

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residual that is not of exceptional quality, and also inserts the word “surface” before the existing word “waters,” in order to indicate that the setback is not applicable to ground water. The Department also proposes to delete the phrase, “unless otherwise specified by the Department in a permit,” since a similar phrase proposed at N.J.A.C. 7:14A-20.7(b)2ii is applicable to N.J.A.C. 7:14A-20.7(b)2ii(3).

The Department proposes to amend existing N.J.A.C. 7:14A-20.7(b)2iv and recodify it as N.J.A.C. 7:14A-20.7(b)2ii(4). Existing N.J.A.C. 7:14A-20.7(b)2iv states, “Bulk residual shall be applied to agricultural land, forest, a public contact site, or a reclamation site in accordance with (g) below.” The Department proposes at N.J.A.C. 7:14A-20.7(b)2ii(4) to replace the words “agricultural land, forest, a public contact site, or a reclamation site” with the inclusive term “the land,” and to add the word “except” before the words “in accordance with (g) below,” in order to preserve the intent of the management practice, in light of the Department’s proposed inclusion of the words “shall not be” at proposed N.J.A.C. 7:14A-20.7(b)2ii.

The Department proposes to delete existing N.J.A.C. 7:14A-20.7(b)2v, since it applies to a land application program found at existing N.J.A.C. 7:14A-20.7(h)4, which is proposed for deletion.

The Department proposes another new management practice at N.J.A.C. 7:14A-20.7(b)2ii(5) in order to reduce the potential impact of land application on drinking water supplies. Proposed N.J.A.C. 7:14A-20.7(b)2ii(5) prohibits the land application of bulk residual within 1,500 feet of public community water supply wells or within 300 feet of public non-community or non-public supply wells.

Existing N.J.A.C. 7:14A-20.7(h)1 through 6 require that all residual applied to the land conform to one of six programs, based on the level of quality, pathogen and vector attraction

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reduction. The first program at existing N.J.A.C. 7:14A-20.7(h)1 applies to exceptional quality residual. The remaining five programs at existing N.J.A.C. 7:14A-20.7(h)2 through (h)6 apply to non-exceptional quality residual.

Existing N.J.A.C. 7:14A-20.7(h)1 details requirements applicable to exceptional quality residual that is applied to the land in bulk or that is sold or given away in a bag or other container. The Department proposes to replace the list of regulatory conditions with the newly defined term “exceptional quality.”

The Department proposes to amend literature requirements at N.J.A.C. 7:14A-20.7(h)1iv to require that exceptional quality residual applied to the land be accompanied by literature based on the mode of marketing and conforming to the Department’s applicable NJPDES Technical Manual. It is inappropriate for the permittee to try to reach markets for which it has not developed instructions for environmentally friendly use. The Department’s applicable NJPDES Permit Technical Manual provides guidelines on appropriate uses for residual products and presents the minimum information that must be included in instructional literature.

Existing N.J.A.C. 7:14A-20.7(h)2 through 6 detail requirements applicable to non-exceptional quality residual that is applied to the land in bulk or that is sold or given away in a bag or other container. The existing requirements of N.J.A.C. 7:14A-20.7(h)2 through 6 are very similar. The Department proposes to simplify the rule by amending N.J.A.C. 7:14A-20.7(h)2 to consolidate the requirements of paragraphs (h)2 through 6, and by deleting existing paragraphs (h)3 through 6.

The Department proposes to broaden the first paragraph of N.J.A.C. 7:14A-20.7(h)2 so that it describes a residual that meets the minimum land application requirements applicable to all non-exceptional quality residual. The Department proposes to readopt N.J.A.C. 7:14A-

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non-exceptional quality residual applied to the land in bulk. The Department proposes new N.J.A.C. 7:14A-20.7(h)2iv, which applies site restrictions when residual that is not stabilized to Class A pathogen standards is land applied. The Department proposes new N.J.A.C. 7:14A-20.7(h)2v, which requires cumulative pollutant loading limits, recordkeeping and reporting when residual does not meet the pollutant concentrations in 40 CFR 503.13(b)3. The Department proposes to recodify existing N.J.A.C. 7:14A-20.7(h)2iv and v as (h)2vi and vii.

In addition, the Department proposes to amend proposed recodified subparagraph (h)2vi to replace the existing language that allows land application only in accordance with a conservation plan prepared by the USDA-NRCS and approved by a Soil Conservation District with language that allows land application in accordance with a conservation plan pursuant to N.J.A.C. 7:14A-20.7(a)3i(7). See discussion of proposed N.J.A.C. 7:14A-20.7(a)3i(7) above. The Department also proposes to amend proposed recodified N.J.A.C. 7:14A-20.7(h)2vii to change a cross-reference to application requirements for a Letter of Land Application Management Approval (LLAMA) from existing N.J.A.C. 7:14A-20.7(a)3iii to the proposed, broader paragraph (a)3, since the broader citation covers all application requirements for a LLAMA. The Department also proposes to amend the provision to require that the recipient of the LLAMA must ensure that the person who applies residual complies with the conditions of the LLAMA. The Department proposes this amendment to cover the situation in which the person who receives the LLAMA hires another person to apply residual.

In addition, the Department proposes to prohibit distribution of non-exceptional quality residual in a bag or other container. The Department has never received a request for permission to distribute non-exceptional quality residual in a bag or other container, and the practice is

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prohibition is effected by the Department's proposal to delete N.J.A.C. 7:14A-20.7(b)2v, to readopt N.J.A.C. 7:14A-20.7(h)2ii without amendment, and to delete N.J.A.C. 7:14A-20.7(h)4.

The Department proposes to amend N.J.A.C. 7:14A-20.7(i) to delete the reference to Table 4 of 40 CFR 503.13, since it is only applicable to the program for non-exceptional quality residual found at N.J.A.C. 7:14A-20.7(h)4, which is proposed to be deleted.

The Department proposes new N.J.A.C. 7:14A-20.7(i)6 to require monitoring of residual additives used in the production of a marketable residual product. The Department proposes additive monitoring once every year, or when the additive source changes. Permits currently issued by the Department require additive monitoring. See also the discussion of proposed N.J.A.C. 7:14A-20.7(a)1, 1i, 1ii and 1iv above.

The Department proposes to clarify N.J.A.C. 7:14A-20.7(j)2 by replacing a list of regulatory conditions with the phrase "not exceptional quality." As previously discussed, the Department proposes to define the term "exceptional quality" as a residual that meets certain pollutant concentrations, pathogen requirements, and vector attraction reduction requirements.

Existing N.J.A.C. 7:14A-20.7(j)1 through 5 require permittees to keep certain records for residual applied to the land, including detailed records of the destination and application rates of non-exceptional quality residual, but do not require recordkeeping of exceptional quality residual distribution sites. The Department proposes new N.J.A.C. 7:14A-20.7(j)3 to require daily records of exceptional quality residual bulk distribution outlets and the quantity delivered to each outlet. The Department also proposes to recodify existing N.J.A.C. 7:14A-20.7(j)3 through 5 as (j)4 through 6.

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The Department proposes to amend N.J.A.C. 7:14A-20.7(k) to modify the frequency of reporting of the records kept pursuant to N.J.A.C. 7:14A-20.7(j) from quarterly to that frequency required by existing N.J.A.C. 7:14A-6.8. Existing N.J.A.C. 7:14A-6.8 requires that monitoring data be reported at intervals specified in a permit. The Department proposes this change to ensure effective and timely compliance reviews. This proposed amendment has no impact on frequency of monitoring.

The Department proposes to delete frequency of reporting reduction criteria at N.J.A.C. 7:14A-20.7(k)2. Since the adoption of N.J.A.C. 7:14A-20 in May 1997, the Department has neither received a request for nor approved any reduction in frequency of reporting in accordance with N.J.A.C. 7:14A-20.7(k)2. In addition, pursuant to proposed N.J.A.C. 7:14A-20.7(k), frequency of monitoring will be at intervals specified in a permit that must be issued with the review and comment of the permittee, and so can be modified upon the request of the permittee or appealed upon issuance.

The Department proposes to delete N.J.A.C. 7:14A-20.7(l)2, because the existing paragraph was intended to bring certain practices that existed prior to the adoption of N.J.A.C. 7:14A-20 in May 1997 into conformance by August 3, 1997. That date has passed. The Department also proposes to recodify existing N.J.A.C. 7:14A-20.7(l)3 and 4 as (l)2 and 3.

N.J.A.C. 7:14A-20.8 Surface disposal of residual

The State of New Jersey, taking a resource-use approach, has restricted the landfilling of sewage sludge both as monofill and as co-disposal with municipal solid waste consistent with N.J.S.A. 13:1E-42 and the Statewide Sludge Management Plan. Residual, other than sewage sludge, which is placed on the land for final disposal (defined as storage for periods greater than

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486, February 5, 1996.) In these rules proposed for readoption with amendments, the Department intends to apply, at a minimum, the standards developed for the surface disposal of sewage sludge to all residual, and intends to apply additional restrictions consistent with the requirements of the Solid Waste Management Act, N.J.S.A. 13:E-1 et seq.

The Department proposes to amend N.J.A.C. 7:14A-20.8(a) to apply the prohibition of surface disposal under N.J.A.C. 7:14A-20.8 to all residual, including material derived from residual. See also discussion of N.J.A.C. 7:14A-20.2(b) above and 20.8(b) below. The reason stated by the USEPA for exclusion of industrial residual from 40 CFR Part 503 was that sufficient information was not available on the number of industrial facilities that generate residual, the amount of residual generated at those facilities, and the practices through which the residual is used or disposed to evaluate the impact of Part 503 numerical limits. See 58 Fed. Reg. 9324-9325 (February 19, 1993). However, New Jersey has required such information to be reported by all such generators since 1980 under the Sludge Quality Assurance rules (SQAR, N.J.A.C. 7:14C). In addition, the Department has determined that it is not appropriate or responsible to allow the use or disposal of industrial residual that does not conform, at a minimum, to the standards established for sewage sludge. The Department also proposes to move the exemption for certain sewage sludge found at existing N.J.A.C. 7:14A-20.8(a) to proposed N.J.A.C. 7:14A-20.8(c)1 and broaden this exemption to include industrial residual.

The Department proposes to replace existing N.J.A.C. 7:14A-20.8(b), which established a now-passed submission deadline, with language that plainly states that placement of residual or material derived from residual as fill is surface disposal, and prohibited. Residual and residual blends are a source of nutrients intended for agronomic purposes under this subchapter. Material

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blend and then placing the topsoil blend at depths below any reasonable root zone) is considered surface disposal.

The Department has included exemptions under N.J.A.C. 7:14A-20.8(c) in order to clarify the relationship of Subchapter 20 to other rules. The first exemption at N.J.A.C. 7:14A-20.8(c)1 is a relocation (with amendments) of existing N.J.A.C. 7:14A-20.8(a) that allows a person to submit a written demonstration that the land on which the residual remains is not a surface disposal site. For example, an operation making soil blends with exceptional quality residual might require storage over the winter pending spring markets. In such a case, the person needs to maintain sufficient markets for the product generated and clearly demonstrate to the Department that ultimate management arrangements exist. If the person fails to submit a demonstration that is conformance with N.J.A.C. 7:14A-20, then the Department will notify the person that the exemption does not apply.

The Department proposes a second exemption at new N.J.A.C. 7:14A-20.8(c)2 for sites that are fully permitted as sanitary landfills under the New Jersey Solid Waste Management Act. Any operating entity that plans to implement a new surface disposal site must construct, operate and maintain the disposal site as a sanitary landfill in accordance with the provisions of the Solid Waste Management rules at N.J.A.C. 7:26.

The Department proposes a third exemption at new N.J.A.C. 7:14A-20.8(c)3 for residual that is being managed under an approval for beneficial use or that is categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g).

The Department proposes a fourth exemption at new N.J.A.C. 7:14A-20.8(c)4 for existing surface disposal sites that were in conformance with all relevant laws when the

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discharge commenced, and that have received and are in compliance with a valid NJPDES

discharge to ground water permit issued pursuant to N.J.A.C. 7:14A-7.

The Department proposes new N.J.A.C. 7:14A-20.8(d) to require the operator of a surface disposal site that does not qualify for an exemption under N.J.A.C. 7:14A-20.8(c) to submit a closure plan within six months and to cease discharge to the surface disposal site within one year of the effective date of the amended rules, or as otherwise may be warranted by N.J.A.C. 7:14A-20.5. If a surface disposal site cannot conform to the proposed rules, its continued operation is considered to pose an unacceptable risk to public health and the environment and it must be closed.

The Department proposes to amend recodified N.J.A.C. 7:14A-20.8(e) to specify that it describes management practices that apply only to in situ, closed surface disposal sites. The Department may determine that in-situ is inappropriate for some closed surface disposal sites and require residuals to be removed from the site. The Department proposes to clarify N.J.A.C. 7:14A-20.8(e)5 by specifying that it applies only to “closed” surface disposal sites. The Department proposes to amend N.J.A.C. 7:14A-20.8(e)8 to require that a ground water monitoring program be not only implemented, but also maintained for a period of five years after the Department approves closure of the surface disposal site. Also, the Department proposes to replace the term “sewage sludge” with the broader term “residual” throughout recodified N.J.A.C. 7:14A-20.8(e) for the reasons discussed above.

The Department proposes to amend N.J.A.C. 7:14A-20.8(f)1 to require surface disposal site closure plans to identify the date that discharges to a surface disposal site will cease. Also, the Department proposes to replace the term “sewage sludge” with the broader term “residual” throughout amended N.J.A.C. 7:14A-20.8(f), for the reasons discussed above. The Department

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and not just domestic treatment works. This makes the condition consistent with the Department's proposal to replace the term "sewage sludge" with the broader term "residual" throughout the section.

The Department proposes to delete the submission requirements for in-situ closure applications at N.J.A.C. 7:14A-20.8(f)5i through iii since these requirements are already included as management practices at proposed N.J.A.C. 7:14A-20.8(e)3, 4 and 9, respectively. Proposed new N.J.A.C. 7:14A-20.8(f)5ii requires an applicant proposing in-situ surface disposal site closure to demonstrate compliance with the management practices at N.J.A.C. 7:14A-20.8(f).

N.J.A.C. 7:14A-20.8(f)7 is proposed to be amended to remove a reference to residual infiltration-percolation lagoons. Any structure that is used to store or dispose of residuals is considered an impoundment and not an infiltration-percolation lagoon.

N.J.A.C. 7:14A-20.9 Reed beds

The Department proposes to repeal the residual fact sheet requirements at existing N.J.A.C. 7:14A-20.9, since they are duplicative of the fact sheet requirements at existing N.J.A.C. 7:14A-15.8.

The Department proposes to replace existing N.J.A.C. 7:14A-20.9 with new standards, management practices and submission requirements for reed beds. Reed bed treatment combines the action of conventional drying beds with the effects of aquatic plants upon water-bearing substrates. Although conventional drying beds are used to remove 20 to 25 percent of water content from sewage sludge, the resultant residue must be hauled away for further treatment. By

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having the drying beds built in a specific manner, the beds can be planted with reeds, and further

desiccation of the residual is accomplished through the plants' voracious demand for water. To satisfy this demand, the plants extend their root systems continually into the residual deposits.

The extended root system causes the establishment of a rich microflora that feeds upon the organic content of the residual. Aerobic conditions needed by the microflora are created through the root action of the plants. Eventually substantial portions of the residual solids are converted into carbon dioxide and water with a corresponding volume reduction. These drying beds can be operated for more than five years before the remaining residues have to be removed. Many of the standards and management practices incorporated into proposed new N.J.A.C. 7:14A-20.9 have been developed over the last 17 years and are largely reflective of permits currently issued by the Department. The Department's approach to regulating reed bed systems represents a cooperative approach among the Department, process vendors, and operating entities.

The Department proposes new N.J.A.C. 7:14A-20.9(a) to detail application requirements for a permit to discharge residuals to a reed bed. Proposed new N.J.A.C. 7:14A-20.9(a)1 requires submission of information on the characteristics of residual to be loaded to the proposed reed bed. The characteristics and loading rate of residual are essential data in the Department's evaluation of an applicant's proposed design and operation of a reed bed system. Also, consistent with N.J.A.C. 7:14A-6.12(c), proposed new N.J.A.C. 7:14A-20.9(a)2 requires submission of the proposed loading rate of residual to the proposed reed bed. Proposed new N.J.A.C. 7:14A-20.9(a)3 requires submission of an operation and maintenance manual.

The Department proposes new N.J.A.C. 7:14A-20.9(b) to establish minimum management practices for the operation of a reed bed. These practices are intended to prevent damage to the reeds, or overtopping of the reed bed. These practices are also intended to enhance

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water to a period not to exceed 48 hours following loading, except during periods of severe inclement weather. Proposed new N.J.A.C. 7:14A-20.9(b)2 requires that plants be harvested during winter dormancy and that approximately 10 inches of stubble be left standing after harvest. Proposed new N.J.A.C. 7:14A-20.9(b)3 specifies methods of weed removal that will protect the reeds. Proposed new N.J.A.C. 7:14A-20.9(b)4 requires that reed beds be evacuated when the depth of residual reaches within six inches of freeboard.

In order to maintain operational efficiency of a reed bed, the Department proposes new N.J.A.C. 7:14A-20.9(c) to limit reed bed loading to no more than once every 14 days after plants meet maturity. Less frequent loading rates will be set forth in the permit during the time that plants are maturing or as required by conditions (such as standing water in the beds). The Department recognizes that optimum residual loading may not be realized until the plants reach maturity. Therefore, the residual loading rates in the permit are based upon mature plants. Excess residual must be removed for alternative management.

The Department proposes new N.J.A.C. 7:14A-20.9(d) to require analysis of the residual discharged to the reed beds in accordance with the reporting requirements of, and frequency as determined by the Sludge Quality Assurance rules (N.J.A.C. 7:14C). This is required to obtain representative data of the quality of residual supplied to the reed bed.

The Department proposes new N.J.A.C. 7:14A-20.9(e) to require an annual analysis of residual discharged to the reed beds for pH and volatile solids. Residual pH and volatile solids values are important determinants of the viability of a reed bed system. Volatile solids of residual loaded to a reed bed is used together with information gathered in accordance with new N.J.A.C. 7:14A-20.9(f) to determine the relative stability of material removed from the reed bed.

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The Department proposes new N.J.A.C. 7:14A-20.9(f) to require an annual analysis of the residual in the reed bed, if residual is removed from the reed bed for use or disposal, for the same parameters required under N.J.A.C. 7:14A-20.9(d) and (e). This data is necessary to qualify the removed residuals for final management.

In order to ensure bed evacuation proceeds in a timely manner and that residual quality is compatible with the permittee's chosen management method, the Department proposes new N.J.A.C. 7:14A-20.9(g) to require the permittee to submit for approval, 180 days prior to the anticipated date of evacuation of a reed bed, a plan for removal and management of all accumulated residual.

The Department proposes new N.J.A.C. 7:14A-20.9(h) to require that phragmites rhizomes be removed from the residual prior to transport to an operation that will process the residual for land application. This is necessary to enhance the marketability of the residual and to prevent the unwanted introduction of the reed species, Phragmites, to agricultural or other land.

N.J.A.C. 7:14A-20.12 Residual blending and distribution

The Department has identified numerous sites that store exceptional quality residual or material derived from blends of exceptional quality residual and other material, such as soil, on the ground prior to off-site distribution. These sites have operated under exemptions at existing N.J.A.C. 7:14A-20.2(b) and (c). The storage of exceptional quality residual and material derived from exceptional quality residual on the ground and exposed to precipitation generates significant potential for losses of pollutants (most specifically nutrients) to the surrounding environment. In addition, the activity has significant potential for creating nuisance conditions.

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The Department proposes new N.J.A.C. 7:14A-20.12(a) to require that only exceptional quality residual generated and distributed in accordance with N.J.A.C. 7:14A-20 may be used for residuals blending and distribution.

The Department proposes new N.J.A.C. 7:14A-20.12(b) to require a permit for storage of more than 100 cubic yards of exceptional quality residual or 2,500 cubic yards of material derived from exceptional quality residual. This provision establishes a threshold quantity below which a permit will not be required. As required at proposed amended N.J.A.C. 7:14A-20.7(h)1iv, generators of exceptional quality residual must produce instructional literature consistent with the Department's Technical Manual for Residuals Management and provide it to users of their product, including operators of residual blending and distribution sites. Operations that store residual under this threshold amount will be provided with such instructional literature. The Department has not identified significant problems with residual blending and distribution sites that store below the threshold amounts and that operate in conformance with such literature. Should a person storing below the threshold amounts fail to operate in conformance with such

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The Department proposes new N.J.A.C. 7:14A-20.12(c) to require that any person who owns or is operating an existing residual blending and distribution site that is required to be permitted under this section must apply for a permit within six months of the effective date of the amended rule or cease operation and remove all residual and material derived from residual. The allowable duration of storage of residual as defined at N.J.A.C. 7:14A-1.2 is six months or less. Storage for more than six months is surface disposal under N.J.A.C. 7:14A-20.8. Proposed N.J.A.C. 7:14A-20.12(c) is consistent with these existing rules.

The Department proposes new N.J.A.C. 7:14A-20.12(d) to specify NJPDES permit application requirements specific to residual blending and distribution operations. Existing application requirements of N.J.A.C. 7:14A-4 and the applicable NJPDES Technical Manual characterize sites proposed to prepare residual for land application or sites where residual is applied to the land as a fertilizer. The sites characterized by the application requirements at proposed N.J.A.C. 7:14A-20.12(d) differ in that they are intended for the outdoor storage and blending of residuals with other materials on an ongoing basis over a long period of time.

The Department proposes new N.J.A.C. 7:14A-20.12(e) to specify additional NJPDES permit application requirements for residual blending and distribution operations proposed to store more than 10 thousand cubic yards of material derived from exceptional quality residual. Due to the likelihood of significant environmental impacts from a larger operation, proposed new N.J.A.C. 7:14A-20.12(e)1 requires an environmental assessment in accordance with N.J.A.C. 7:14A-20.6. Due to the likelihood of significant leaching of contaminants, specifically nutrients, from a larger operation, a ground water monitoring program is required under proposed new

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The Department proposes new N.J.A.C. 7:14A-20.12(f) to exempt from the requirement to obtain a NJPDES permit those operations in which all phases of handling, storage and blending occur in an enclosed building. This exemption is necessary because there exists a class of operation that incorporates many materials, including at times exceptional quality residual, into existing, commercially marketed bagged and bulk fertilizers and that operate indoors primarily to protect the quality of their product. The Department has identified no detrimental environmental effects from the use of exceptional quality residual by such operations.

Subchapter 21. Requirements for Indirect Users

Subchapter 21 incorporates the pretreatment program requirements for indirect users specified under Water Pollution Control Act and the Federal General Pretreatment Regulations and any other applicable statutes and regulations, wherever possible. The Department is proposing to amend this subchapter consistent with the Streamlining Rule under the Federal General Pretreatment Regulations at 40 CFR Part 403.

N.J.A.C. 7:14A-21.3 Additional requirements for all significant indirect users

Proposed amendments to N.J.A.C. 7:14A-21.3(b)4ii update cross references, based upon the amendments to N.J.A.C. 7:14A-21.4 discussed below.

Proposed amended N.J.A.C. 7:14A-21.3(b)5ii incorporates language added to the Federal rule at 40 CFR 403.12(b)(5)(ii) as part of the streamlining changes. This amendment specifies the reporting requirements that apply when best management practices (BMPs) or pollution

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prevention alternatives are used as pretreatment standards. BMPs may include schedules of activities, prohibitions of practices, maintenance schedules and other management practices to prevent or reduce pollution. BMPs may also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be site or sector specific, and reporting requirements may include any or all of the above noted provisions as deemed necessary by the control authority.

N.J.A.C. 7:14A-21.3(b)5iii is proposed to be deleted consistent with the streamlining requirements under 40 CFR 403.12(b)(5)(iii). The proposed amendment will eliminate the requirement that a minimum of four grab samples be taken in all instances to measure pH, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds for baseline monitoring reports (BMRs) and 90-day reports to be submitted by existing users, which the streamlining amendments removed from the Federal rule. Where a lower number of samples is authorized, the control authority will be responsible for documenting the site-specific circumstances in the indirect user's file. New facilities and facilities that make process changes or install new treatment are still required to take a minimum of four grab samples to measure pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds to meet baseline monitoring and 90-day compliance report requirements. See N.J.A.C. 7:14A-21.3(g)4. For facilities where historical sampling data are available, the control authority may authorize a lower minimum number of grab samples for the noted parameters for periodic compliance reports.

The Department proposes to recodify N.J.A.C. 7:14A-21.3(b)5iv through viii as (b)5iii through vi, respectively.

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The proposed amendments at N.J.A.C. 7:14A-21.3(b)5iv, 7i and 7ii, and (e) update cross references in accordance with the within proposed amendments to the NJPDES rules.

N.J.A.C. 7:14A-21.3(f)1 is proposed to be amended to incorporate language added to the Federal rule as part of the streamlining changes to 40 CFR 403.12(b)(5)(ii) and (e). This amendment specifies the reporting exception for non-significant categorical indirect users (NSCIUs), and specifies the reporting requirements that apply when BMPs are used as pretreatment standards. For BMPs, this would include any documentation required by the control authority or the pretreatment standards themselves to demonstrate compliance with BMPs that are included in categorical standards, as well as any documentation required by the control authority to demonstrate compliance with BMPs that serve as local limits.

The Department proposes a new N.J.A.C. 7:14A-21.3(f)2 to conform the rule to 40 CFR 403.12(e)(2), amended as part of the streamlining changes. This amendment will allow the control authority to authorize an indirect user subject to categorical pretreatment standards to forgo future sampling for a pollutant, provided the indirect user demonstrates, through sampling and a technical evaluation of its facility operations, that a given pollutant is neither present nor expected to be present in the discharge, or is only present at background levels from intake water without any increase in the pollutant due to the activities of the indirect user. This amendment also specifies the monitoring waiver period, sampling requirements, control mechanism requirements, certification statement, and other provisions consistent with the criteria specified under 40 CFR 403.12(e)(2). Consistent with the Federal regulation, granting the monitoring waiver is at the discretion of the control authority, and where there has been a history of problems with a pollutant at a POTW, the control authority may deny a waiver, if it deems this necessary to prevent future problems.

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The Department proposes to recodify N.J.A.C. 7:14A-21.3(f)2 and 3i as (f)3 and 4, respectively.

The proposed amendment at N.J.A.C. 7:14A-21.3(f)3 updates the cross reference.

N.J.A.C. 7:14A-21.3(g)1 is proposed to be amended to incorporate a reporting requirement exception for non-significant categorical indirect users (NSCIUs). This is the same change that was made to the Federal rule at 40 CFR 403.12(g)(1) as part of the streamlining changes.

N.J.A.C. 7:14A-21.3(g)2 through 4 are proposed to be amended to conform to 40 CFR 403.12(g)(2) through (4). Proposed amended N.J.A.C. 7:14A-21.3(g)2 specifies that, where a control authority conducts monitoring and analysis for an indirect user and those results indicate a violation, the control authority must repeat the sampling and analysis unless it notifies the user of the violation and requires the user to repeat the monitoring and analysis. The criteria under N.J.A.C. 7:14A-21.3(g)2ii, specifying when repeat sampling is not necessary, is also amended consistent with the changes to 40 CFR 403.12(g)(2)(ii).

Proposed amended N.J.A.C. 7:14A-21.3(g)3 adds a reporting and sampling requirement for significant indirect users consistent with 40 CFR 403.12(g). This amendment would enable the control authority to authorize compositing, prior to analysis, individual grab samples (for specified parameters) that are taken over a 24-hour period, provided the protocols specified under 40 CFR Part 136 and appropriate USEPA guidance are utilized, including proper sample preservation. Under the existing rule, it is not clear if multiple grab samples can be composited, or at what location (such as field or laboratory) compositing may take place. Proposed amended N.J.A.C. 7:14A-21.3(g)3 incorporates the streamlining change under 40 CFR 403.12(g)3 and specifies that compositing is allowed for the parameters cyanide, total phenols, sulfide, oil and

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clarified by USEPA, the proposed amendment provides that compositing for cyanide, total phenols, and sulfide may be done in the field or in the laboratory, and that volatile organics and oil and grease may be composited only in the laboratory.

Proposed new N.J.A.C. 7:14A-21.3(g)4 requires a minimum of four grab samples for baseline monitoring reports and 90-day compliance reports. For facilities with historical data, this provision also gives control authorities the flexibility to determine the appropriate number of grab samples that an indirect user is required to take when conducting sampling for these reports. The number of grab samples that an indirect user must take can be decreased where historical data demonstrates past compliance by that user.

The Department proposes to recodify N.J.A.C. 7:14A-21.3(f)4 and 5 as (f)5 and 6, respectively.

Proposed amendments to N.J.A.C. 7:14A-21.3(g)6 and (h) conform the rules to 40 CFR 403.12(g)(6) and (h). Proposed amended N.J.A.C. 7:14A-21.3(g)6 requires all SIUs to report to the control authority all monitoring results for regulated parameters for which monitoring was conducted at the point of compliance. The Department proposes to delete portions of N.J.A.C. 7:14A-21.3(h) because they are redundant with the language under N.J.A.C. 7:14A-21.3(b)5v. Proposed new language specifies reporting requirements that apply when best management practices or pollution prevention alternatives are used as pretreatment standards.

N.J.A.C. 7:14A-21.3(j) is proposed to be amended to require that the user notify the “control authority” as opposed to the “local agency.” In cases where the local agency and control authority are different (such as areas serviced by a non-delegated local agency), the indirect user would notify both the control authority and local agency of any substantial change

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Proposed new N.J.A.C. 7:14A-21.3(k) is being added to be consistent with 40 CFR 403.12(q), which adds the annual certification requirement and language for non-significant categorical indirect users.

N.J.A.C. 7:14A-21.4 Categorical standards, calculations of equivalent and/or alternative limits

The Department proposes to recodify with amendments N.J.A.C. 7:14A-21.4(a)4 through 6 as (d) through (f), as discussed below. Proposed new N.J.A.C. 7:14A-21.4(b) and (c) are consistent with 40 CFR 403.6(c)(5) and (6). N.J.A.C. 7:14A-21.4(b) specifies the criteria that an indirect user must meet in order to request that the control authority convert the concentration-based categorical limits expressed in its permit to equivalent mass limits. N.J.A.C. 7:14A-21.4(c) specifies the criteria that an indirect user must meet in order for the control authority to use USEPA promulgated concentration-based limits instead of flow-based mass limits in establishing permit limitations for new and existing indirect dischargers in categories regulated under 40 CFR Part 414 (Organic Chemical, Plastics, and Synthetic Fibers), Part 419 (Petroleum Refining), and Part 455 (Pesticide Chemicals).

Proposed new N.J.A.C. 7:14A-21.4(d) includes the language and requirements of existing N.J.A.C. 7:14A-21.4(a)4, as well as additional language to conform the subsection to the streamlining changes under 40 CFR 403.6(c)(7), which specify that calculated equivalent limits are deemed pretreatment standards, and that indirect users must comply with such standards once those conditions are incorporated into the users' permits.

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Proposed new N.J.A.C. 7:14A-21.4(e) includes the language and requirements of existing N.J.A.C. 7:14A-21.4(a)5. The amendment is consistent with the streamlining changes under 40 CFR 403.6(c)(8), clarifying that the same production or flow figures shall be used in calculating both the monthly average and daily maximum equivalent limitations.

Proposed new N.J.A.C. 7:14A-21.4(f) includes the language and requirements in existing N.J.A.C. 7:14A-21.4(a)6.

The Department proposes to recodify N.J.A.C. 7:14A-21.4(b) through (d) as (g) through (i). The proposed amendments at N.J.A.C. 7:14A-21.4(i) conform the rule to the amendments to 40 CFR 403.15. The amendments will make the language regarding net/gross calculations at N.J.A.C. 7:14A-21.4(i) consistent with the NPDES regulations at 40 CFR 122.45(g). This will allow a categorical pretreatment standard to be adjusted on a “net” basis if either the applicable pretreatment standards allow for this calculation or the indirect user demonstrates its control system meets those pretreatment standards. The Department proposes to recodify N.J.A.C. 7:14A-21.4(i)2ii through iv as (i)2 through 4.

N.J.A.C. 7:14A-21.4(i)2i is proposed to be deleted consistent with the streamlining changes under 40 CFR 403.15. Proposed new N.J.A.C. 7:14A-21.4(i)1i includes the language and requirements of existing N.J.A.C. 7:14A-21.4(d)3. Proposed new N.J.A.C. 7:14A-21.4(i)1ii includes the language and requirements of existing N.J.A.C. 7:14A-21.4(d)2. These two requirements establish the criteria under which the net/gross adjustments would be allowed. The proposed amendments under N.J.A.C. 7:14A-21.4(i) are consistent with the USEPA streamlining changes under 40 CFR 403.15. During the 1988 modifications to the Federal rules, the USEPA had erroneously used the term “and” instead of “or,” thus inadvertently establishing a test in which both conditions would have to be met. Because there are no categorical standards that

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specify application on a net basis, this resulted in an unintended prohibition on the use of the net/gross provision in the Pretreatment Program. This amendment reflects the change to the Federal rule, specifying that meeting either condition allows for consideration of limit adjustment.

N.J.A.C. 7:14A-21.7 Additional requirements for facilities which meet the SIU definition and discharge to a delegated local agency's treatment works

The amendment proposed in N.J.A.C. 7:14A-21.7 incorporates permit exemption language (see N.J.A.C. 7:14A-21.9(g)) whereby a delegated local agency may identify a categorical indirect user as a "non-significant categorical indirect user," or NSCIU, and thus exempt the facility from the requirement to obtain an SIU permit from that delegated local agency. The proposed amendment conforms the rule to the language of 40 CFR 403.3(v)(2).

N.J.A.C. 7:14A-21.9 Exemptions from the requirements for an individual NJDPES-SIU permit from the Department

Proposed amended N.J.A.C. 7:14A-21.9(a) will incorporate the SIU permit exemption for facilities that meet the NSCIU criteria, as included in the streamlining changes under 40 CFR 403.3(v)(2). Likewise, the Department proposes to amend N.J.A.C. 7:14A-21.9(g) to incorporate the NSCIU criteria. This amendment establishes a new class of indirect users, in an effort to reduce the sampling and inspection requirements of the control authorities. A facility meeting the NSCIU criteria will not be required to obtain a permit for discharge, and thus will not have to be sampled and inspected on an annual basis by the control authority.

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NJPDES-SIU permit issued by the Department

The Department proposes to amend N.J.A.C. 7:14A-21.10(a)3 to incorporate by reference the updated USEPA guidance manual on local limit development, the Local Limits Guidance Manual, as supplemented or amended. The newer manual dated July 2004 replaces the previous USEPA guidance manual dated December 1987.

Proposed new N.J.A.C. 7:14A-21.10(b)7 is consistent with 40 CFR 403.8(f)(1)(iii)(B)(3), allowing for the inclusion of best management practice (BMP) provisions within an SIU permit, since BMPs developed by local agencies may now serve as pretreatment standards as required by 40 CFR 403.5(c)(3).

Subchapter 22. Treatment Works Approvals, Sewer Bans, Sewer Ban Exemptions

N.J.A.C. 7:14A-22 establishes the administrative requirements for treatment works approval (TWA) submittals, establishes the criteria for implementation of the Capacity Assurance Program (CAP), and establishes the criteria for the imposition of sewer connection bans and sewer ban exemptions. The primary objective of these programs is to prevent degradation of the water of the State due to inadequately designed and/or poorly operated wastewater treatment and conveyance facilities.

The TWA program regulates the construction and operation of domestic and industrial wastewater collection, conveyance and treatment systems. In general, TWA permits are required for building, installing, operating or modifying domestic and industrial treatment works including sewer extensions, sewage treatment systems, holding tanks, equalization tanks, residual treatment units and wastewater treatment and recycling systems. Certain treatment

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works are exempt from obtaining a TWA, including lateral connections conveying less than 8,000 gallons per day (GPD), subsurface disposal systems that are regulated pursuant to N.J.A.C. 7:9A, and industrial treatment facilities discharging into a publicly owned treatment works and located in an area of the State for which the Department is not the control authority (delegated area) for the industrial pre-treatment program, pursuant to 40 CFR Part 403 and N.J.A.C. 7:14A-19.

The CAP is a regulatory tool by which the Department requires the affected treatment works owner/operator to evaluate their treatment works to assure future capacity at treatment facilities to enable continued growth in the service area communities. When the committed flow to a treatment works reaches 80 percent of permitted capacity, a CAP is instituted. This requires the exploration of measures that can be taken to assure future capacity. Such measures include, but are not limited to, implementation of water conservation measures, reduction of inflow and infiltration, measures to maximize treatment capacity at minimal costs, construction of improvements, disconnecting roof leaders, sump pumps and other sources of inflow into sanitary sewers and quarterly accounting of committed flows. Through discussion and implementation of these measures, future capacity can be assured and an overload of the facility, which can lead to violations of discharge limits and penalties, can be avoided.

The Sewer Ban Program is a means to prevent additional pollution from severely malfunctioning and/or overloaded facilities. A sewer connection ban is imposed when, based upon the arithmetic average of a three consecutive month period, a treatment works discharges effluent to a surface water and the effluent violates any of the conventional pollutants or it violates any non-conventional pollutant and the sewerage authority/municipality has not entered into an administrative/judicial consent order with the Department or has not obtained a TWA for

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discharging to ground water violates any effluent or flow limitation of its NJPDES permit. A sewer connection ban can also be imposed on sewer collection and conveyance facilities when inadequate conveyance capacity results in overflows or discharges of raw waste. The effect of a sewer connection ban is that no additional flow can be introduced into the treatment works, unless a sewer ban exemption is granted, until the plant or conveyance facilities are again in compliance. Often a sewer ban is the catalyst necessary to initiate sewer plant upgrades, expansions, and/or rehabilitation of conveyance systems.

The Department proposes to readopt Subchapter 22 with the amendments summarized below. The majority of the amendments are associated with the Department's decision to move the requirements of the 90-Day Construction Law, N.J.S.A.13.1D-29 et seq. for TWAs into this subchapter. The administrative review process, fee structure and public notice process for the TWA program are found in N.J.A.C. 7:1C, which are the existing rules for the Ninety-Day Construction Law. These rules were shared by other construction programs administered by the Department, including permitting for Waterfront Development, Coastal Area Facilities Review Act, Wetlands Act of 1970 (Coastal Wetlands) and Flood Hazard. The Ninety-Day Construction Law requirements have already been incorporated into the coastal and flood hazard rules. The Department proposes now to incorporate into the TWA rules those portions of the ninety-day rules that pertain to TWA. Accordingly, the Department is also proposing to repeal N.J.A.C. 7:1C in its entirety.

Please note that the Department is not proposing to incorporate those portions of N.J.A.C. 7:1C that are redundant, or do not pertain to TWAs. For example, the public comment period language in N.J.A.C. 7:1C-1.7(a)5 does not pertain to the TWA program and will not be included

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N.J.A.C. 7:14A-22.1 General policy and purpose

N.J.A.C. 7:14A-22.1 contains the general policy and purpose for the TWA, CAP and sewer ban program. The Department proposes new N.J.A.C. 7:14A-22.1(a)7, incorporating the language for timely processing of TWA applications from N.J.A.C. 7:1C-1.1.

N.J.A.C. 7:14A-22.3 Activities for which a treatment works approval is required

N.J.A.C. 7:14A-22.3 establishes the activities for which a TWA is required. In general, TWAs are required for building, installing, modifying or operating any treatment works.

The Department proposes new N.J.A.C. 7:14A-22.3(a)5 to clarify that a TWA is required for construction activities associated with an individual subsurface disposal system, if required pursuant to N.J.A.C. 7:9A-3.9.

The Department proposes new N.J.A.C. 7:14A-22.3(a)7 to clarify that a TWA is required for construction activities associated with reclaimed water for beneficial reuse (RWBR) authorized under a NJPDES permit. This provision is consistent with new N.J.A.C. 7:14A-2.15.

N.J.A.C. 7:14A-22.4 Activities for which a treatment works approval is not required

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N.J.A.C. 7:14A-22.4 establishes specific activities for which a TWA is not required. The Department is proposing to add language at N.J.A.C. 7:14A-22.4(a)3 in order to clarify and provide the scope of subsurface disposal systems that are exempt from obtaining a treatment works approval.

In addition, the Department is proposing to add N.J.A.C. 7:14A-22.4(b)6 in order to specify certain RWBR construction activities that are exempt from obtaining a treatment works approval. In new language proposed at N.J.A.C. 7:14A-22.3(a)7, the Department will require a treatment works approval for building, installing, operating or modifying any process unit, storage unit or conveyance facilities that treats and/or conveys RWBR, as authorized under a NJPDES permit, from the source of the reclaimed water to the facility where it will be used. The proposed exemption at N.J.A.C. 7:14A-22.4(b)6 pertains to the building, installing, operating or modifying a treatment works for the sole purpose of treating effluent to achieve a higher quality RWBR than what is required by the NJPDES permit. Typically, additional treatment of RWBR is necessary to allow for its use at a facility. In addition, the proposed exemption at N.J.A.C. 7:14A-22.4(b)6 pertains to the onsite distribution system located at the facility where the RWBR will take place. Once on site, the RWBR is considered a water source and is not subject to a treatment works approval.

N.J.A.C. 7:14A-22.5 Treatment works approval

N.J.A.C. 7:14A-22.5 details general conditions relative to TWA submittals, such as categorizing stage I, II, III and general industrial TWAs, revocation, limits of Department review, emergency approvals, and responsibility for adequate design, construction and operation.

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The Department proposes a new N.J.A.C. 7:14A-22.5(d) that incorporates certain provisions for a TWA preapplication review, which are similar to those outlined in N.J.A.C. 7:1C-1.3(a), but reflect the actual operating preapplication procedures of the Department's Division of Water Quality, which administers the TWA program.

Recodified N.J.A.C. 7:14A-22.5(e) stipulates that the Department shall approve, condition or deny an application for a treatment works within 90 days of a complete application. The Department proposes to remove the reference to the Ninety-Day Construction Rules (N.J.A.C. 7:1C-1) and incorporate relevant language from N.J.A.C. 7:1C into N.J.A.C. 7:14A-22(e). Accordingly, the Department proposes to add the term "administratively" at N.J.A.C. 7:14A-22.5(e) to clarify that the 90-day time frame begins upon receipt of an administratively complete application. For the TWA program, administrative completeness of an application is determined based on whether the TWA application requirements in N.J.A.C. 7:14A-22.6 or 22.8 have been met. Thus, the Department is proposing new paragraph (e)1 that provides that the Department will review an application for administratively completeness within 20 days of receipt. The Department is also proposing new subparagraphs (e)1i and ii to incorporate application provisions from N.J.A.C. 7:1C.

The Department proposes new N.J.A.C. 7:14A-22.5(e)2 that incorporates the language from N.J.A.C. 7:1C-1.7(a)5, where the Department would include comments received on an application with the application file and such comments would be considered by the Department in the application review process.

For applications where the Department has failed to act within the 90-day time frame, the Department proposes to add new N.J.A.C. 7:14A-22.5(e)3 that incorporates the default approval language for TWAs from N.J.A.C. 7:1C-1.8(d).

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The Department proposes new N.J.A.C. 7:14A-22.5(e)4 that incorporates the language for reactivating a denied application from N.J.A.C. 7:1C-1.8(f).

Finally, the Department proposes new N.J.A.C. 7:14A-22.5(n) that incorporates the language from N.J.A.C. 7:1C-1.6 for the publication of the application receipt and Department's final action on a TWA in the DEP Bulletin, which constitutes constructive notice to all interested persons.

N.J.A.C. 7:14A-22.6 Application requirements for general industrial treatment works approvals

N.J.A.C. 7:14A-22.6 contains information and submission requirements for general industrial TWAs. Included are the items required for administrative completeness and the items to be included in the final approval. Accordingly, the Department proposes to change the section heading to reflect that the information and submission requirements are, in fact, application requirements for general industrial TWAs.

The Department is proposing to amend N.J.A.C. 7:14A-22.6(a) to include a mailing address for General Industrial TWA submittals by referring to the address at N.J.A.C. 7:14A-22.8(d).

At N.J.A.C. 7:14A-22.6(a)2 the Department is proposing to remove the reference to N.J.A.C. 7:1C-1.5 and replace it with N.J.A.C. 7:14A-22.25, where the language for the TWA fees is proposed to be located.

N.J.A.C. 7:14A-22.6(a)8 refers to the evidence of public notification requirement for general industrial TWAs. The Department is proposing to amend this paragraph and remove the incorrect reference to N.J.A.C. 7:1C-1.5 and replace it with N.J.A.C. 7:14A-22.8(a)4, where the

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language added to N.J.A.C 7:14A-22.6(a)8 reflects the language from the 90-day construction permit rules at N.J.A.C. 7:1C-1.3(b).

N.J.A.C. 7:14A-22.8 Application requirements for construction, installation, or modification of treatment works--Stage II

N.J.A.C. 7:14A-22.8 contains the administrative requirements for stage II TWAs. Included is a list of the items necessary to be submitted for the application to be deemed administratively complete. Accordingly, the Department proposes to change the section heading to reflect that the administrative requirements are in fact application requirements for stage II TWAs.

At N.J.A.C. 7:14A-22.8(a)2, the Department is proposing to remove the reference to N.J.A.C. 7:1C-1.5 and replace it with N.J.A.C. 7:14A-22.25, where the language for the TWA fees is proposed to be located.

The Department proposes to amend this section by removing the incorrect reference to N.J.A.C. 7:1C-1.5 and adding new language at N.J.A.C. 7:14A-22.8(a)4 that incorporates language from the 90-day construction permit rules at N.J.A.C. 7:1C-1.3(b) that establishes the public notification requirement for TWAs.

In conjunction with the adoption of the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38, the Department proposes at N.J.A.C. 7:14A-22.8(a)11 to require a copy of a Highlands Preservation Area Approval for the project, if applicable, prior to issuance of a TWA. The existing rule already requires the submission of copies of such approvals, if necessary, from the Pinelands Commission, and the Delaware and Raritan Canal Commission.

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The Department proposes to add new language N.J.A.C. 7:14A-22.8(d) that provides the mailing address for the submission of applications and other information pertaining to TWAs.

Finally, the Department proposes to add new language N.J.A.C. 7:14A-22.8(e) that incorporates the language from existing N.J.A.C. 7:1C-1.4(a)2. This language provides that falsified or inaccurate information is cause for rejection of an application.

N.J.A.C. 7:14A-22.10 Requirements for stage III treatment works approval applications

N.J.A.C. 7:14A-22.10 contains the administrative requirements for issuance of stage III (operation) TWAs for projects that were previously issued a stage II (construct only) TWA. In most cases the Department will issue a combined stage II/III construct and operate TWA.

N.J.A.C. 7:14A-22.10(c)3 refers to the appropriate permit modification review fee. The Department is proposing to remove the reference to N.J.A.C. 7:1C-1.5 and replace it with N.J.A.C. 7:14A-22.25, where the language for the TWA fees is proposed to be located.

N.J.A.C. 7:14A-22.11 Modifications and revocations of treatment works approvals

N.J.A.C. 7:14A-22.11 contains the circumstances under which the Department may modify, suspend or revoke a TWA. In addition, it establishes criteria used to determine whether any material change, design or construction alterations, or changes in flow, which occur after the issuance of a TWA, will require a TWA modification or a new TWA. The administrative and technical items to be submitted with a TWA modification request are also listed.

N.J.A.C. 7:14A-22.11(c)1i refers to the appropriate permit modification review fee. The Department is proposing to remove the reference to N.J.A.C. 7:1C-1.5 and replace it with N.J.A.C. 7:14A-22.25, where the language for the TWA fees is proposed to be located.

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N.J.A.C. 7:14A-22.12 Extensions of time for treatment works approvals

N.J.A.C. 7:14A-22.12 details the length of time a TWA will be valid, as well as the procedures and administrative requirements necessary to extend the time frame for the validity of a TWA.

N.J.A.C. 7:14A-22.12(b)1i and 2 refer to the time extension review fees. The Department is proposing to remove the references to N.J.A.C. 7:1C-1.5 and replace them with N.J.A.C. 7:14A-22.25, where the language for the TWA fees is proposed to be located.

N.J.A.C. 7:14A-22.24 Requests for adjudicatory hearings

N.J.A.C. 7:14A-22.24 contains the procedures for requesting an adjudicatory hearing regarding the approval or denial of treatment works approvals and sewer ban exemptions. The Department proposes to replace existing N.J.A.C. 7:14A-22.24(a) through (e) with proposed new sections (a) through (j).

Existing N.J.A.C. 7C-1.9, proposed to be repealed, allows a request for a hearing on a TWA to be filed within 10 days of public notice of the decision via newspaper. The Department has determined that there is a need to simplify this process and establish a consistent process for TWAs. Therefore, the Department is proposing that the appeal period run from publication in the DEP Bulletin. Further, to conform the appeal period to other programs formerly included in the Ninety-Day Construction Permit Rules at N.J.A.C. 7:1C, the Department proposes to increase the appeal period to 30 days from publication if the decision in the DEP Bulletin.

Existing N.J.A.C. 7:1C-1.9(e), proposed for repeal, allows a person requesting a hearing to also request a stay of the issuance of a TWA. The Department proposes at new N.J.A.C.

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7:1C-1.9(e) required the Commissioner to issue a decision on a request for a stay within 21 days after the decision to issue or deny a TWA. Under proposed N.J.A.C. 7:14A-22.24, the request for hearing would not be due until 30 days after the issuance or denial of a TWA. Accordingly, the 21 day period for decision regarding a stay would no longer be appropriate.

The Department proposes to consolidate the provisions for appeal of TWAs with the provisions to request a hearing on an approval or denial of a sewer ban exemption. The Department proposes no material amendments in the procedure for requesting an appeal of a sewer ban exemption decision.

N.J.A.C. 7:14A-22.25 Fees

The Department is proposing new N.J.A.C. 7:14A-22.25 that incorporates the fee provisions of existing N.J.A.C. 7:1C-1.5 that pertain to the TWA program into this subchapter, without changing the amount of the fees charged.

The Department proposes to add new language at N.J.A.C. 7:14A-22.25(a) that incorporates N.J.A.C. 7:1C-1.5(a) for the calculation of treatment works approval fees.

The Department proposes new N.J.A.C. 7:14A-22.25(b) to incorporate the language from existing N.J.A.C. 7:1C-1.5(b) for the fee of a TWA one-year extension of time request.

The Department proposes new N.J.A.C. 7:14A-22.25(c) to incorporate N.J.A.C. 7:1C-1.5(d)1 for the fee calculation of a TWA modification request.

The Department proposes new N.J.A.C. 7:14A-22.25(d) to incorporate N.J.A.C. 7:1C-1.5(g), which specifies that fees shall be made payable to “Treasurer, State of New Jersey -

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The Department proposes new N.J.A.C. 7:14A-22.25(e) to incorporate the language from N.J.A.C. 7:1C-1.5(k) referring to payment by installments, in accordance with N.J.A.C. 7:1:L.

Subchapter 23. Technical Requirements for Treatment Works Approval

Applications

Subchapter 23 governs the technical requirements for the TWA program and has the same primary objective as N.J.A.C. 7:14A-22. This subchapter establishes the technical requirements for TWA submittals, including, but not limited to, flow values associated with different types of establishments, general sanitary sewer design criteria, criteria covering the design of wastewater treatment plants, and closure requirements for wastewater treatment plants.

The Department proposes to readopt Subchapter 23 with the amendments summarized below.

N.J.A.C. 7:14A-23.2 Scope

N.J.A.C. 7:14A-23.2 pertains to the applicability and technical scope of the rules. The Department is proposing new N.J.A.C. 7:14A-23.2(d) to refer to the technical standards for subsurface disposal systems that require a treatment works approval pursuant to N.J.A.C. 7:14A-22.3(a)5, established in N.J.A.C. 7:9A.

N.J.A.C. 7:14A-23.3 Projected flow criteria

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N.J.A.C. 7:14A-23.3 contains flow values associated with different types of establishments. In accordance with N.J.A.C. 7:14A-23.3(a), the Department may, at its discretion, accept flow values that are not currently identified provided that actual water use data is provided by the design engineer and incorporates an appropriate safety factor. Since the last rule readoption in 1997, the Department has accepted flow values for certain categories and has made it policy to accept such figures for determining projected flow for the purposes of applying for a TWA. The Department proposes to amend N.J.A.C. 7:14A-23.3(a) to add additional categories for age-restricted housing, assisted living facilities, skilled nursing facilities and multi-member swimming pools.

The proposed flow criteria for age-restricted housing, based on number of bedrooms per dwelling unit, is approximately 75 percent of the Department flow criteria for a similar, non-age restricted “residential dwelling,” based on a similar number of bedrooms per dwelling unit, and reflects the less intense use of this type of housing unit, where typically residency is restricted to those aged 55 and over. This proposed flow criteria has been accepted by the Department since March 30, 1998. This determination was based upon water use data submitted to the Department from design engineers from similar age-restricted housing units and incorporates a 50 percent safety factor.

The proposed flow criterion for assisted living facilities, 100 gallons per day per bed, is approximately 80 percent of the Department flow criteria for “other institutions” (excluding hospitals) per bed, and reflects the less intensive use of this type of institutional bed, where the person is typically not bed-ridden and enjoys a degree of autonomy to partake in personal and community activities. This proposed flow criterion has been accepted by the Department since April 16, 1999. This determination was based in part in consult with the New Jersey Association

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of Health Care Facilities and upon the submission of water use data submitted to the Department from design engineers from similar assisted living facilities and incorporates a 50 percent safety factor.

The proposed flow criterion for skilled nursing facilities, 75 gallons per day per bed, is approximately 60 percent of the Department flow criteria for “other institutions” (excluding hospitals) per bed, and reflects a less intensive use of this type of institutional bed, where the person is typically bed ridden and requires assistance for personal and community activities. This proposed flow criterion has been accepted by the Department since April 21, 1997. This determination was based in part in consult with the New Jersey Association of Health Care Facilities and upon the submission of water use data submitted to the Department from design engineers from similar skilled nursing facilities and incorporates a 50 percent safety factor.

The proposed flow criterion for a swimming pool facility, 15 gallons per day per person, is similar to the “picnic parks with showers” design flow criteria of 15 gallons per day per person, and reflects the additional flows specifically associated with pools (typically shower usage). This proposed flow criterion has been accepted by the Department since February 7, 2006. The Department also recognizes that typical pool usage by members and guests is restricted to a maximum occupancy allowed by the administrative authority and such limit is required for computing projected flow to wastewater conveyance and treatment facilities.

Subchapter 24. Additional Requirements for Certain Stormwater Discharges

Subchapter 24 sets forth additional requirements applicable to all stormwater discharges to surface water (DSW) and some stormwater discharges to ground water (DGW), including exemptions and deadlines for permit applications. Subchapter 24 is generally based on USEPA

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N.J.A.C. 7:14A-24.2 Stormwater discharges for which a NJPDES permit is required under this subchapter; exemptions

Due to amendments to 40 CFR Part 122, which were finalized by the USEPA on June 12, 2006 (See 71 Fed. Reg. 33628), there is a conflict between the Federal rule and Subchapter 24. USEPA's changes prohibit states from requiring permits for stormwater discharges associated with field activities or operations at oil and gas exploration, production, processing, and treatment operations or transmission facilities. Existing N.J.A.C. 7:14A-24.2(c)2 exempts certain mining and oil and gas facility related stormwater discharges to surface water from permitting requirements under the existing rules and are consistent with most of the Federal requirements. The Department is proposing to remove the references to oil and gas facilities from this exemption and add an exemption specific to oil and gas facilities at N.J.A.C. 7:14A-24.2(c)4 to address the Federal rule changes by incorporating the Federal language into the proposed exemption. However, it is important to note that this exemption, as does the Federal regulation, relieves the applicable facilities from only the requirement to obtain a NJPDES stormwater discharge permit, provided the area where the field activity or operation has not had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 302.6; or has not had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987. It is also important to

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N.J.A.C. 7:14A-24.4 Deadlines to apply for NJPDES permit for stormwater discharges

Due to amendments to 40 CFR Part 122 (See 71 Fed. Reg. 33628), there are conflicts between the Federal rule and Subchapter 24, as discussed in the preceding paragraph. N.J.A.C. 7:14A-24.4(a)6i specifically requires permit applications for small construction activities associated with oil and gas facilities. The Department is proposing to delete N.J.A.C. 7:14A-24.4(a)6i to address these Federal rule changes. In addition, the Department proposes to update cross references.

N.J.A.C. 7:14A-24.7 Permit application requirements for stormwater discharges associated with industrial activity or small construction activity, and for certain other stormwater DSW

To complement the proposed amendments in N.J.A.C. 7:14A-24.2 and 24.4, the Department proposes to relocate language at N.J.A.C. 7:14A-24.7(a)3, which exempts certain oil and gas facility related stormwater discharges to surface water from permitting requirements, to N.J.A.C. 7:14A-24.2(c)4, to consolidate exemptions.

Subchapter 25. Municipal Stormwater Regulation Program

Subchapter 25 sets forth requirements applicable to the NJPDES Municipal Stormwater Regulation Program. These requirements are applicable to discharges to surface water (DSW) and discharges to ground water (DGW) of stormwater from “large municipal separate storm

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The Department proposes to readopt Subchapter 25 without amendments.

Social Impact

The Department anticipates that the rules proposed for readoption with amendments, repeals and new rules will have an overall positive social impact, as discussed below.

N.J.A.C. 7:1 Department Organization

N.J.A.C. 7:1-1.3 discusses publication of the DEP Bulletin. The Department anticipates that the proposed amendments to N.J.A.C. 7:1-1.3 will have no social impact.

N.J.A.C.7:1C Ninety-Day Construction Permits

The Ninety-Day Construction Permits rules establish application and review conditions for treatment works approvals. The Department is proposing to move all provisions relating to the TWA program into the NJPDES rules at N.J.A.C. 7:14A-22, and as a result of the change, the Department is also proposing to repeal N.J.A.C. 7:1C. To the extent that consolidating the Ninety-Day Construction Permit rules pertaining to treatment works approvals into the NJPDES rules will make it easier for the regulated public to understand and comply with those rules, the proposed amendments will have a positive social impact.

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N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

The Department anticipates that the proposed amendments to N.J.A.C. 7:9A will have a positive social impact. The proposed amendments are to definitions, and serve to conform the definitions in this chapter to those proposed definitions in the NJPDES rules. Further, the proposed amended definitions formalize the Department's interpretation of the terms used within the chapters. The proposed amendments will make the rules easier for the regulated community to use by providing definitions that will make it easier to identify if a project is subject to regulation under N.J.A.C. 7:9A or 7:14A-8.

N.J.A.C. 7:14 Water Pollution Control Act

The proposed amendments to N.J.A.C. 7:14-8.2 should have a minimal, but positive, social impact. The proposed amendment is to the definition of "serious violation," and serves to conform this definition in the chapter to that in the NJPDES rules. This amendment reflects the inclusion of whole effluent toxicity test terms already found in the NJPDES rules at N.J.A.C.7:14A-13.14. This proposed amendment does not change the monitoring parameter, but provides for a better-defined statistical condition for testing, and make the rules easier for the regulated community to use.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

The Department anticipates that the rules proposed for readoption with amendments, repeals and new rules will have a positive social impact. The surface and ground waters of the State are used as domestic, municipal and industrial water supplies, and for commercial and recreational fishing, clamming, crabbing, swimming and boating. The rules proposed for

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waters of the State and provide the social benefit of protecting water resources and access to these activities.

NJPDES: Administrative Provisions

The administrative portions of the NJPDES rules, located within N.J.A.C. 7:14A-1 through 4, 6, and 15 through 18, address the permit application process, permit decision making, permit issuance, annual fees, adjudicatory hearings and stays of permit conditions and requests for confidentiality. These rules proposed for readoption with amendments and new rules provide a positive social impact by identifying the submission requirements of the permit application process; the criteria the Department uses in its decision making processes; how permit fees are determined and calculated; the requirements for requesting an adjudicatory hearing and stay of permit conditions; and the procedures and submission requirements for confidentiality requests.

The Department's proposed amendments to the administrative review provisions are designed to improve the efficiency and predictability in the NJPDES permitting program. The amendments will allow electronic access and retrieval of information and, therefore, will allow almost instantaneous exchange of information. Other amendments, such as adding and updating certain definitions and acronyms will clarify the rules, making it easier for the regulated community to understand and comply with the rules. The proposed amendments at N.J.A.C. 7:14A-3.1(d) also update and simplify certain permit fee calculations (such as fees to dischargers to groundwater) to make fees more predictable and stable from year to year. Other proposed amendments are intended to reduce ambiguity, such as the proposed amended submission forms

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Reclaimed Water for Beneficial Reuse

The Department expects the proposed reclaimed water for beneficial reuse (RWBR) rules, located within N.J.A.C. 7:14A-2, to have a positive social impact. The proposed amendments and new rule should encourage use of RWBR for non-potable applications in place of potable water. The amendments and new rule pertaining to RWBR will help conserve and protect drinking water supplies, thus providing social benefits by ensuring adequate drinking water supplies, reducing pollutant load to waterbodies and aquifers, protecting public health, reducing costs, increasing recreational opportunities and providing aesthetic value.

Ground Water Program

The rules proposed for readoption concerning, and amendments to, the DGW requirements, N.J.A.C. 7:14A-7 through 10, will have a positive social impact by ensuring that the ground water quality is adequately protected from undue degradation, thereby assisting in the protection of potable water supplies.

In New Jersey, approximately four million people use ground water for domestic and industrial purposes, and as a source of drinking water. Ground water is a critical ecosystem resource, providing a constant source of recharge to streams, lakes, and wetlands, which are used for or help to support commercial and recreational fishing, clamming, crabbing, swimming, and boating. Ground water also replenishes moisture in soil, which is then used by plants, trees, and

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The Department anticipates that the proposed amendments to the UIC rules at N.J.A.C. 7:14A-8 will have a positive social impact on the regulated community. By clarifying existing requirements, these amendments will make it easier for dischargers to understand and comply with the rules.

Surface Water Program

The rules proposed for readoption with amendments and repeals, N.J.A.C. 7:14A-4 and 11 through 14, establish a permit program for discharges to surface water, which program requires the treatment or control of domestic, municipal and industrial wastewater and water pollutants, thereby protecting the surface waters of the State. The rules contain permit conditions, application procedures, filing requirements, and procedures for determining effluent limitations for permittees.

The rules proposed for readoption with amendments and repeals will affect all residents of the State. The rules are intended to maintain and improve the quality of surface waters, which will result in increased recreational opportunities, higher quality sources of potable water, increased aesthetics, improved quality of life, and increased public health and well-being for the general public. The proposed amendments are intended to make the NJPDES rules and permitting program easier to understand and implement.

The application requirements specific to surface water discharge permits (N.J.A.C. 7:14A-11) are intended to provide the information that applicants need to complete a permit

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application without confusion and undue delays. The State effluent standards for discharges to surface water (N.J.A.C. 7:14A-12), and the procedures to determine effluent limitations (N.J.A.C. 7:14A-13) provide a positive social impact by establishing consistent effluent standards that are applicable to discharges to surface water, and a consistent method for determining effluent limits. Proposed amendments to N.J.A.C. 7:14A-13 governing the point of compliance for effluent limitations contain an option to include a chlorine produced oxidant (CPO) decay factor in a permit where there is a significant period of time between where the final effluent sample for CPO is taken and the point of discharge. This will allow dischargers that have long outfalls with a significant amount of travel time between the last accessible sample location and discharge point, or approved regulatory mixing zones to adjust their measured effluent CPO concentration. This will provide a positive social impact by optimizing the chlorine use necessary to maintain water quality.

The monitoring requirements in the DSW rules proposed for readoption with amendments and repeals, including proposed amendments to the pollutant lists at N.J.A.C. 7:14A-4, Appendix A, Tables II and III, and Table IV, will ensure that the Department has sufficient data to verify that discharges are in compliance with the applicable permit conditions. These requirements will result in further improvements to water quality, a positive social benefit.

Residuals Management Program

The rules proposed for readoption with amendments, repeals and new rules at N.J.A.C. 7:14A-20 maintain diversity of residual management options through readoption of uniform national residual recycling pollutant, pathogen and vector attraction reduction standards, while

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implementation of uniform national standards for the beneficial use of residuals, as well as the improvement of the productivity of land by conditioning the soil and adding nutrients from residual, are additional social benefits.

Domestic sewage may be treated (or partially treated) at its source in such devices as septic tanks and portable toilets, or may be treated in publicly owned, privately owned, or State or Federally owned treatment works. A treatment works may treat domestic sewage alone or in combination with industrial wastewater. Each treatment works must meet effluent or discharge limitations, as mandated by statute. Increased levels of treatment result in increased amounts of residual. Typically, a family of four generates 300 to 400 gallons of domestic sewage wastewater per day. See 58 Fed. Reg. 9255 (February 19, 1993). Based on algorithms published in Tables 3 through 6 of the 1987 edition of the Statewide Sludge Management Plan, the Department estimates that a family of four is directly responsible for approximately one dry pound of sewage sludge per day.

Notwithstanding the powers granted to the Department pursuant to the Solid Waste Management Act, particularly N.J.S.A. 13:1E-6, it has been the Department's policy to place the primary responsibility for selection of ultimate residuals management alternatives at the generator level rather than at the State level. By proposing to readopt this subchapter, with amendments, repeal and new rules, the Department is ensuring the societal benefit of maintaining a diversity of residual management alternatives.

In making residual management decisions, considerations of public health and environmental protection alone are not sufficient grounds on which to evaluate a range of alternatives. Public acceptability is also a necessary input into the evaluation process. Factors

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The Department is proposing to readopt conditions that require, as part of the permit application process, proof of the efficacy of land applying a residual other than sewage sludge. The proposed amendments, repeals and new rules expand these requirements to include all new residual stabilization processes not previously permitted in New Jersey. Although nuisance characteristics can be minimized through careful marketing, handling and land application techniques, some products can be so nuisance-prone that the likelihood of successful marketing is very low. The rules proposed for readoption with amendments, repeals and new rules require the applicant to demonstrate that a product is marketable and will not generate nuisance conditions. If the applicant cannot demonstrate these characteristics to the Department (either by example of the same process operating in other jurisdictions or by operation of a pilot phase), then the Department will deny the application to operate the new process in New Jersey.

The Department also proposes additional management practices for non-exceptional quality bulk marketable residual products and for certain exceptional quality residual when deemed necessary by the Department in a permit. Examples of management practices include buffer zones between application areas and wells, saturated or shallow soils, frozen or snow covered land, and surface and ground water. The proposed amendments also strengthen instructional literature requirements, and expand and clarify notification requirements.

In addition, for non-exceptional quality residual, the proposed amendments clarify and expand the site description criteria for proposed land application sites – information that the

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The Department also proposes to readopt and strengthen, through amendments, conditions for case-by-case imposition of requirements more stringent than the requirements in the existing subchapter. The Department proposes to extend the list of examples of reasons why it may impose additional requirements to include nutrient loss and nuisance odors. The Department also proposes to expand the activities for which more stringent conditions may be established to include residual treatment, delivery, storage, and land application.

Finally, the Department proposes a new regulatory program to address sites that accept and blend marketable residual product with other materials for subsequent distribution. This program will require permits for the largest such operations while allowing smaller operations to proceed with less regulation, thus supporting an important recycling activity while applying regulatory control to these sites.

Although many people appreciate the concept of recycling, the public will not perceive poorly prepared or poorly marketed material as a good product. Inferior residual management programs can degrade to the point where marketing becomes indistinguishable from disposal. Residuals are generated as the result of careful and expensive wastewater treatment that prevents ground and surface water contamination, surface water oxygen depletion and eutrophication. It is inappropriate to introduce residual as a resource to the environment without striving to minimize the loss of residual constituents to the water cycle and to the air in the form of nuisance odors. Thus, through these rules proposed for readoption with amendments, repeal and new rules, the Department expects greater permittee oversight and involvement at production, marketing and use sites, enhancing public confidence in the recycling of residuals.

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Pretreatment and SIU Programs

N.J.A.C. 7:14A-19, proposed for readoption with amendments, includes procedures related to the pretreatment program. It provides a positive social impact by assisting local agencies that operate publicly owned treatment works (POTWs) in regulating the industrial waste discharges to the POTW which may harm the treatment works or which the POTW may not be able to treat effectively. This results in fewer pollutants entering the waters of the State.

The rules proposed for readoption with amendments at N.J.A.C. 7:14A-19 affects the approximately 450 publicly owned treatment works in New Jersey regulated under a NJPDES permit, including the 24 local agencies that have State approved industrial pretreatment programs. These rules proposed for readoption with amendments will have a positive social impact by further clarifying the pretreatment requirements for both delegated and non-delegated local agencies, specifically as these requirements relate to the streamlining regulations under 40 CFR Part 403, headworks analyses, and permit issuance procedures.

The rules proposed for readoption with amendments at N.J.A.C. 7:14A-21 will provide a positive social impact by delineating specific requirements for issuance of discharge permits. Indirect users that discharge wastewater into the sanitary sewer are also affected, including 78 indirect users currently regulated under a NJPDES SIU permit issued by the Department, and the approximately 900 indirect users regulated under a DLA-issued discharge permit. The rules proposed for readoption with amendments will promote efficient operation of the treatment works, protect local agency's workers' health and safety and promote beneficial use of the biosolids. The rules proposed for readoption with amendments allow for the management of discharges in a manner that protects the public health, welfare, and safety. They should benefit

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Treatment Works

N.J.A.C. 7:14A-22 and 23 include provisions related to the treatment works approval (TWA) program. This program issues permits for construction of new collection and/or treatment facilities. These two subchapters are being proposed for readoption with amendments. The Department anticipates that the overall social impact of the rules proposed for readoption with amendments at N.J.A.C. 7:14A-22 and 23 will be positive. The rules provide for the protection of health of the residents of New Jersey by establishing and maintaining Statewide design standards for the proper construction and operation of treatment works. In addition, the rules will continue to provide for the expedited review of industrial treatment works that are related to resolving existing environmental problems such as contaminated ground water remediation.

The Department proposes to continue the rule provisions governing the imposition and rescission criteria for sewer connection bans. These rules establish the criteria for which a sewer connection ban may be imposed. The imposition of sewer bans on those municipalities that own or operate treatment works that cause significant environmental impacts, or which do not commit to undertake the necessary corrective action to improve the non-conforming treatment works, will result in some adverse social impacts that affect developers, builders and landowners by restricting development and new sewer connections during the sewer ban. However, as sewer connection bans are a regulatory tool used by the Department, an overall positive social impact should also be realized in helping to enhance and maintain water quality.

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The majority of the proposed amendments to the TWA rules do not incorporate new requirements for the regulated community. Most of these provisions are clarifications to the existing rules and program policies, in order to prevent confusion, delay and frustration to the regulated community. These amendments will be socially beneficial, as they will allow the Department's decisions to be more predictable.

The proposed inclusion of the TWA application and processing requirements presently located at N.J.A.C. 7:1C, Ninety-Day Construction Permits, into the TWA rules will enable the regulatory community to follow the Department's policies and procedures more easily and to access the permit fee structure more readily, thereby resulting in a positive social impact.

Stormwater Program

N.J.A.C. 7:14A-24 and 25, proposed for readoption, establish the Statewide Stormwater Permitting Program and the NJPDES program for regulating "concentrated animal feeding operations" (CAFOs). The rules proposed for readoption at N.J.A.C. 7:14A-24 and 25 will benefit all residents of the State by helping to maintain or restore water quality in streams, rivers, lakes, estuaries, wetlands, the ocean, and ground water. Further benefits will come from maintaining and improving water quality for recreational and commercial activities. The Statewide Stormwater Permitting Program, including the Municipal Stormwater Regulation and Industrial Stormwater Permitting programs, will continue to provide benefits, such as maintaining water supply from groundwater recharge, reducing hazards from floods and erosion, and providing aesthetic and other amenities (for example, more trees and less litter) and preserved or created wildlife habitat. By proposing to readopt the rules, the Department seeks to continue

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Economic Impact

N.J.A.C. 7:1 Department Organization

N.J.A.C. 7:1-1.3 discusses publication of the DEP Bulletin. The Department anticipates that the proposed amendments to N.J.A.C. 7:1-1.3 will have a positive economic impact. The Department will no longer incur the expense of printing and distributing the DEP Bulletin. The DEP Bulletin will remain available electronically to the public.

N.J.A.C.7:1C Ninety-Day Construction Permits

The Ninety-Day Construction Permits rules establish certain application and review conditions for treatment works approvals. The Department is proposing to move all provisions relating to the TWA program into the NJPDES rules at N.J.A.C. 7:14A-22, and as a result of the change, the Department is also proposing to repeal N.J.A.C. 7:1C. Because the administrative and review provisions will continue as a result of this change, the Department does not anticipate that the repeal of N.J.A.C. 7:1C will have an economic impact.

N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

The proposed amendments to N.J.A.C. 7:9A are to definitions of terms already in use. Accordingly, the Department does not anticipate that the proposed amendments to N.J.A.C. 7:9A will have any economic impact.

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N.J.A.C. 7:14 Water Pollution Control Act

The proposed amendments to N.J.A.C. 7:14-8.2 should have no economic impact. The proposed amendment is to the definition of “serious violation,” and serves to conform this definition to the proposed amended definition of the term in the NJPDES rules. This amendment reflects the inclusion of whole effluent toxicity test terms already found in the NJPDES rules at N.J.A.C.7:14A-13.14. This amendment does not change the monitoring parameter, but provides for a better-defined statistical condition for testing. The economic impact, if any, would be felt by only those few permittees who may be at or near the limitation threshold. The more precise measurements that the better-defined statistical condition achieves could result in a facility’s being over the threshold, which might not have been reflected by the existing statistical conditions.

N.J.A.C.7:14A New Jersey Pollutant Discharge Elimination System

The Department administers the NJPDES program through rules developed under the National Pollutant Discharge Elimination System (NPDES) as authorized by the Federal Clean Water Act and the underground injection control program as authorized under the Federal Safe Drinking Water Act. If the Department did not administer its own water pollution control program, the overall costs to permittees would not significantly change, as a similar program would be administered by the USEPA under the Federal NPDES rules.

The purpose of the NJPDES rules is to provide surface and ground water that are safe for drinking, recreation, and industrial and commercial use. Without the NJPDES rules, a negative economic impact would occur because New Jersey’s waters would not be suitable to use. Two

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of the State's most important industries, tourism at the shore and commercial fishing, would not be possible without clean ocean water. Without fresh surface and ground water, farms would not have an adequate source of clean water for irrigation, and manufacturing would be impacted by higher costs to treat water for industrial use.

The rules proposed for readoption with amendments, repeals and new rules will continue to have a positive economic impact on the economy of the State by providing a cost-effective mechanism for the protection, maintenance, and restoration of waters of the State. The rules proposed for readoption with amendments, repeals and new rules are intended to make the existing program more efficient and easier to implement for both the Department and the regulated community and, as a result, the Department believes that the rules will contribute to new industrial and commercial facilities' deciding to locate in New Jersey and for existing facilities' remaining and, perhaps, expanding. The rules proposed for readoption with amendments, repeals and new rules should also lead to an increase in the environmental living standards in New Jersey, positively affecting the State's tourism industry, and should be seen as a positive factor for families remaining in and relocating to New Jersey.

NJPDES: Administrative Provisions

The administrative portions of the NJPDES rules establish the permit application process, permit decision making, permit issuance, annual fees, adjudicatory hearings and stays of permit conditions, and requests for confidentiality. The Department is proposing to readopt the rules with amendments in order to create a more efficient permitting process that will result in cost savings for the regulated community and the Department.

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Applying for and receiving a NJPDES permit involves certain administrative costs to the permittee, in the form of preparing and submitting a permit application; monitoring and reporting (when applicable); and when applicable, preparing and submitting a request for an adjudicatory hearing and stay of permit conditions or request for confidentiality.

The NJPDES program consists of permitting and enforcement activities, including development, issuance, compliance monitoring and administration of NJPDES permits. The Department assesses permit fees to cover 100 percent of the NJPDES program budget. The budget covers personnel costs, which include the current average salary for each full time employee in the NJPDES program, plus fringe benefit and indirect costs, such as legal and administrative expenses. It also covers the operating expenses, which include printing, office supplies, vehicles and other travel, telephones, postage, information processing, equipment and their maintenance, and rent.

The Department recovers the costs of implementing the NJPDES program by assessing permit fees in accordance with the New Jersey Water Pollution Control Act, specifically N.J.S.A. 58:10A-9. These costs are borne by the regulated industrial and municipal permittees. The industrial permittees pass this cost to the consumer of their product, while the municipal permittees pass this cost to the customers they serve.

The NJPDES fees for fiscal year (FY) 2007 cover the period July 1, 2006 to June 30, 2007. For FY2007, the total costs for the NJPDES program was \$19.8 million. The Department assessed \$10.9 million of the total budget as fees for dischargers to surface water; \$0.5 million for Significant Indirect Users (SIUs); \$2.6 million for dischargers to ground water (including landfills); \$0.2 million for residuals; and \$5.6 million for stormwater. This amounts to a total

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Table 1
Minimum Fees for NJPDES Permits

<u>Permit Fee Category</u>	<u>Minimum Fee</u> <u>FY 2007</u>
Major DSW Domestic Treatment Works (DTW) - Individual Permit	\$11,150
Minor DSW Domestic Treatment Works (DTW) - Individual Permit	\$4,200
Combined Sewer Overflow - Individual Permit Component or General Permit	\$9,450
Major Industrial DSW - Individual Permit	\$9,950
Minor Industrial DSW - Individual Permit	\$4,200
General Permit - Industrial DSW, DGW, or both (unless otherwise listed)	\$2,300
Industrial Stormwater - Individual Permit	\$4,100
Stormwater - Basic Industrial General Permit (5G2)	\$800
Municipal Stormwater – Tier A General Permit (R9) Range 1k	\$600
Municipal Stormwater – Tier A General Permit (R9) Range 5k	\$1,050
Municipal Stormwater – Tier A General Permit (R9) Range 10k	\$2,000
Municipal Stormwater – Tier A General Permit (R9) Range 15k	\$3,000
Municipal Stormwater – Tier A General Permit (R9) Range 20k	\$4,050
Municipal Stormwater – Tier A General Permit (R9) Range 25k	\$5,250
Municipal Stormwater – Tier A General Permit (R9) Range 25k+	\$9,000

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Municipal Stormwater – Tier B General Permit (R10)	\$500
Municipal Stormwater – Public Complex General Permit (R11) Range 3k	\$900
Municipal Stormwater – Public Complex General Permit (R11) Range 6k	\$1,500
Municipal Stormwater – Public Complex General Permit (R11) Range 9k	\$2,600
Municipal Stormwater – Public Complex General Permit (R11) Range 9k+	\$3,600
Municipal Stormwater – Highway Agency General Permit (R12) Range 9	\$550
Municipal Stormwater – Highway Agency General Permit (R12) Range 199	\$2,450
Municipal Stormwater – Highway Agency General Permit (R12) Range 399	\$5,100
Municipal Stormwater – Highway Agency General Permit (R12) Range 400+	\$9,800
DGW – Initial Individual Permit ¹	\$6,000
DGW – Renewed or Continued Individual Permits ¹	\$2,750
DGW - General Permit (I1, I2 and LSI)	\$900
DGW - General Permit (T1)	\$450
DGW - Operating Landfill Individual Permit	\$6,900
Residuals Use or Disposal Operations (unless otherwise listed)	\$10,600
Residuals - Food Processors / WTPs ³ Individual Permit	\$4,000
Residuals - Category Z Individual Permit ⁴	\$2,050
Residuals - General Permit (ZG and 4G)	\$500
Residuals - Category 04 Individual Permit	\$850
Residuals – Land Application General Permit (unless otherwise listed)	\$800
Significant Indirect User (SIU) (Pretreatment)	\$5,750

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¹ For a domestic or industrial facility issued an individual NJPDES discharge to groundwater permit, the minimum fee is \$6,000 for the first five years, and \$2,750 if the permit is renewed or administratively continued.

The NJPDES Program encompasses both permitting and enforcement activities. Permitting activities include developing, issuing, monitoring and administering NJPDES permits. Enforcement activities include inspections and, when appropriate, follow up activities to gain permit compliance. The total Water Pollution Control (WPC) budget consists of the NJPDES and Enforcement Services budgets that are funded by State appropriations given at the start of the State fiscal year. The Department assesses permit fees to cover 100 percent of the NJPDES Services budget and all fees collected are deposited directly to the General Fund within the Department of the Treasury. Similarly, all penalties collected are also deposited into the General Fund.

The proposed amendments to N.J.A.C. 7:14A-3.1(d) will have a beneficial economic impact for the DGW permit fee payers by stabilizing yearly fees, making them less volatile or sensitive to slight changes to facility rating characteristics, thereby making them more predictable. Under the existing rules, fees can vary widely due to slight changes in rating characteristics, principally aquifer rating and flow. The proposed fee formula eliminates “aquifer rating” and reduces the impact of flow.

Facilities that do not report flow will no longer be assigned a default flow rating and resultant lower fee. Instead, the fee will depend upon the nature of the pollutants discharged and the engineering design constructed to minimize pollutant flow to groundwater. Historically, the nature of pollutants discharged and design of waste treatment facilities varies little from year to year.

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Facilities that do report flow will not see a fee increase for slight flow increases. Fee increases will only take effect when a facility's design/permitted flow increases beyond a certain flow range. The ranges proposed are designed for reasonable flexibility. For example, the ranges are less than one million gallons per day, between one and three million gallons per day, between three and five million gallons per day and, over five million gallons per day.

The proposed amendments to N.J.A.C. 7:14A-3.1(j), the construction activity stormwater general permit, will result in an increased cost to permittees required to have construction general permits due to the proposed increase from the existing flat fee of \$300.00 to a two-tiered system of \$450.00 for land disturbances less than five acres and \$650.00 for land disturbances of five acres or more. The increased fees are directly related to the increased costs associated with administering this permit program, by both the Department and the local soil conservation districts that issue the permits.

The Department has experienced an increase of approximately 2,000 permits per year as a result of the expansion of the construction activities stormwater general permit program to include small construction activities. Further, the local soil conservation districts have required additional support from the Department for enforcement of the construction activity stormwater general permit, which also increased the Departments costs. In addition, the Department has spent significant resources to coordinate the construction program with the State Soil Conservation Committee, local soil conservation districts and the Department of Agriculture, and had not previously passed the cost of the coordination on to permittees. The workload has also significantly increased for the soil conservation districts, as they have been required to assist entities that are subject to additional permit requirements under this program.

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The amendments proposed to the administrative portions of the rules are anticipated to reduce costs to the public and to the Department by improving efficiency. The proposed addition and clarification of definitions will allow permittees to more easily determine the content and scope of applicable regulations. Incorporation of current technology, such as electronic distribution of Fee Reports and allowing electronic submission of permitting information, as well as making information available on the Department's web page, will decrease administrative costs for both the permittee and the Department through reduced paperwork and easier access to information. Also, electronic submission will save permittees the cost of postage, and provide an immediate acknowledgement of the Department's receipt. The Department will realize an economic benefit through reduced file storage costs, time and postage.

Reclaimed Water for Beneficial Reuse

The Department expects the proposed new reclaimed water for beneficial reuse (RWBR) rule at N.J.A.C. 7:14A-2.15 to have a direct positive economic impact on RWBR producers and RWBR users. RWBR producers, such as publicly owned treatment works (POTWs), that choose to sell reclaimed water may experience a positive economic impact. If those producers pass the economic benefit to ratepayers in the form of reduced fees, then the ratepayers will also benefit directly. Some permittees will incur additional costs associated with preparing and implementing a reuse feasibility study pursuant to N.J.A.C. 7:14A-2.15(b). These costs can range between \$30,000 and \$90,000 depending upon the scope of the reuse project. The Department anticipates, however, that these one time costs will be offset by cost savings realized through utilization of RWBR in lieu of potable water.

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RWBR users, such as golf courses or manufacturing facilities, may also experience a positive economic impact. First, availability of RWBR in times of drought may provide a user with a steady, dependable non-potable water supply. A golf course that uses reclaimed water for irrigation, for example, may be able to remain in operation during a drought, while a golf course using potable water could be forced to close for lack of water. An industrial facility that reuses its effluent for non-potable purposes, such as non-contact cooling, could save money that would otherwise be spent purchasing potable water for the purpose.

Ground Water Program

The NJPDES discharge to ground water (DGW) and underground injection control (UIC) requirements of N.J.S.A. 7:14A-7 through 10, proposed for readoption with amendments, regulate facilities operated by a wide variety of governmental entities and industrial, commercial, nonprofit, and other private entities. Entities subject to the rules proposed for readoption with amendments will continue to incur NJPDES permit costs, including the costs of applying for and complying with the permit, the permit fee, and the risk of penalties or fines if the permit is violated. Over 1,000 facilities in New Jersey have NJPDES DGW (including UIC) permits (other than a permit-by-rule or stormwater permit).

The Department estimates that the annual cost for individual NJPDES-DGW permittees to maintain and demonstrate compliance with the Ground Water Quality Standards is usually between \$6,000 and \$14,000. This cost consists of consultant fees, ground water monitoring well sampling costs, laboratory costs, and NJPDES-DGW permit fees. It does not include capital costs associated with repairs or upgrading of the facility to ensure compliance with the Ground Water Quality Standards, because these capital costs are variable and are dependent on

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the characteristics of existing treatment systems and particular characteristics of the waste stream. Capital costs could range from \$2,700 to \$270,000 per regulated unit. The costs to comply with the statutory and regulatory requirements of the program are borne by the permittees, but New Jersey's four million ground water users and the ecosystem all benefit from the ground water protection that results.

The Department anticipates that the proposed amendments to the UIC rules will have a positive economic impact on dischargers and the Department. By clarifying existing requirements, many of the amendments make it easier for dischargers to understand and comply with the rules. For example, amendments to UIC rule provisions regarding injection well closure update and reduce the number of regulatory references, and clarify the location of well closure requirements in the UIC rules.

Surface Water Program

The NJPDES-DSW program is a Federally delegated program. Under the terms of the delegations, the Department is authorized to issue NPDES permits in accordance with the Federal Clean Water Act. The Clean Water Act establishes requirements for facilities that discharge directly to surface water. These requirements include water quality based effluent limitations, secondary treatment requirements for POTWs, and technology based effluent limitations for industrial dischargers. In addition the State of New Jersey and other environmental entities promulgate requirements for dischargers. Subchapters 12 through 14 of the rules proposed for readoption with amendments, repeals and new rules contain the technical requirements for developing the effluent limitations and conditions to be included in surface water permits. Each requirement involves a set of costs and contributes benefits from

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improvements in water quality. Costs associated with the implementation of the NJPDES rules are incurred by the Department and the permittees. In the absence of the NJPDES rules, USEPA would assume authority for issuing permits, and costs associated with the program would continue to be realized by the permittees, and the Department.

For example, the Department incurs costs associated with developing TMDLs and water quality management plans. Under the Clean Water Act, the direct costs include sampling of the existing ambient water quality in the waterbody, developing a predictive water quality model, and developing a TMDL and water quality management plan. This category of costs is covered by a combination of legislative appropriations, grants from other governmental agencies, Department funds, and fees from dischargers and local or regional governmental entities. The Department also incurs administrative costs associated with development and issuance of a discharge permit, which include salaries for the individuals who develop and review the discharge permits, postage, and supplies. Prior to the delegation of the NPDES program to the Department in 1982, these administrative costs were incurred by USEPA. In the unlikely event that responsibility for the NPDES program in New Jersey would sometime in the future revert back to USEPA, who would then incur these administrative costs.

Permittees incur the cost of complying with the permit limitations and conditions or implementing best management practices. In the absence of these rules, permittees would still be required to comply with surface water discharge permits under the Clean Water Act.

Under the rules proposed for readoption with amendments, repeals and new rules, facilities may choose how they will comply with permits. Some of these choices include providing new or additional treatment, reducing pollutant loadings, or finding an alternate to surface water discharge.

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The costs for treatment include capital and operation and maintenance costs for installing new treatment units or retrofitting of existing treatment units. Capital costs are a one-time expense to develop a project. They consist of direct costs (land, structures, equipment, ancillary facilities), indirect costs (engineering, fees, contingencies) and financial costs. Operation and maintenance costs are those that recur, usually on an annual basis, over the life of the facility. They can be classified as variable (vary with the rate of flow and/or pollutant loading) or fixed (fixed by the size of the facilities). Variable costs include such things as power, chemicals, process water, monitoring, steam, and fuel. Fixed costs may include labor, supervision, overhead, maintenance, and taxes. When an addition is made to an existing facility, it is termed a retrofit. Retrofitting an existing facility to meet new or more stringent conditions is usually more costly than for construction of the same unit at a new plant. Besides the complex design problems, there is also the physical difficulty of integrating the process into the design scheme and constructing the retrofit unit on the plant site. Some of the factors that contribute to the additional costs are as follows:

Plant Age – May require structural modifications to facility and process alterations.

Available Space – May require extensive steel support construction and site predations. Existing equipment may require removal and relocation. New equipment may require custom design to meet space allocations.

Utilities – Electrical, water supply, waste removal, and waste disposal facilities may require expansion.

Production Shutdown – Industrial facilities may lose production capabilities during retrofit.

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Direct (Field) Labor – If retrofitting is accomplished during normal plant operations, installation time and labor hours will be increased. If installation occurs during off-hours, overtime wages may be necessary.

Engineering – Increased engineering costs to integrate control system into existing process.

As a rule of thumb, equivalent retrofit installation costs from 25 to 40 percent more than for construction of a new facility.

Most of these costs are borne by those entities that discharge into the waterbody. For domestic treatment works (DTWs), taxes or fees ultimately cover the costs for usage. For industrial facilities costs are factored into the goods and services provided.

Adding treatment or retrofitting existing facilities is the most costly option to achieve compliance with permit limitations and conditions. In some cases, end-of-pipe treatment is the only option for compliance. Other, less costly options may be available to achieve permit compliance. For example, a domestic treatment works may impose more stringent limits or other requirements for industrial facilities that pretreat wastewater prior to discharging it to the domestic treatment works. An industrial facility may change a chemical manufacturing process, or reduce pollutants at the source before discharge to the treatment facility. Another facility might optimize the treatment efficiency for one or more treatment units. These options are part of pollution prevention.

Pollution prevention describes those actions, other than treatment, taken by a permittee to reduce levels of pollutants in its wastewater discharge. Such actions include development of local ordinances related to pretreatment, modification of an industrial process to remove a byproduct from the wastestream, or maximizing the treatment efficiency of existing treatment

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units. Pollution prevention may be a component of a toxicity reduction program for dischargers that are not in compliance with whole effluent toxicity requirements. Many domestic treatment works receive industrial waste from industrial sources within the service area. The industrial source is usually required to provide treatment for one or more pollutants prior to discharging the wastewater to the domestic treatment works. The level of treatment may depend on local ordinances or on a permit issued to the industrial source by either the Department or the local domestic treatment works agency. The costs of pollution prevention are likely to be relatively small compared to that of adding new treatment units. Even where pollution prevention alone can not achieve permit compliance, if combined with treatment alternatives the net cost to comply will be less than treatment alone.

The public will realize an economic benefit as a result of the surface water program. Cleaner waters generally result in enhanced property values due to improved aesthetics, increased wildlife, and other benefits. Commercial ventures that rely on surface water, such as beach tourism, fishing, and water recreation, will realize economic benefit from fewer beach closures and improved health of the ecosystem.

Because surface waters are a source of potable water, as the ambient quality of waters improves, the level of treatment required prior to distribution decreases, thus providing a potential reduction in the costs of providing potable water. These costs are ultimately paid through taxes or fees for water usage.

As production or manufacturing facilities develop and implement pollution prevention strategies, they will realize an economic benefit from the reduced need for future remediation resulting from their activities. Such benefits could be from restricting the amounts and types of pollutants that enter the waste stream, or by improved wastewater treatment.

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The costs to permittees to comply with the rules proposed for readoption with amendments, repeals and new rules will depend on two factors: one, are discharges in compliance with existing permits; and two, will the rules require additional limitations and requirements upon permit renewal. For facilities that are in compliance with existing requirements the main costs will be annual operation and maintenance of existing treatment units. For facilities that require additional treatment the costs will be higher and include capital costs for retrofitting plus annual operation and maintenance costs of existing and new treatment units.

Tables 2 and 3 below present examples of estimated costs associated with installing or adding specified treatment units/systems to reduce the concentration of pollutants in an effluent. The costs an individual discharger might incur to meet effluent limitations depend on the applicable pollutant loading, technology-based requirements, categorical requirements, antidegradation requirements, removal of multiple toxic substances by a single type or combination of treatments, and the fate of the pollutants in a specific waterbody. It is clear that the continuing costs associated with compliance with effluent limitations could range from zero for some dischargers to millions of dollars, where capital improvements are needed, for other dischargers. The specific actions that a permittee selects will depend on the levels of effluent control that must be achieved to assure attainment and/or compliance with the effluent limitations required by the readopted regulations rules proposed for readoption with amendments.

The only new amendment that might result in a potential economic impact is the replacement of the whole effluent toxicity standard of LC50>50 percent (N.J.A.C. 7:14A-5.3(a)) with an equivalent action level (N.J.A.C. 7:14A-13.18(f)). There are only a handful of facilities

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no new costs under the proposed amended rule, if a facility is achieving the former effluent standard. The proposed amendment would not require them to take additional action. The small number of facilities that exceed the action level would be required to conduct a Toxicity Reduction Evaluation to investigate the cause of the toxicity and to implement corrective measures, which are the same measures required under the existing effluent standard.

Table 2

Capital Costs for Wastewater Treatment Technologies

(In Millions of 2007 Dollars)

ENR construction cost index = 8007.48

	FLOW _(a) , MGD					
	<u>0.01</u>	<u>0.1</u>	<u>0.5</u>	<u>1.0</u>	<u>5.0</u>	<u>10.0</u>
Activated Sludge _(b)	1.05	2.81	5.78	9.63	23.6	34.5
Air Stripping	0.13	0.37	0.98	1.93	4.73	8.98
Equalization	0.23	0.42	1.27	1.64	3.55	6.21
Neutralization	0.15	0.31	0.58	0.77	1.65	2.42
Chemical Precipitation	0.40	1.12	2.43	3.85	9.46	14.8
Filtration	0.20	0.56	0.86	1.25	2.84	3.80
Chemical Oxidation (peroxide)	0.20	0.47	0.98	1.64	4.50	7.60
Chemical Oxidation (ozone)	0.41	0.84	1.79	2.89	6.15	10.0
Granular Activated Carbon Columns _(c)	0.39	0.79	1.45	2.13	5.91	7.94

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Powdered Activated Carbon [®] Treatment _(d)	0.13	0.25	0.76	0.96	1.89	2.42
Powdered Activated Carbon [®] Regeneration	NA	NA	2.55	4.05	11.4	16.2
Anaerobic Biological Treatment	0.63	2.38	5.20	8.67	21.8	31.4

Operation and Maintenance Costs for Wastewater Treatment Technologies

(In Millions of 2007 Dollars per Year)

Activated Sludge _(b)	0.123	0.281	0.876	1.14	2.80	4.24
Air Stripping	0.018	0.070	0.175	0.193	0.505	0.721
Equalization	0.002	0.009	0.026	0.068	0.168	0.300
Neutralization	0.009	0.033	0.140	0.228	0.900	1.44
Chemical Precipitation	0.019	0.056	0.175	0.273	0.925	0.573
Filtration	0.002	0.019	0.061	0.114	0.224	0.593
Chemical Oxidation (peroxide)	0.018	0.070	0.193	0.330	1.21	1.91
Chemical Oxidation (ozone)	0.006	0.025	0.132	0.262	1.26	2.54
Granular Activated Carbon Columns	0.012	0.033	0.087	0.114	0.252	0.382
Granular Activated Carbon Regeneration	0.017	0.033	0.140	0.205	0.869	1.31
Powdered Activated Carbon [®] Treatment _(e)	.043 _(f)	.121 _(f)	.061 _(g)	.125 _(g)	.252 _(g)	.339 _(g)
Powdered Activated Carbon [®] Regeneration	NA	NA	0.193	0.240	0.449	0.721
Anaerobic Biological Treatment	0.017	0.053	0.263	0.387	1.04	1.53

(a) - Wastewater: 1,000 mg/L COD, 500

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(b) - Includes sludge handling, dewatering, and

disposal.

(c) - Based on carbon utilization rate of 2 lbs. carbon/1,000

gallons.

(d) - Based on 250 mg/L carbon dose.

(e) - Powdered Activated Carbon[®] dose of 250 mg/L.

(f) - Includes cost of makeup carbon with no

regeneration.

(g) - Assumes on-site Powdered Activated Carbon[®] regeneration as a

separate cost.

NA = Not Applicable

Source: Lankford, P.W. and Eckenfelder, W.W., editors, Toxicity Reduction in Industrial Effluents, Van Nostrand Reinhold, New York, 1990.

Table 3

Average Unit Capital Costs for Biological Nutrient Removal Upgrade at Maryland and Connecticut Wastewater Treatment Plants (2007\$)
ENR construction cost index = 8007.48

<u>Flow (mgd)</u>	<u>Cost/mgd</u>
>0.1 – 1.0	\$7,057,000
>1.0 – 10	\$1,763,000
>10.0	\$588,000

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Residuals Management Program

N.J.A.C. 7:14A-20, proposed for readoption with amendments, repeal and new rules, contains the rules governing residual management. These rules will have an economic impact on publicly and privately owned domestic and industrial treatment works seeking to land apply residual, domestic and industrial treatment works operating residual impoundments that are classified as surface disposal sites, and large scale residual blending and distribution operations. These rules will also have an economic impact on facilities operating under existing general permits for food processing residual land application, residual transfer stations and Phragmites reed beds.

N.J.A.C. 7:14A-20 applies primarily to the recycling of residual by land application. Land application systems managed about 11 percent (about 30,500 dry metric tons) of the domestic residual produced in New Jersey in the year 2005. Residual recycling via land application is not necessarily less expensive than disposal. The Department's "Municipal Sector Study—Phase II" (November 1993) listed a cost range of \$175.00 to \$840.00 per dry ton for operating residual composting systems; \$152.00 to \$650.00 per dry ton for direct land application systems; and \$109.00 to \$480.00 per dry ton for incineration systems. Although the figures are more than a year old, they remain useful for purposes of comparison. With ocean disposal banned nationally, and landfill disposal banned in New Jersey, the recycling of domestic sewage sludge as regulated under this subchapter remains an economically important option to the State of New Jersey.

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N.J.A.C. 7:14A-20 requires an applicant for a residual land application permit to submit the results of analyses of the residual to be land applied as well as any residual additives. Based on a review of several laboratory pricing sheets, the Department estimates that the cost of analysis will range from \$500.00 to \$700.00 per sample. The frequency of sampling and the number of sampling locations are determined on a case-by-case basis, depending on the size and complexity of the proposed activity. Once permitted, the cost of ongoing residual testing will range from \$2,400 per year (quarterly sampling) to \$7,200 per year (monthly sampling) for each monitored location at the mid-range cost of \$600.00 per sample. Additive analyses are in the same cost range and must be repeated annually upon permit issuance, or whenever additives are changed.

A residual generator may substitute data obtained from analyses performed pursuant to the Sludge Quality Assurance Regulations (N.J.A.C. 7:14C) where equivalent data is required under N.J.A.C. 7:14A-20.

The Department estimates that the cost of bacterial monitoring for facilities operating Class A pathogen reduction methods will range from about \$800.00 to \$27,000 per year depending on the nature and size of the stabilization process. N.J.A.C. 7:14A-20 also requires bacterial monitoring for certain Class B pathogen reduction methods within the same cost range. At present, no New Jersey Class B processors are operating under methods that require bacterial monitoring.

Process monitoring (such as the recording of time, temperature and pH values sufficient to prove pathogen and vector attraction reduction) varies widely from process to process and is often performed by treatment system personnel using in-house equipment. Given the wide range

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of processes used to stabilize residuals and the wide variety of both manual and automated techniques used to gather such information the Department cannot accurately estimate the cost.

The Department estimates the cost of soil nutrient analyses required for non-exceptional quality residual land application sites will be about \$15.00 per soil sample per year. The number of soil samples per agricultural field will vary depending on the size of the field, and is to be determined in a sampling plan prepared by the permittee for approval by the Department.

For all residual land application operations, the rules proposed for readoption with amendments, repeals and new rules require analysis of several new parameters during the permit application phase and, if warranted, ongoing permit monitoring for these same parameters. The new analyses are not anticipated to exceed \$250.00 per sample. See discussion of N.J.A.C. 7:14A-20.7(a) in the Summary above.

The Department proposes to readopt with amendments its existing requirement that it review proposed non-exceptional quality residual land application sites and, if suitable, approve them with a "Letter of Land Application Management Approval" or "LLAMA." See discussion of proposed N.J.A.C. 7:14A-20.7(a)3 and (h)2vii in the Summary above. In the Department's opinion, a LLAMA is necessary in order to document and enforce the site specific restrictions, recordkeeping and reporting appropriate for each land application site receiving residual. Conditions such as slope, run-off control, public access, buffer zones, drinking water wells, dwellings, depth to ground water, site soil texture and parent geologic material must be delineated by the LLAMA applicant. Also, the Department requires the LLAMA applicant to issue a local public notice and to provide a copy of the LLAMA application to the municipality where the proposed land application site is located, thus allowing opportunity for public involvement in the review process. The Department also proposes to expand the LLAMA

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transportation patterns, a delineation of proposed fields with labeled acreage, and a copy of an aerial photograph showing the location of the proposed residual land application site. The remainder of site specific information required to apply for a LLAMA are consistent with the requirements of 40 CFR Part 122 for submitting a Land Application Plan. The Department estimates that the cost of preparing a complete LLAMA application ranges from \$20.00 to \$125.00 per acre.

In addition, the LLAMA applicant must obtain a conservation plan or soil erosion and sediment control plan approved and kept on file with the local County Soil Conservation District. There is no fee for obtaining a conservation plan through the United States Department of Agriculture Natural Resources Conservation Service (USDA-NRCS); however, due to resource constraints, some USDA-NRCS offices do not have the resources to provide planning services for LLAMA applicants. The Department proposes to accept LLAMA applications that include equivalent conservation plans prepared by a person equally qualified in nutrient management and conservation/erosion control planning. Such planning will cost up to \$1,200 per 100 acres of farmland. Applicants can still opt for the free USDA-NRCS service.

The Department proposes amendments to N.J.A.C. 7:14A-20 in order to strengthen non-point source controls from agricultural land application of residual. As compared to the existing rule, proposed amendments to N.J.A.C. 7:14A-20 increase the number of buffered acres for some farmland. These include restrictions from applying residual to ponded ground; saturated or shallow soils; land subject to seasonal flooding; land within 200 feet of surface water; or land that is within close proximity to drinking water supply wells. For any farmer using residual or contemplating using residual, costs to manage land buffered out by the proposal can be expected

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Recycling: Beneficial Technology for a Better Environment" (EPA 832-R-94-009, June 1994),

USEPA reported the benefits of residual applied to sandy, irrigated soils near Yuma, Arizona.

Residual use resulted in decreased use of fertilizer, herbicide and pesticide, and a concomitant cost reduction of approximately \$170.00 per acre. The Department believes that the cost of managing buffered land without biosolids is reasonable since the farmer still realizes significant savings on the cost of fertilizer on land that is not buffered and since the cost to the environment of nutrient loss to the waters of the State is prevented by adequate buffering.

The Department's rules regarding land application of residuals expressly impose the requirement that exceptional quality residuals be land applied at the agronomic rate and extend the definition of agronomic rate to include nutrient factors other than nitrogen (such as phosphorus and pH). The only cost associated with the proposed rule is the nominal cost to label exceptional quality residual with appropriate agronomic rate. Although the cost is small, the benefit is considerable. Properly labeling the material will help the person applying the residual avoid over-application, which could cause excess nutrients to run off into the waters of the State. See N.J.A.C. 7:14A-1.2 and 20.7(g).

The Department proposes to prohibit the distribution in a bag or other container non-exceptional quality residual as currently allowed by Federal law and existing N.J.A.C. 7:14A-20.7(h)4. The type of non-exceptional quality residual contemplated for distribution at existing N.J.A.C. 7:14A-20.7(h)4 fails to meet the pollutant concentrations in 40 CFR 503.13(b)3, and is inconsistent with the Department's intent to promote use of the highest quality residuals. The Department has never received a request for permission to distribute this type of residual in a bag or other container. Moreover, most sewage sludge samples taken by New Jersey generators meet

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The Department's existing rule at N.J.A.C. 7:14A-20.7(k) require quarterly reporting. The Department proposes to amend N.J.A.C. 7:14A-20.7(k) to eliminate the quarterly reporting requirement. Instead, the necessary reports would be governed by N.J.A.C. 7:14A-6.8, which establishes the basis for all reporting under NJPDES and requires that monitoring data be reported at intervals specified in a permit. The Department would, through the permitting process, establish the frequency of reporting, which would not be less frequent than annually. Pursuant to the Regulatory Impact Analysis included in the Preamble to 40 CFR Part 503 (see 58 Fed. Reg. 9374), the reporting costs to comply with the Federal land application subpart are estimated to be \$20,000 annually. This represents a small percentage of the total cost to comply with the 40 CFR Part 503 land application subpart. The Department believes that the costs associated with more frequent reporting – which is possible under the proposed rule – are negligible since the information required to be reported must be recorded and maintained under proposed readopted N.J.A.C. 7:14A-20.7(j), which is fully consistent with 40 CFR Part 503.17(a).

The Department proposes to readopt and amend N.J.A.C. 7:14-20.7(b)1ix, which requires the person exporting residual to submit to the Department documentation that the exportation for land application is in compliance with the receiving state's law. The Department believes that such information is within the knowledge of the person exporting the residual, in order that the person can know whether he or she is complying with the receiving state's law. Therefore, the proposed requirement will not result in an additional cost beyond that associated with transmitting the information to the Department.

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The Department proposes to readopt N.J.A.C. 7:14A-20.7(f), regarding septage management, without amendment. Land application of septage has not been permitted in New Jersey since prior to adoption of the November 1987 Statewide Sludge Management Plan. N.J.A.C. 7:14A-20.7(f) reiterates the policy statement of the November 1987 Statewide Sludge Management Plan that the use of domestic treatment works is the most environmentally sound method for management of domestic septage. In this manner, domestic septage is introduced at the head of the treatment plant, is subject to the same treatment processes as sewage and, as a result, contributes to the sewage sludge produced by the domestic treatment works. Although, N.J.A.C. 7:14A-20.7(f) does allow for the land application of domestic septage on a case-by-case basis only where an overriding public benefit is demonstrated and no reasonable alternative exists, no such demonstration has been made and the POTW alternative continues to exist. In addition, N.J.A.C. 7:14A-20.7(f) requires that all septage must be treated to the same standards applicable to other residuals intended for land application. Therefore, if domestic septage were land applied in New Jersey, the cost would be equivalent to the cost of land application of other residual.

The Department anticipates that the economic impact of the rules proposed for readoption with amendments on operators of surface disposal sites will vary depending on the extent to which site improvements are needed to mitigate environmental impacts. However, the Department expects that the majority of such surface disposal sites will incur only those costs already associated with ground water monitoring in compliance with N.J.A.C. 7:14A-7 and existing N.J.A.C. 7:9-6. For operators of surface disposal sites that must implement mitigating measures, the implementation schedule that must accompany submission of the closure plan will allow the Department to work with facilities to phase in financial impacts. As indicated in the

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the estimated total annual nationwide cost to comply with the surface disposal subpart was \$18,335,000 compared to \$14,182,000 for land application and \$11,703,000 for incineration. See 58 Fed. Reg. 9371 (February 19, 1993). Total annual costs include management practice costs; monitoring, recordkeeping, and reporting costs; and in a few cases, costs for a change in use or disposal practices. Thus, from a cost perspective, surface disposal appears to be one of the least attractive residual management options.

N.J.A.C. 7:14A-20 requires a person who prepares a surface disposal site closure plan to submit analyses of the residual present in the surface disposal site. For a domestic sewage sludge surface disposal site the Department estimates that the cost will be approximately \$600.00 per sample. The cost for industrial residual surface disposal sites will vary, since the reporting parameters will vary depending on the nature of the industry. The typical analytical cost for most industrial treatment works will be less than \$1,000 per sample. For both domestic and industrial surface disposal sites the number of samples is determined using the Department's Field Sampling Procedures manual and will vary based on the size and characteristics of the site.

Analyses required by the standard transfer station permit are as required by the existing Sludge Quality Assurance Regulations (N.J.A.C. 7:14C). There are no analytical costs associated with the transfer station General Permit.

The Department estimates that applicants for the Food Processor General Permit or the standard food processor permit will incur initial food processing by-product analytical costs ranging from \$500.00 to \$700.00 per sample. Once the permit is issued, the cost of ongoing testing will be under \$200.00 per month per sample during months when material is removed for land application.

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The Department estimates that applicants for a Phragmites reed bed permit will incur initial residual analytical costs of approximately \$50.00 per sample. Once the permit is issued, the cost of ongoing residual monitoring will be about \$50.00 per bed per year and about \$650.00 per bed from which residual is removed in a given year.

The Department proposes amendments to N.J.A.C. 7:14A-20 that establish a new permitting program for residual blending and distribution sites. These amendments may apply to businesses engaged in earth moving, topsoil and landscaping markets; however, the proposed amendments will directly regulate only large-scale activity. The Department anticipates that few businesses will rise to the level of activity that will trigger regulation. An affected business can restrict the size of the residual blending component of its operation to maintain exemption from specific regulation. For large-scale operations, the Department has determined that the potential to negatively impact the environment warrants the cost of regulation.

Facilities that must obtain a residual blending and distribution permit will incur costs related to applying for a permit and complying with permit conditions, the costs of permit fees and the risk of penalties or fines if the permit is not applied for or is violated. These facilities will also incur the cost of any applicable stormwater permits in compliance with N.J.A.C. 7:14A-11. The largest residual blending and distribution operations will incur costs associated with ground water monitoring in compliance with N.J.A.C. 7:14A-7 and existing N.J.A.C. 7:9-6, unless the sites implement controls such that there is no discharge to groundwater.

Each facility that must obtain a permit under N.J.A.C. 7:14A-20 will incur costs related to applying for a permit and complying with permit conditions, the costs of permit fees and the risk of penalties or fines if the permit is not applied for or is violated. The cost of the permits is discussed above.

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Pretreatment and SIU Programs

N.J.A.C. 7:14A-19 and 21, proposed for readoption with amendments, regulate pretreatment implementation and enforcement by publicly owned treatment works (POTWs) and discharges by indirect users into POTWs. Both programs are designed to prevent discharges into POTWs that will upset, pass through, or interfere with the operations of the treatment works, protect the local agency's workers' health and safety, as well as protect and/or improve the quality of sludge generated by the POTWs.

Readoption of N.J.A.C. 7:14A-19 with amendments will continue the pretreatment program requirements for the approximately 450 publicly owned treatment works in New Jersey, including the 24 local agencies that have State approved industrial pretreatment programs. DLAs are required by 40 CFR 403.8(f)(3) to have sufficient funding, including qualified personnel and adequate resources, to carry out the authorities and procedures as required and as allowed under the existing rules.

Data provided by DLAs in 2005 through 2006 indicate that the cost of implementing the pretreatment program ranges from \$30,000 to \$8.5 million dollars. These figures include costs associated with activities that may exceed the minimum requirements under this subchapter. Those dollar amounts reflect programs that range in size from three to 245 SIUs. For non-delegated local agencies, the costs associated with complying with the pretreatment requirements include those for identifying significant indirect users, submitting an annual report, and developing local limits or demonstrating that such limits are not necessary.

Costs associated with identifying SIUs and submission of the annual report are estimated to be up to \$1,400 for agencies that complete this work in-house. This cost assumes that follow-

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Proposed amended N.J.A.C. 7:14A-19.3(c)7i includes annual sampling and analysis for the parameters molybdenum (total), ammonia (NH₃), and phosphorus (total) in the influent, effluent and sludge. This sampling is to be conducted by DLAs and can be completed at the time of the annual priority pollutant scan. Adding these pollutants to the influent and effluent monitoring already conducted would result in a minimal increase in cost, estimated to be less than \$150.00 per year per POTW. Because all DLAs already analyze their sludges for these parameters no less than annually, no additional costs are incurred relative to sludge analysis. Costs associated with the sampling and analyses for a priority pollutant scan on the treatment works influent, effluent, and sludge are estimated at \$1,000 per event, or \$3,000 per year.

Proposed amended N.J.A.C. 7:14A-19.3(e) requires that DLAs incorporate specific provisions from the streamlining requirements under 40 CFR Part 403 into their rules and regulations or sewer use ordinance. These modifications are intended to reduce the regulatory burden on delegated local agencies without adversely affecting environmental protection by allowing DLAs to better focus oversight resources on indirect users with the greatest potential for affecting treatment plant operations or the environment. DLAs will incur costs associated with making these changes to their rules and regulations or sewer use ordinances, including attorneys fees, and public notice/public participation costs.

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Proposed amended N.J.A.C. 7:14A-19.7 will have a positive economic impact, in that the cost for some non-delegated local agencies to comply with the monitoring requirements under the industrial pretreatment program will be decreased, and in some cases eliminated. For local agencies that receive only domestic pollutants as defined under N.J.A.C. 7:14A-1.2, and do not have any water quality based effluent limits for metals in their NJPDES discharge permit, cost savings will be realized through decreased monitoring and analytical requirements. These local agencies need only conduct limited treatment plant sampling in lieu of conducting a complete headworks analysis.

A complete headworks analysis consists of a minimum of seven consecutive days of sampling for pollutants of concern in the influent, effluent, sludge, in-plant streams, and a domestic-only wastewater sample point in the collection system. The limited sampling under the proposed rule will consist of one sampling event for specific pollutants in the influent, effluent, and sludge. For POTWs, such as those at schools, correctional facilities, and housing developments, that do not have the potential to receive wastewater from industrial sources, the monitoring requirements under the industrial pretreatment program may be eliminated, thus saving these POTWs the monitoring and analytical costs. Elimination of these monitoring requirements is contingent upon the POTW's not having any water quality based effluent limits for metals in its NJPDES discharge permit.

Proposed amended N.J.A.C. 7:14A-19.8(d) and (e) require DLAs to include in their rules and regulations or sewer use ordinance the procedural and substantive requirements for IPP permit application, permit renewal, modification, suspension or revocation, and to submit the rules, regulations or ordinances to the Department. DLAs will incur costs associated with making these changes to their rules and regulations or sewer use ordinances, including attorneys

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not result in increased costs. The DLAs are already required to provide the public with notice and the opportunity to comment in permit renewal, modification, suspension or revocation.

There should be no additional cost to the DLA from including the requirements in the rules and regulations or sewer use ordinances.

N.J.A.C. 7:14A-21 establishes the indirect discharge criteria for those indirect users that discharge wastewater into the sanitary sewer, including the 78 indirect users currently regulated under a NJPDES SIU permit issued by the Department. A facility that is subject to proposed N.J.A.C. 7:14A-21 and is required to obtain an SIU permit from the Department will be subject to the SIU permit fee, which is a minimum of \$5,750 under the FY2007 fee schedule, above at Table 1. The facility will also incur costs associated with sampling and reporting, and treatment system operation and maintenance.

Sampling costs are directly related to the number of parameters regulated in an SIU permit, and the frequency of reporting. Typical costs for SIU monitoring and reporting would range from \$200.00 to \$600.00 per report, with reporting in most cases being semi-annually or quarterly. Costs associated with the operation and maintenance of industrial pretreatment systems are site specific and variable, depending upon the complexity of the system, treatment chemicals, volume of wastewater, and licensed operator requirements.

The rules proposed for readoption with amendments at N.J.A.C. 7:14A-21 will have economic impacts on the regulated community. Costs associated with the rules proposed for readoption with amendments, including permitting, sampling, and operations and maintenance, are noted above. With the exception of the proposed amendment to N.J.A.C. 7:14A-21.10(a)3, all of the proposed amendments to N.J.A.C. 7:14A-21 were made to make the subchapter

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N.J.A.C. 7:14A-21.3(f)2 incorporates the streamlining changes under 40 CFR 403.12(e)(2). This amendment will allow a control authority to authorize an indirect user subject to categorical pretreatment standards to forgo future sampling for a pollutant if the indirect user demonstrates, through sampling and a technical evaluation of its facility operations, that a given pollutant is neither present nor expected to be present in the discharge, or is only present at background levels from intake water without any increase in the pollutant due to the activities of the indirect user. Not having to conduct additional sampling and analysis will result in a monetary savings for an indirect user.

N.J.A.C. 7:14A-21.9(g) is amended to incorporate the non-significant categorical indirect user (NSCIU) criteria. This modification is consistent with the streamlining changes under 40 CFR 403.3(v)(2). Any facility meeting the NSCIU may be exempt from obtaining an SIU permit, and will see an economic savings ranging from \$50.00 to \$11,000 dollars per year, based on DLA-issued permit fees, or \$5,750 based on the minimum NJPDES SIU permit fee assessed by the Department. Also, costs savings associated with not having to conduct sampling, analysis, and report submission will also be realized by the indirect users' (IUs) meeting the NSCIU criteria.

N.J.A.C. 7:14A-21.12 will impact approximately 3,400 dental facilities in New Jersey that generate amalgam waste through placement or removal of mercury amalgam fillings. The Department estimates that the average purchase price for an amalgam separator typically ranges from \$1,000 to \$2,000 per facility. The annual operating cost for a separator, which includes the

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cost of recycling the captured material, is estimated at \$700.00 to \$1,000 per year. Thus, the initial capital costs for these 3,400 facilities to purchase separators would be \$3.4 to \$6.8 million. With the estimated life of the separator being 10 years, the annual average cost over this period would equate to \$0.34 to \$0.68 million. Annual operating costs for a separator, for 3,400 facilities, equates to \$2.4 to \$3.4 million per year. Thus, total annual costs for purchase, installation, and operation of the amalgam separators would be \$2.7 to \$4.1 million. Based on the 1999 CDC National Oral Health Surveillance System study (the most recent available), 72 percent of New Jersey residents visited a dentist in 1999. Utilizing the census data closest to that year, the 2000 census data indicated the New Jersey population to be 8,414,350. This would equate to 6.05 million New Jersey residents that saw a dentist in 1999. There are approximately 6000 dentists in New Jersey, including the approximately 1000 specialists (such as orthodontists and endodontists) that do not generate amalgam waste. With 5000 of the 6000 dentists handling amalgam, there would be 5.04 million visits to dentists that place or remove amalgam. Thus, the costs associated with installation of amalgam separators for all affected dental practices in New Jersey would be 54 to 81 cents per year per patient over the life of the equipment. It is anticipated that these costs would be transferred to dental patients.

The rules proposed for readoption with amendments at N.J.A.C. 7:14A-21 will promote efficient operation of the treatment works, protect the local agency's workers' health and safety and promote beneficial use of the biosolids generated. The rules will, without increasing the economic burden on the indirect users, reduce the operating expenses and the biosolids disposal costs for the local agencies. The indirect users and the general public may benefit from lower sewerage rates.

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Treatment Works

Treatment works approvals are regulated under N.J.A.C. 7:14A-22 and 23. These rules will have an economic impact on applicants, including municipalities, sewerage authorities, industries, private developers and homeowners. Each new treatment works is subject to a TWA application. Each TWA application will require the services of a New Jersey licensed professional engineer to design, create, sign and seal construction specifications, construction plans, and an engineer's report, and may require other consultants to prepare the application for submittal. The anticipated cost for such preparation may begin at \$3,000 for a minor application, such as a lateral or sewer extension with a length of 400 feet or less. The cost would be expected to increase with the scope and complexity in the design of the project. For the more complex projects, the anticipated cost for such preparation would typically average 12 percent of the construction cost. These costs are not entirely associated with TWA, inasmuch as the same or similar engineering reports, plans and specifications are typically required from the local municipal and sewerage entity.

The permit fee for a TWA is determined using a fee calculation formula in N.J.A.C. 7:14A-22 and is at a minimum of \$850.00. Fees are assessed to cover the Department's costs to review, issue and manage TWA permits, as well as develop rules, track flows and compliance as part of the Capacity Assurance and Sewer Ban Programs, and deal with enforcement issues related to the TWA program. The majority of the applications received by the Department fall into the minimum fee category. The TWA application fee is based upon the construction cost of the treatment works, with more expensive projects subject to larger application fees.

The Department's cost of administering the TWA program, based on FY2005, is approximately 2.1 million dollars. This cost includes both personnel costs and operating costs

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For industrial facilities located in non-delegated areas, the readoption of these rules with amendments will continue the 30-day administrative review program known as General Industrial Treatment Works Approvals. In comparison to the Department's normal TWA reviews, this provides for additional savings due to the shorter time period between the design and construction phases. This program has reduced delays in the implementation of projects aimed at upgrading existing treatment facilities and remediation of ground water contamination sites.

Readoption of these rules with amendments will also continue the economic impact that has resulted from the Sewer Ban program. Substantial adverse impacts on jobs and businesses are possible due to the severe limitations on new construction in sewer ban areas. However, there might also be a positive economic impact on jobs created to help design, rehabilitate or construct new treatment works needed to resolve the conveyance and/or treatment issues that triggered the imposition of the sewer ban.

The Department anticipates that the amendments to the technical standards at N.J.A.C. 7:14A-23 will have a positive economic impact since they will reflect updated design flow figures that have been accepted by the Department in the past, and will allow conformity for such uses Statewide.

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Stormwater Program

The Department's stormwater rules, proposed for readoption with amendments at N.J.A.C. 7:14A-24, apply to industrial facilities and to construction activities.

Industrial Facilities

The segment of the public most directly affected financially by the industrial stormwater requirements are those responsible for a "stormwater discharge associated with industrial activity" or "industrial stormwater discharge to groundwater" as defined in N.J.A.C. 7:14A-1.2. More than 2,700 industrial facilities in New Jersey have NJPDES permits for stormwater discharges. Of these, more than 2,500 are general permits. Industrial facilities are subject to the fee for a NJPDES permit for such discharges, as discussed in Table 1 above. Additionally, there may be costs associated with preparing the application for the permit. These costs include fees to professionals for preparing individual permit applications or requests for authorizations (RFAs) for general permits, preparing and implementing the stormwater pollution prevention plan (SPPP) and complying with other permit conditions.

The cost to prepare an RFA is minimal. Most facilities are authorized under a general permit that provides for automatic renewal of authorization so that new RFAs are not required when the general permits are renewed. For most facilities, an RFA is all that will be required. The cost to prepare the RFA should be under \$100.00; however, the RFA forms for hot mix asphalt producers and mining and quarrying facilities are more complex and more costly to prepare. If a facility that could obtain authorization under a general permit chooses to apply for an individual permit, the cost to prepare the individual permit application (including sampling data) will be substantial compared to the cost of preparing an RFA for a general permit.

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The cost of preparing and implementing industrial SPPPs varies and depends on a number of factors, including the size of the facility; the existing industrial materials and machinery at the facility, if any, that are exposed to stormwater; the nature of the plant operations and plant designs and the housekeeping measures employed; and the amount of information the facility already has about its stormwater drainage system. Most of the NPDES rules for industrial stormwater permits are based on regulations promulgated by the USEPA between 1990 and 1992 for the first phase (Phase I) of the NPDES Stormwater Permitting Program.

As the USEPA discussed in its report on the NPDES Phase I regulations to Congress in 2000, the Water Environment Federation (WEF) performed a national survey of industrial facilities with NPDES general stormwater permits (Water Environment Federation, 1996). Costs for SPPP preparation ranged from less than \$1,300 to more than \$125,000, with the average cost being about \$9,400. Approximately 39 percent of facilities needed capital improvements to meet the regulatory requirements, with 34 percent of those facilities spending less than \$6,800, 45 percent spending between \$6,800 and \$67,500, and 21 percent spending more than \$67,500. The average annual cost to operate the systems is about \$5,100, although the majority (70 percent) spends less than \$3,100.

Annual administrative costs to industrial permittees for facility inspection/evaluation, SPPP revision, recordkeeping, and reporting are expected to range from an average of approximately \$375.00 for the Department's "basic industrial" stormwater general permit, which requires no stormwater sampling, to an average of approximately \$12,500 for a small number of facilities subject to extensive stormwater sampling and reporting requirements. Annual permit

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Most persons receiving Department requests for information about industrial stormwater discharges under N.J.A.C. 7:14A-24.5 will incur the minor administrative costs of about \$50.00 to \$100.00 for responding to those requests. Persons who do not comply with N.J.A.C. 7:14A-24.5 incur the risk of assessment of penalties or fines. Also, the Department expects that as a result of N.J.A.C. 7:14A-24.5, some affected persons may obtain NJPDES permits for stormwater discharges sooner than otherwise would be the case, which would result in increased permit-related costs. Conversely, however, obtaining the NJPDES permit earlier may also reduce the penalties or fines that such persons could be charged for discharging industrial stormwater without a NJPDES permit.

Those members of the industrial community that qualify for exclusion under N.J.A.C. 7:14A-24.6 ("Permanent No Exposure" of industrial activities and materials to stormwater) will be directly affected financially. These facilities will incur the minor administrative costs of about \$50.00 for completing and submitting a "Permanent No Exposure Certification," and some of these facilities may incur costs for facility modification to qualify for such exclusion. However, these facilities will also save the annual permit fee and other administrative costs for a NJPDES stormwater permit.

Construction Activity

N.J.A.C. 7:14A-24.10 and other NJPDES rule provisions concerning stormwater discharges associated with construction activity will result in an economic impact on those who operate stormwater discharges subject to those provisions. The number of new projects per year

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with these discharges varies with building activity, but is expected to average approximately 3,200. Several provisions in N.J.A.C. 7:14A-11.1(b), 24.2, 24.4, and 24.7 require such persons to apply for a NJPDES permit for this discharge. Such persons will continue to incur the costs of preparing RFAs for a general permit (or individual permit applications, if appropriate), the costs of complying with the NJPDES permit, the costs of NJPDES permit fees, and the risk of penalties or fines if the NJPDES permit is not applied for or is violated.

In 2004, the Department modified its “construction activity” stormwater general permit (NJPDES Permit No. NJ0088323) to authorize and control these discharges and meet all applicable requirements in N.J.A.C. 7:14A-24.10. Because this general permit requires minimal information in the RFA, the Department expects the cost (excluding fee) of completing and submitting each RFA to be under \$100.00.

The principle effluent limitation in this general permit is compliance with requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. Thus, this general permit does not impose any requirements for soil erosion and sediment control that do not already apply to the project under that Act. Costs will also be incurred to control waste such as discarded building materials, concrete truck washout, chemicals, litter, sanitary waste, and other solid or hazardous waste at the construction site. The cost to control such waste is variable and depends on a number of factors, including the types and quantities of waste at the construction site, the housekeeping measures employed, and any expenses incurred to prevent or reduce such waste. Many of the costs to control such waste are not additional costs because such control is already required to comply with other existing laws, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the State litter statute, N.J.S.A. 13:1E-99.3, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., other provisions in the NJPDES

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In addition, costs will be incurred for facility inspection, SPPP revision, recordkeeping, and reporting of noncompliance (which collectively should average under \$375.00 for each year the facility has the permit). The proposed \$450.00 and \$650.00 fees for authorization under the “construction” stormwater general permit under N.J.A.C. 7:14A-3.1(j) are among the lowest minimum fees charged for a NJPDES permit under N.J.A.C. 7:14A-3.1 Table III. Moreover, the fee for authorization under this general permit is not an annual fee, but a one-time fee assessed for each RFA. The NJPDES construction stormwater rules should have a positive economic impact on the soil conservation districts, as the Department expects that the expenses those districts incur under this general permit will continue to be reimbursed from NJPDES fee revenues.

Municipal Stormwater Regulation Program

N.J.A.C. 7:14A-25, proposed for readoption, regulates entities that operate a “small municipal separate storm sewer system” (small MS4) as defined at N.J.A.C. 7:14A-1.2, and that are obligated under N.J.A.C. 7:14A-25.2(a) or (b) to obtain and comply with a NJPDES permit. These entities include 562 municipalities, all 21 counties, and many county, State, interstate, and Federal agencies that operate small MS4s that are located at “highways and other thoroughfares” or at certain “public complexes” (such as some hospitals, prisons, colleges, universities, office complexes, or military bases).

The entities regulated under the Municipal Stormwater Regulation Program will continue to incur the costs of developing, implementing, and enforcing a stormwater program and

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The main costs to small MS4 permittees under the readopted rules will continue to be the costs of developing, implementing, and enforcing the stormwater program required by the general NJPDES permit. Except for the Tier B Permit discussed below, the core requirements for this stormwater program are the “Statewide Basic Requirements” (SBRs) at N.J.A.C. 7:14A-25.6(b)1, and (b)3 through 8. The cost of developing, implementing, and enforcing the stormwater program for these SBRs varies and depends on a number of factors, including the specific conditions of the general permit; the nature and extent of the permittee’s small MS4, maintenance yards, and highway service areas; the amount of new development or redevelopment that the permittee would undertake or regulate; the method of public education and the population to be educated; the nature and extent (with respect to the permittee’s small MS4) of illicit connections and sources of solid and floatable materials; the number of the permittee’s employees requiring training; and the control measures already being implemented.

The listed SBRs are derived from USEPA’s “minimum control measures” in 40 CFR 122.34(b). USEPA discussed the costs that would be incurred by many small MS4 permittees with respect to those measures in the Preambles to USEPA’s proposed and final “Phase II” stormwater regulations (January 9, 1998, 63 Fed Reg. 1535; December 8, 1999, 64 Fed. Reg. 68721), and in a report to Congress (U.S. Environmental Protection Agency, 1999).

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Using information from a National Association of Flood and Stormwater Management

Agencies survey of local communities, USEPA estimated the total costs to small MS4 permittees (including administrative costs for recordkeeping, reporting, and applying for the permit) to average \$9.16 per household annually (1998 dollars). USEPA also separately estimated those total costs to average \$9.08 per household annually, based on actual expenditures reported from 26 Phase I MS4s (see 64 Fed. Reg. 68791-68792). These estimates are equivalent to an average annual cost of about \$3.50 per capita (using USEPA's conversion factor of 2.62 persons per household). For the 457 municipalities that currently have authorization under the Tier A Permit, this annual per capita cost corresponds to a total annual cost of about \$28 million (using 2000 Census populations), or an annual average cost per municipality of about \$61,000.

Reese et al. (2000) estimated costs that would be incurred by small MS4 permittees based on an interpretation of USEPA's Phase II stormwater regulations as applied to two hypothetical communities that differ in size and program complexity. The estimated total annual cost per capita for USEPA's minimum control measures ranged from \$1.33 to \$7.76 for the first five-year permit term, and from \$1.11 to \$5.63 for subsequent five-year permit terms.

The Department considers the costs estimated by USEPA and Reese et al. to be more relevant to the Tier A Permit than to the Public Complex Permit or the Highway Permit. Moreover, up to 20 percent of the estimated costs were attributable to the minimum control measure for construction site runoff. The Department's Municipal Stormwater Regulation Program does not impose costs for construction site runoff control on small MS4 permittees because the Department is responsible for implementing the SBR for construction site runoff.

Because the SBRs in the Tier B Permit include only two of USEPA's minimum control measures (post-construction stormwater management in new development and redevelopment,

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and public education), the average per capita costs incurred by Tier B municipalities will continue to be substantially lower than those incurred by Tier A municipalities. USEPA's estimated total annual costs per capita incurred by small MS4 permittees for these two measures ranged from about \$1.10 to \$1.43 (63 Fed. Reg. 1599). The corresponding per capita estimates by Reese et al. ranged from \$0.53 to \$3.82 for the first permit term, and from \$0.49 to \$2.66 for subsequent permit terms. An average annual cost of \$1.27 per capita (the middle of USEPA's range) would correspond to a total annual cost of about \$0.46 million for the 102 municipalities that currently have authorization under the Tier B Permit, or an annual average cost per municipality of about \$4,500.

Some costs incurred by small MS4 permittees for SBRs are not additional costs because some components of these SBRs are specifically required under other law. For example, one component of the SBR for post-construction stormwater management requires Tier A and Tier B municipalities to ensure that residential development and redevelopment projects comply with the Department of Community Affairs' Residential Site Improvement Standards (RSIS) for stormwater management (N.J.A.C. 5:21-7). This requirement exists under N.J.A.C. 5:21 and the Municipal Land Use Law at N.J.S.A. 40:55D-40.1 to 40.7. In addition, much of the new development or redevelopment that will be directly undertaken by small MS4 permittees is subject to requirements for post-construction stormwater management under other regulatory programs such as the Department's Coastal Zone Management rules at N.J.A.C. 7:7E and the Flood Hazard Area Control Act rules at N.J.A.C. 7:13.

The Department's Sewage Infrastructure Improvement Act Grants rules (N.J.A.C. 7:22A) require 94 Tier A municipalities to comply with requirements for stormwater sewer system mapping and for elimination of interconnections and cross-connections that are more extensive

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than the requirements for MS4 outfall pipe mapping and illicit connections in the SBR for prohibiting improper disposal of waste. Also, to avoid liability under the Spill Compensation and Control Act, prudent Tier A municipalities or other small MS4 permittees that own or operate maintenance yards or highway service areas will already have taken a variety of actions that may also be required under the SBR for such yards and areas.

In addition, some costs incurred by small MS4 permittees for SBRs are not additional costs because some small MS4 permittees have been (in varying degrees) implementing components of these SBRs, even though they were not specifically required to do so under other law. For example, many Tier A municipalities or other small MS4 permittees have been implementing one or more best management practices (BMPs), such as prohibiting littering or other improper disposal of waste, sweeping pavement, cleaning or repairing stormwater management facilities, controlling erosion along roads, maintaining litter receptacles, or storing de-icing salt indoors, that may be required under various SBRs.

The Department also encourages small MS4 permittees to reduce the cost and improve the effectiveness of their stormwater programs by relying, where appropriate, on other governmental or private entities to implement one or more control measures or component (as allowed under N.J.A.C. 7:14A-25.7(a) and 25.8(d)). These entities could be, for example, other small MS4 permittees; soil conservation districts; local health agencies; regional, State, or interstate agencies; watershed management groups; watershed associations; and business or environmental organizations.

Grant funds in the amount of \$12 million were made available in State Fiscal Years 2004 and 2005 to municipalities and counties to use for certain activities required by the Tier A, Tier B, and Highway Permits. In addition, there are other Federal and State programs that can

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Transportation Equity Act: A Legacy for Users (SAFETEA-LU, PL 109-59) for certain transportation related stormwater projects; State grants to municipalities and counties for litter-related activities under the Clean Communities Program Fund (N.J.S.A. 13:1E-217); and the New Jersey Environmental Infrastructure Financing Program, which is a revolving loan program, administered by the Department and the New Jersey Environmental Infrastructure Trust, that provides loans for a wide variety of wastewater, stormwater, and nonpoint source management projects.

Pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., however, the Department also assesses administrative fees to cover the costs of processing, monitoring and administering NJPDES permits for small MS4s. The Department established an annual “minimum fee” (which for a general permit is the total fee) of \$500.00 for the Tier B permit, and established annual minimum fees for the Tier A Permit, Public Complex Permit, and Highway Permit that range from \$550.00 to \$9,800, depending on municipal or public complex population (Tier A Permit, Public Complex Permit) or highway mileage (Highway Permit).

The Municipal Stormwater Regulation Program rules, proposed for readoption, will also continue to have an economic impact on many private or public entities that are not small MS4 permittees, but that engage in new development or redevelopment activities that disturb one or more acres in Tier A or Tier B municipalities, or use the property after such activities are completed. Such entities will be subject to ordinances or other regulatory mechanisms that those municipalities include in their stormwater programs to address post-construction stormwater runoff. The type and extent of this economic impact is variable and depends on a number of factors, including the size, nature, and location of the activity; the specific requirements of the

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regulatory mechanism; the specific stormwater management measures selected in response to those requirements; and the stormwater management requirements that would apply, even in the absence of the Municipal Stormwater Regulation Program rules, under the Residential Site Improvement Standards or other stormwater management regulations.

The Department expects the NJPDES permit program for small MS4s to have water quality and other benefits that have substantial economic value to the general public and some small MS4 permittees. USEPA developed monetized annual estimates for its small MS4 “minimum control measures” (excluding stormwater runoff controls for construction sites). Nationally, USEPA expects these annual benefits to range from \$131 million to \$410 million (see Exhibit 5 at 64 Fed. Reg. 68794). If eight percent of these benefits are allocated to New Jersey (in proportion to New Jersey’s share of the nation’s Phase II population in urbanized areas), New Jersey’s share of these estimated annual benefits would range from about \$10 million to about \$33 million. For the same reasons that some costs incurred by small MS4 permittees in New Jersey are not additional costs, some of these benefits are not additional benefits.

Concentrated Animal Feeding Operations

Under the rules proposed for readoption, a concentrated animal feeding operation (CAFOs) as described in N.J.A.C. 7:14A-2.13 continues to be a point source that requires a NJPDES permit if it discharges to surface water or groundwater. CAFOs will continue to incur the costs of applying for a NJPDES permit and complying with NJPDES permit conditions (such as those in the existing CAFO general permit, NJPDES Permit No. NJ0138631); the costs of NJPDES permit fees; and the risk of penalties or fines if the NJPDES permit is not applied for or

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violated. The cost of complying with NJPDES permit conditions for CAFOs is variable and depends on a number of factors, including number and type of animals confined, existing animal waste practices at the CAFO, and availability of cropland and pastureland for manure application. As under existing N.J.A.C. 7:14A-2.13(c), animal feeding operations (AFOs) that receive requests from the Department to provide information will incur the costs of providing that information.

This rules proposed for readoption do include amendments specific to CAFOs and AFOs. As discussed in the Agriculture Industry Impact below, the Department believes that there are relatively few CAFOs in New Jersey.

Environmental Impact

N.J.A.C. 7:1 Department Organization

The Department anticipates that the proposed amendments to N.J.A.C. 7:1-1.3 will have a positive environmental impact as a result of the electronic publication of the DEP Bulletin. Resources will no longer be used to print and distribute hard copies of the publication.

N.J.A.C.7:1C Ninety-Day Construction Permits

The Ninety-Day Construction Permits rules establish certain application and review conditions for treatment works approvals. The Department is proposing to move all provisions relating to the TWA program into the NJPDES rules at N.J.A.C.7:14A-22, and as a result of the change, the Department is also proposing to repeal N.J.A.C. 7:1C. Since the administrative and review provisions will continue as a result of this change, the Department does not anticipate that the repeal of N.J.A.C. 7:1C will have an environmental impact.

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N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

The proposed new definitions at N.J.A.C. 7:9A should have no environmental impact, because these definitions are consistent with the Department's construction of existing N.J.A.C. 7:9A. See SJC Builders, LLC v. State of N.J., 378 N.J. Super. 50 (App. Div. 2005).

N.J.A.C. 7:14 Water Pollution Control Act

The proposed amendments to N.J.A.C. 7:14-8.2 should have a positive environmental impact. The proposed amendment is to the definition of "serious violation," and serves to conform the definition to the definition of the term in N.J.A.C. 7:14A. This amendment reflects the inclusion of whole effluent toxicity test terms already found in the NJPDES rules at N.J.A.C.7:14A-13.14. This proposed amendment does not change the monitoring parameter, but only provides for a better-defined statistical condition for testing. The minimal environmental impact would affect those few permittees who may be at or near the limitation threshold. As a result, the NJPDES permittee may be required to upgrade their treatment facilities to meet these effluent limitations that are considered "serious violations," which would otherwise subject the NJPDES permittee to enforcement action. To the extent that there is a reduction in effluent discharged, there would be a positive environmental impact.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

The rules proposed for readoption with amendments, repeals and new rules will enable the Department to more effectively administer the NJPDES program. Most of the rules at N.J.A.C. 7:14A are required by the New Jersey Water Pollution Control Act, the Federal Clean

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NJPDES: Administrative provisions

The administrative provisions of N.J.A.C. 7:14A, proposed for readoption with amendments, will not have any environmental impact, as they do not affect effluent limitations in NJPDES permits, and will not affect the technical evaluation, inspection, and monitoring activities to protect water quality that the Department conducts in administering the NJPDES permit program.

Reclaimed Water for Beneficial Reuse

The Department has always considered the protection and conservation of the State's potable water supplies to be of the utmost importance. However, a lack of potable water at certain times in the past forced the Department to explore other options. As a result, municipalities, counties, commercial entities, and others discovered that reclaimed water was considered a desirable resource. The Department has been encouraging and promoting reclaimed water for beneficial reuse (RWBR) and water conservation since 1999. Therefore, since there has been a tremendous environmental benefit resulting from RWBR, the Department is proposing to amend its rules to include these types of applications. The proposed new rule at N.J.A.C. 7:14A-2.15 and amended rule at N.J.A.C. 7:14A-22.3 will have a direct positive

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environmental impact on the environment in several ways. First, these rules are expected to result in additional use of RWBR for non-potable uses, which should result in a reduction in the demand on potable water supplies. Second, reusing effluent rather than discharging it should also reduce overall pollutant loadings to New Jersey's surface waters. Additionally, land application of RWBR should result in reduction in the amount of fertilizer required per application, thereby reducing the amount of nutrients present in land runoff.

By ensuring that RWBR is treated to a level commensurate with its intended use, the general population and the environment will be further protected by these rules.

Ground Water Program

The groundwater program rules at N.J.A.C. 7:14A-7 through 10, proposed for readoption with amendments, are essential to protecting the ground water quality of the State. Therefore, the rules proposed for readoption with amendments are anticipated to have a significant positive environmental impact.

In New Jersey, approximately four million people use ground water for domestic and industrial purposes, and as a source of drinking water. Ground water is a critical ecosystem resource, providing a constant source of recharge to streams, lakes, and wetlands, as well as replenishment of soil water for use by plants, trees, and soil organisms. The New Jersey Legislature recognized the importance of protecting and maintaining high quality ground water when it enacted the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-1 et seq., which states that part of its purpose is to "restore, enhance, and maintain the ground water quality of the State." The WPCA also provides (N.J.S.A. 58:10A-6) that it shall be unlawful for any person to

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Part of the DGW permitting program is the Underground Injection Control (UIC) Program. On the Federal level, the UIC Program (40 CFR Parts 144 through 148) was created under the authority of Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 93-523, as amended; 42 U.S.C. §§ 300f et seq.). The UIC Program requires compliance with standards and monitoring conditions to protect underground sources of drinking water. The Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1 et seq., implementing rules at N.J.A.C. 7:26-2A, which incorporate Federal rules at 40 CFR Parts 257 and 258, require ground water monitoring systems at sanitary landfills. All hazardous waste facilities subject to the SWMA and N.J.A.C. 7:26G, which incorporate Federal Resource Conservation and Recovery Act regulations at 40 CFR 264.90 through 264.100, are required to maintain ground water monitoring systems. The NJPDES DGW Program continues to be the mechanism used to restore, enhance and maintain ground water quality and implement the ground water requirements of these Federal and State laws and regulations and the WPCA.

N.J.A.C. 7:14A-7 through 10 incorporate standards and controls for DGW. A DGW permit includes pollutant limits (numerical or non-numerical), monitoring and/or inspection requirements, reporting requirements, and compliance schedules. It may also include requirements for best management practices or for treatment of the discharge. The Department's experience with DGW indicates that without the controls implemented by DGW permits, the DGW, geographically dispersed throughout the State, would affect ground water quality to the extent that it would not be valuable for drinking water, industrial uses, or as an ecosystem resource.

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N.J.A.C. 7:14A-7 protects groundwater quality by requiring that DGW permits shall include a Ground Water Protection Program (GWPP) that demonstrates compliance with the Ground Water Quality Standards (GWQS), N.J.A.C. 7:9C. The components of the DGW permit require adequate controls, including, but not limited to, an organized set of actions, procedures and devices.

N.J.A.C. 7:14A-8 prohibits underground injection activities unless they are authorized by a UIC permit-by-rule, an individual or general UIC permit, or exempted by regulation. The conditions contained in this subchapter are protective of groundwater quality by identifying when injection activities are more at risk of contravening standards and applying the appropriate level of controls and/ or prohibitions. This distinction is made in part through categorizing the injection well as Class I, II, III, IV, or V, and through providing a general permit or UIC permit-by-rule for certain Class V injection wells. Each class has additional specific requirements to comply with standards. The proposed amendments to this subchapter, while limited in scope, generally provide clarification of the appropriate level of controls and requirements for injection activities. The rules proposed for readoption with amendments ensure proper operation, maintenance and closure of all permitted injection wells.

For injection wells, N.J.A.C. 7:14A-8 is proposed to be readopted with amendments that enable these activities to have a UIC permit that exerts an appropriate level of control for the risk associated with the discharge. In addition, these discharges are subject to the requirements of N.J.A.C. 7:14A-8.4 and 8.5, such as a requirement to apply for a general or individual NJPDES permit, perform monitoring or reporting, cease injection, or close the injection well, if, for example, the Department learns that the injection well may cause a violation of the Department's

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7:9C), or may otherwise be adversely affecting the health of persons.

N.J.A.C. 7:14A-9 and 10 are protective of groundwater quality and its resource value by not allowing discharges from sanitary landfills and hazardous waste facilities, respectively, that contravene ground water protection standards.

The readoption of N.J.A.C. 7:14A-9 would continue to prescribe groundwater monitoring, leak detection monitoring and corrective action requirements for sanitary landfills. The rules provide standards for sampling and analysis to determine whether the landfill is leaking. Subchapter 9 also requires an assessment monitoring program to determine if a leak causes contravention of groundwater protection standards. A sanitary landfill that has been determined to be leaking is required to implement a corrective action remedial program to contain the leak and to repair the source of the leak so as to further protect ground water quality by eliminating future discharges.

The readoption of N.J.A.C. 7:14A-10 ensures that hazardous waste facilities will continue to be subject to groundwater monitoring and corrective action requirements in accordance with 40 CFR 264 and N.J.A.C. 7:26G-8 through 9. The monitoring requirements are identical to the Federal rule with the purpose to detect, characterize and respond to releases from hazardous waste facilities. Its purpose is to ensure that hazardous waste facilities do not discharge or leak, and if they do, they are required to implement a sequence of assessment and corrective action procedures that will contain, control, and eliminate future discharges.

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Surface Water Program

The Department expects a positive environmental impact from the rules proposed for readoption with amendments concerning the surface water program requirements at N.J.A.C. 7:14A-11 through 15, which should result in reduced pollutant loadings in wastewater or pollutants discharged from facilities to the surface waters of the State. The goal of the NJPDES surface water programs is to prevent, reduce, or eliminate the pollution of the surface waters. The effluent limitations in discharge to surface water permits for both industrial and domestic facilities restrict the amount of pollutants, which may be discharged.

The rules proposed for readoption with amendments provide technical and administrative procedures for processing and issuing permits and establish a consistent and scientifically sound mechanism for determining effluent limitations necessary to protect both human health and the environment. The NJPDES program will continue to serve as the regulatory means of mitigating and preventing adverse impacts from discharges to the waters of the State. A discharge permit includes pollutant limits (numerical or non-numerical), monitoring requirements, reporting requirements, and compliance schedules. In some cases it may also include requirements to complete a pollutant reduction study and/or water quality study. The NJPDES surface water program is essential to protect the water quality of the State.

The surface water program rules work with other rules, such as the New Jersey Surface Water Quality Standards at N.J.A.C. 7:9B, to ensure adequate protection of ambient water quality resulting in an overall positive environmental impact. The proposed amendments to subchapters related to the surface water discharge program are also expected to have a positive environmental impact. The majority of the proposed amendments regarding surface water are minor in nature, intended to clarify certain rules, provide additional explanation where needed

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However, even small clarifications and administrative corrections may result in an environmental benefit as they help to streamline the processing of a permit for both the permittee and the Department, which in turn may allow the Department to issue more permits and reduce its backlog. Ensuring that permits are renewed within a reasonable amount of time ensures that discharges are regulated by the most updated applicable effluent limitations and conditions.

Residuals Management Program

The primary purpose of N.J.A.C. 7:14A-20, proposed for readoption with amendments, repeal and new rules, is to continue the standards that must be met when residual is applied to the land. The standards in the subchapter consist largely of the requirements from 40 CFR Part 503, and include general requirements, pollutant limits, management practices, operational standards, and requirements for frequency of monitoring, recordkeeping, and reporting. The subchapter also includes requirements for reducing organisms in residual that cause disease (pathogens). Further, the subchapter requires reduction of vector attraction (that is, control of those characteristics of residual that attract disease-spreading agents like flies or rats) when residual is applied to the land.

The regulation of land application by means of pollutant limits and management practices is expected to protect public health and the environment from the reasonably anticipated adverse effects of arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, zinc and nutrients in the residual. Under N.J.A.C. 7:14A-20.5, the Department may also impose numerical limits on other pollutants applied to the land when levels exceed what the USEPA considered in adopting 40 CFR Part 503, exceed values identified in the technical documents

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The soil conditioning properties and nutrient content of residuals can improve the productivity of land and have the additional environmental advantage of helping reduce dependence on chemical fertilizers. The Department expects the proposed provisions related to the management of residual to have positive environmental impact by maintaining conformance with uniform national pollutant, pathogen reduction and vector attraction reduction standards while promoting responsible nutrient and nuisance control standards for the State's residual beneficial use program. With these rules proposed for readoption with amendments, repeal and new rules, the Department proposes to reinforce regulatory approaches that support beneficial use as a socially and environmentally sound management alternative.

Another purpose of the subchapter is to establish the essential requirements for NJPDES permit applications and case-by-case permitting requirements for residual use and disposal practices consistent with 40 CFR Parts 122, 123 and 124. Accordingly, this subchapter establishes requirements for including in NJPDES permits any terms and conditions necessary to implement the standards in 40 CFR Part 503, as well as any others which may be necessary to protect human health and the environment pursuant to Section 405(d)(4) of the Federal Act and Sections 4 and 6 of the State Act (N.J.S.A. 58:10A-4 and 6).

The subchapter also establishes standards for the closure of all surface disposal sites. The existing subchapter addresses only sewage sludge surface disposal sites. The Department intends to apply, at a minimum, the standards developed for the surface disposal of sewage sludge to all residual, and intends to apply additional restrictions consistent with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. It is not consistent

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7:14A-20.8.

The Department also proposes to readopt the requirements for permitting residual transfer stations, and proposes new requirements for residual reed beds and for residual blending and distribution sites. See proposed N.J.A.C. 7:14A-20.9, 20.10 and 20.12. The Department's proposal to readopt N.J.A.C. 7:14A-20 with amendments, repeal and new rules promotes comprehensive regulation of a broad range of residual management activities practiced in the State. Residual blending, if unregulated, has the potential to have a negative environmental impact. The storage of exceptional quality residual and blends made from exceptional quality residual on the ground and exposed to precipitation generates significant potential for losses of pollutants (most specifically nutrients) to the surrounding environment; has the potential to generate nuisance conditions; and, if not marketed promptly, can lead to large storage backlogs. The rules proposed for readoption with amendments, repeal and new rules will minimize that negative impact.

Pretreatment and SIU Programs

The pretreatment program rules at N.J.A.C. 7:14A-19, proposed for readoption with amendments, will enable the Department to address pollutants discharged to POTWs from non-domestic sources. The requirements of this program include the development of local standards or limits for discharges to POTWs. The limits imposed on industrial discharges to POTWs ensure that the POTWs will be able to provide adequate treatment for the waste, minimize discharge of pollutants into the receiving waters, protect the treatment works from pollutants

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The SIU program rules at N.J.A.C. 7:14A-21 proposed for readoption with amendments provide a positive environmental impact by prevention of pollution through the permitting program, which allows for the management of discharges in a manner that protects the public health, welfare, and safety, improving ambient water quality in streams, rivers, and the ground water.

Treatment Works

The proposed readoption with amendments of the rules governing Treatment Works Approvals at N.J.A.C. 7:14A-22 and 23 will continue the positive environmental impact of the existing rules. The primary objective of the treatment works approval program is to prevent degradation of the waters of the State due to inadequately designed and/or poorly operated wastewater conveyance and treatment facilities. Improperly constructed treatment works create the potential for environmental damage and serious health risks, such as those resulting from raw sewage overflows into basements, storm sewers and waterways, as well as the release of poorly treated sewage into the surface and groundwaters of the state. These rules establish minimum design standards for sewerage conveyance and treatment facilities, and through their implementation, the potential for inadequate designs is minimized. The existing treatment works approval program is one of pollution prevention that serves to monitor and address pollution problems before serious environmental damage occurs.

The proposed amendments to the TWA rules will have an overall positive environmental impact since the amendments clarify the existing rules, which will provide the regulated

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The Department has always considered the protection and conservation of the State's potable water supplies to be of the utmost importance. However, a lack of potable water at certain times in the past forced the Department to explore other options. As a result, municipalities, counties, commercial entities, and others discovered that reclaimed water was considered a desirable resource. The Department has been encouraging and promoting reclaimed water for beneficial reuse (RWBR) and water conservation since 1999. Therefore, since there has been a tremendous environmental benefit resulting from RWBR, the Department is proposing to amend the TWA rules in N.J.A.C. 7:14A-22.3 and N.J.A.C. 7:14A-22.4 to ensure the proper design and construction of such facilities, if required.

With the creation of legislation in relation to the protection of the Highlands Area of the State, a project is required to obtain a Highlands Preservation Area approval, if required, prior to the issuance of a TWA. This will enable the Department to review issues that are critical to the protection of the environment without the chance of negative impacts occurring in the meantime. Therefore, language at N.J.A.C. 7:14A-22.8(a)11 is proposed in order to incorporate this requirement into the TWA rules.

The Department is proposing to incorporate several new projected design flow categories to the table. These include age-restricted housing, assisted living and skilled nursing facilities, and homeowner's association common building. It has been demonstrated through actual flow records for similar types of facilities that the proposed design flow criteria are more realistic. Therefore, a positive environmental benefit will be realized when designing treatment works to serve these facilities.

The Sewer Ban, Sewer Ban Exemption and Capacity Assurance Programs proposed for

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readoption have been very effective in preventing additional harm to the environment by restricting additional sewage flow to the non-conforming treatment works. By restricting additional sewage flow to the non-conforming treatment works, existing conveyance or treatment problems will not be exacerbated, such as unauthorized sewage overflows or illegal discharges.

Stormwater Program

The stormwater rules at N.J.A.C. 7:14A-24 and 25, proposed for readoption without amendments, establish the Statewide Stormwater Permitting Program, which provides substantial water quality and environmental benefits, including benefits from control of nutrients (phosphorus and nitrogen), pathogens, solid and floatable materials, toxic and other pollutants, and stormwater runoff quantity. This program is also one of the mechanisms for implementing the stormwater requirements of total maximum daily loads (TMDLs) and water quality management plans. The industrial, construction site, and “municipal” (that is, publicly owned or operated) discharges regulated by the Statewide Stormwater Permitting Program are an important segment of the larger universe of stormwater-related or nonpoint pollution sources, which are a major cause of water pollution (including between 40 and 70 percent of existing surface water quality problems in New Jersey).

Over 2,700 industrial facilities in New Jersey (other than construction activities) currently have NJPDES permits for stormwater discharges. The number of new projects per year with regulated stormwater discharges associated with construction activity varies with building activity, but is expected to average around 3,200. The Municipal Stormwater Regulation Program currently regulates 562 municipalities, all 21 counties, and many county, State, interstate, and Federal agencies that operate separate storm sewers that are located at “highways

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USEPA discussed adverse effects on surface water quality of uncontrolled discharges from municipal separate storm sewers and construction site runoff in the Preamble to USEPA’s final “Phase II” stormwater regulations (December 8, 1999, 64 Fed. Reg. 68724-68731), and in a report to Congress (U.S. Environmental Protection Agency, 1999). USEPA discussed environmental benefits of controlling pollutants in stormwater discharges associated with industrial and construction activity in a subsequent report to Congress (U.S. Environmental Protection Agency, 2000). For a discussion of groundwater contamination from stormwater infiltration, see Pitt (1996). The Department is continuing to encourage the control of stormwater discharges through application of pollution prevention approaches using source controls (and controls required under the Soil Erosion and Sediment Control Act), rather than through application of wastewater treatment technologies.

Under the rules proposed for readoption, “concentrated animal feeding operations” (CAFOs) continue to be point sources that require a NJPDES permit if they discharge to surface water or groundwater. As discussed in the Agriculture Industry Impact below, the Department believes that there are relatively few CAFOs in New Jersey. In 2003, the Department issued its CAFO general permit, NJPDES Permit No. NJ0138631. Requirements of that general permit are summarized in the Regulatory Flexibility analysis below. USEPA discussed environmental concerns associated with improper manure and waste management at CAFOs in the Preamble to CAFO regulations that USEPA promulgated in the Federal Register on February 12, 2003 (68 Fed. Reg. 7180-7181). Readoption of the NJPDES rules will result in continued positive

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Federal Standards Analysis

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The Department has identified various areas in which some existing NJPDES requirements might be considered more stringent than the corresponding Federal provisions. The Department has objectively examined those State standards that are more stringent than the Federal standards and has minimized those differences in the rules proposed for readoption with amendments, repeals and new rules. This analysis compares the State program, proposed for readoption with amendments, repeals and new rules, and existing Federal programs.

N.J.A.C. 7:1 Department Organization

The Department's organizational rules in general, and N.J.A.C. 7:1-1.3 in particular, are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required.

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N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

The authority for regulating the construction of individual subsurface sewage disposal systems comes solely from State statute, specifically N.J.S.A. 58:11-23 et seq., 58:10A-1 et seq., including 58:10A-16, 13:1D-1 et seq., and 26:3A2-21 et seq. N.J.A.C. 7:9A has no Federal counterpart.

N.J.A.C. 7:14 Water Pollution Control Act

The proposed amendment to the definition “serious violation” at N.J.A.C. 7:14-8.2 does not have a Federal counterpart. The proposed amendment reflects the inclusion of whole effluent toxicity test terms in the NJPDES rules at existing N.J.A.C. 7:14A-13.14. The proposed amendment does not change the monitoring parameter, but provides for a better-defined statistical condition for testing.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

The NJPDES rules are developed partly under the National Pollutant Discharge Elimination System as authorized by the Federal Clean Water Act (including surface water and sludge management programs), under the underground injection control (UIC) program as authorized under the Federal Safe Drinking Water Act, and under ground water monitoring and corrective action portions of the municipal solid waste landfill and hazardous waste programs as authorized under the Resource Conservation and Recovery Act (RCRA). The applicable Federal requirements for surface water, sludge management, underground injection control (UIC), municipal solid waste landfills, and hazardous waste are found at 40 CFR Parts 104, 109, 110, 112, 116, 117, 121 through 125, 129, 130, 131, 133, 136, 140, 144 through 148, 239, 258, 264,

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Most of the NJPDES program is a delegated program, which means that the Department, rather than the USEPA, issues the permits. The requirements for delegated state programs are contained at 40 CFR 123, 145, 239, 271, 403 and 501. In accordance with 40 CFR 123, 145, 239, 271, 403 and 501, a delegated state, such as New Jersey, must include in the rules governing the permitting program specific provisions that are at least as stringent as the corresponding Federal provisions.

For parts of the NJPDES program, however, there are no corresponding Federal programs. For those parts of the NJPDES program, the Department is continuing to exercise its broader authority under the New Jersey Water Pollution Control Act and Water Quality Planning Act. The treatment works approval program, for example, has no analogous Federal counterpart. The State ground water program, except for the underground injection control, sanitary landfill, and hazardous waste facilities requirements, has no analogous Federal counterpart. The State surface water program, in contrast, closely follows the corresponding Federal requirements, except that the State surface water program for certain nonpoint sources has no analogous Federal counterpart. Where there is a corresponding Federal program, the proposed rules generally include the same requirements as the Federal provisions. The following discussion includes a section-by-section comparison of each NJPDES subchapter. Those areas where the NJPDES provisions are more stringent than the comparable Federal provisions are specifically identified and discussed.

N.J.A.C. 7:14A-1 Abbreviations, Acronyms, and Definitions

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N.J.A.C. 7:14A-1 provides a list of the abbreviations and acronyms used by the

Department in the NJPDES permitting program. In addition, it defines the terms used in the rules and it incorporates the applicable definitions found in the Federal rules.

Many of the definitions in N.J.A.C. 7:14A-1 incorporate and clarify Federal definitions in 40 CFR 35.2005, 122.2, 122.23, 122.25, 122.26, 122.27, 122.29, 122.41, 133.10 and 144.3. The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-1.1	Abbreviations and acronyms	Incorporates and clarifies 40 CFR 122.2
7:14A-1.2	Definitions	Incorporates and clarifies 40 CFR 35.2005, 122.2, 122.23, 122.25, 122.26, 122.27, 122.29, 122.41, 133.101 and 144.3

Abbreviations, acronyms, and definitions as such do not establish any regulatory requirements; consequently, no further analysis is required. Where any definition as used in a specific rule has an impact for purposes of the comparison with Federal law, the applicable section-specific analysis discusses it.

N.J.A.C. 7:14A-2 General Program Requirements

N.J.A.C. 7:14A-2 contains general NJPDES program requirements and incorporates a variety of Federal requirements in, for example, 40 CFR 122, 123, 144, and 145. Following is a discussion of N.J.A.C. 7:14A-2 provisions for which there are no Federal counterparts, or which

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N.J.A.C. 7:14A-2.4 enumerates activities for which the Department issues NJPDES permits. For some of these activities, there are no Federal requirements analogous to N.J.A.C. 7:14A-2.4. The Federal NPDES permit program is limited to discharges from point sources to “waters of the United States” as defined in 40 CFR 122.2 (most surface waters), and to certain treatment works treating domestic sewage. The Federal UIC Program is limited to underground injection through wells. Under N.J.A.C. 7:14A-2.4, however, the Department issues NJPDES permits not only for those point source discharges, treatment works, and underground injection, but also for certain discharges from nonpoint sources; certain discharges to other waters of the State including groundwater with or without underground injection; and certain specified activities with or without those point source discharges, treatment works, or underground injection (such as land application of wastewaters, storage of pollutants, discharges from site remediation projects and certain solid waste management facilities, and treatment, storage or disposal of certain hazardous waste). For activities not subject to analogous Federal requirements, N.J.A.C. 7:14A-2.4 is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. For additional discussion of discharges from nonpoint sources, see the discussion of N.J.A.C. 7:14A-2.5(d) below.

There are no current Federal requirements for nonpoint source control analogous to N.J.A.C. 7:14A-2.5(d). Because of the limited scope of USEPA’s jurisdiction under the Federal Clean Water Act, the Federal NPDES discharge permit program is limited. In N.J.A.C. 7:14A-2.5(d), however, the Department is exercising its broader authority under the New Jersey Water

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A Federal program concerning nonpoint source pollution control exists under the Coastal Zone Management Act. Under Section 6217(g) of the Coastal Zone Management Act Reauthorization and Amendments of 1990 (CZARA), P.L. 101-508, the USEPA has published “Guidance Specifying Management Measures For Sources of Nonpoint Pollution In Coastal Waters” (CZARA 6217(g) Guidance). States may opt to participate or not participate in overall coastal zone management program. No mandatory Federal standards or requirements for nonpoint source pollution control are imposed. The CZARA 6217(g) Guidance includes management measures for nonpoint source pollution control from agriculture and silviculture as well as many other source types. The Department has developed a coastal zone management program, including a component addressing coastal nonpoint pollution control. The rules at N.J.A.C. 7:14A-2.5(d) are one means by which the Department implements its nonpoint pollution control program.

N.J.A.C. 7:14A-2.6 defines those circumstances where a conflict of interest could affect the permitting process and prohibits persons with such a conflict of interest from participating in the permit decision process. This provision has a Federal counterpart in the NPDES program but not in the UIC program. It provides a positive social benefit for the general public by maintaining the program integrity and ensuring that permitting decisions are made impartially, without regard for financial remuneration to individuals by permittees.

What N.J.A.C. 7:14A-2.7(d) calls “administratively expired,” 40 CFR 122.64(b) calls “termination by notice” or “expedited permit termination.” This provides the Department a simplified process for closing out permits associated with regulated activities that no longer exist

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7:14A-2.8(a) to administratively continue a permit.

N.J.A.C. 7:14A-2.10 describes the Department's subpoena powers in accordance with N.J.S.A. 58:10A-10.3(b). There is no comparable Federal rule. This provision allows the Department to proceed expeditiously with collection of information. The subpoena powers established at N.J.S.A. 58:10A-10.3 are similar in purpose to powers established in Sections 309(g)(10) and 509(a)(1) and (2) of the Federal Clean Water Act and Section 1423(c)(8) of the Federal Safe Drinking Water Act.

N.J.A.C. 7:14A-2.11(b) sets forth the requirements for applicants, permittees and other interested persons to submit applications, reports, and other information electronically, with the Department's consent and in the manner prescribed by the Department, via the Department's web portal. There is no comparable Federal rule other than 40 CFR 122.21(a)(2)(ii), which applies to NPDES permit applications only. N.J.A.C. 7:14A-2.11(b) should facilitate implementation of future, more comprehensive USEPA rules to allow electronic reporting pursuant to the Government Paperwork Elimination Act of 1998, P.L. 105-277.

N.J.A.C. 7:14A-2.11(a), (c), and (d) set forth requirements to provide information in accordance with N.J.S.A. 58:10A-10.3(a) and (c). There are no comparable Federal rules. These provisions allow the Department to proceed expeditiously with collection of information. The requirements established at N.J.S.A. 58:10A-10.3(a) and (c) are similar in purpose to requirements established in Section 308 of the Federal Clean Water Act.

N.J.A.C. 7:14A-2.11(e) sets forth inspection and entry requirements pursuant to N.J.S.A. 58:10A-6(g). Comparable Federal rules at 40 CFR 122.41(i) and 144.51(i) are limited to facilities that have NPDES or UIC permits. This provision allows the Department to enter

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property to conduct inspection, sampling, copying, or photography for purposes of the NJPDES rules, regardless of whether that property has a NJPDES-permitted facility. The inspection and entry requirements established at N.J.S.A. 58:10A-6(g) are similar in purpose to requirements established in Section 308 of the Federal Clean Water Act.

N.J.A.C. 7:14A-2.12(a) and 2.12(b) state, in part, that permittees and applicants may be required to conduct any and all studies that are necessary to develop permit limits and conditions. This is consistent with the Federal requirements at 40 CFR 122.21, 122.41, 122.43, 122.44, and 144.52, and also provided for in Section 308 of the Federal Clean Water Act. 40 CFR 122.41 and 122.44 require permittees to submit the information needed by the Department to develop effluent limitations. In addition, 40 CFR 122.44 requires the Department to incorporate water quality based limits in discharge permits. Although the Department encourages permittees and applicants to engage in cooperative and coordinated ambient studies to optimize the completion of necessary studies in an efficient manner, the rule does not mandate this.

N.J.A.C. 7:14A-2.12(c) provides that all studies conducted for the purposes of implementing the requirements of N.J.A.C. 7:14A, applicable to any regulated entity under the surface water, ground water, storm water, residuals or significant indirect user programs, must be performed in accordance with a Department approved Work/Quality Assurance Project Plan (Work/QAPP). This requirement is consistent with various USEPA quality assurance regulations and other quality assurance requirements that apply to programs over which USEPA has partial or full jurisdiction through regulation, delegation, or funding. Such regulations and requirements include USEPA Order 5360.1 A2 (EPA 2000), *Policy and Program Requirements for the Mandatory Agency-Wide Quality System*, as well as 48 CFR 46 and 40 CFR 30, 31, and 35. In recognizing the importance of quality assurance, the Department applies USEPA's quality

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assurance project plan requirements to all of the Department's environmental programs, including the NJPDES program, even where there is no USEPA or other Federal jurisdiction.

N.J.A.C. 7:14A-2.13 identifies concentrated animal feeding operations (CAFOs) that require a NJPDES permit. Although N.J.A.C. 7:14A-2.13 is generally consistent with 40 CFR 122.23(a), (b)(2), (4), and (6), (c), and (d)(1), some animal feeding operations (AFOs) are identified as CAFOs in N.J.A.C. 7:14A-2.13, but not in the USEPA rules (or vice versa). For example, N.J.A.C. 7:14A-2.13 has categories (removed from the USEPA rules in 2003) for laying hens or broilers at facilities with continuous overflow watering, and for AFOs with specified numbers of "animal units," but does not have categories (added to the USEPA rules in 2003, but later partially vacated by court order) for immature swine, and for laying hens and other chickens if the AFO uses a dry chicken manure handling system.

The Department proposes to readopt N.J.A.C. 7:14A-2.13 and the other NJPDES rules that specifically pertain to CAFOs without amendments. The Department had intended to propose amendments that would make the State's rules consistent with the Federal rules regarding immature swine, and for laying hens and other chickens; however, some important provisions of those USEPA regulations were vacated by the United States Court of Appeals for the Second Circuit in *Waterkeeper Alliance Inc., et al. v. EPA*, 399 F. 3d 486 (2d Cir. 2005). The USEPA has not yet promulgated rules in response to the *Waterkeeper Alliance* decision. The Department and USEPA agreed that is reasonable for the Department to postpone proposing such amendments until USEPA promulgates revised CAFO regulations in response to that opinion.

N.J.A.C. 7:14A-2.13(c) allows the Department, in accordance with N.J.S.A. 58:10A-10.3(a), to require any AFO to provide information regarding the number and type of animals

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confined, the means of discharge, and the name and address of the owner or operator. There are no comparable Federal rules. This provision allows the Department to collect information useful for determining whether an AFO is a CAFO under N.J.A.C. 7:14A-2.13(b) or (d). The requirements established at N.J.S.A. 58:10A-10.3(a) are, however, similar in purpose to requirements established in Section 308 of the Federal Clean Water Act.

N.J.A.C. 7:14A-2.14(c) requires certain aquatic animal production facilities, in accordance with N.J.S.A. 58:10A-10.3(a), to submit certain information to the Department to determine if a NJPDES permit is required. There are no comparable Federal rules.

Proposed N.J.A.C. 7:14A-2.15 regulates Reclaimed Water for Beneficial Reuse (RWBR). There are no comparable Federal rules. This section implements policies concerning reclaiming and recycling of water in Section 201(b) of the Federal Clean Water Act. In addition, the New Jersey RWBR program including this section has been developed in a manner that is consistent with USEPA's 2004 *Guidelines for Water Reuse* (EPA/625/R-04/108) where applicable.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-2.1	Purpose and scope	Incorporates 40 CFR 122.1, 123.25, 145.11.
7:14A-2.2	Liberal construction and severability	Clarifies 40 CFR 123.25.
7:14A-2.3	Incorporation by reference	Clarifies 40 CFR 122.21(c), 123.25, 145.11.

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7:14A-2.4	Activities that require a NJPDES permit	Incorporates and clarifies 40 CFR 122.1(b), 122.21, 122.44(m), 124.52(a) and (b), 144.31, 403(f)(iii), 503.
7:14A-2.5	Exemptions	Incorporates 40 CFR 122.3, and is consistent with 40 CFR 264, 265, and 270.1(c).
7:14A-2.6	Conflict of interest	Incorporates 40 CFR 123.25(c).
7:14A-2.7	Permit duration and renewal	Incorporates 40 CFR 122.41(b) and (f), 122.46(a) through (c), 144.36, 144.51(b), and incorporates and clarifies provisions in 40 CFR 122.64(b) that pertain to a permanently terminated discharge.
7:14A-2.8	Administrative continuation of permits	Incorporates 40 CFR 122.6(a) through (c), 144.37 (a) through (c).
7:14A-2.9	Enforcement action	Incorporates 40 CFR 122.41(a) and (c), 122.5(a), 144.51(a), 144.51(c).
7:14A-2.10	Subpoena	Similar in purpose to Sections 309(g)(10) and 509(a)(1) and (2) of Federal Clean Water Act and Section 1423(c)(8) of Federal Safe Drinking Water Act. Incorporates N.J.S.A. 58:10A-10.3(b).

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7:14A-2.11	Duty to provide information	Incorporates 40 CFR 122.21(a)(2)(ii), 122.41(i) and (l)8, 144.51(i) and (l)(8). Portions similar in purpose to Section 308 of Federal Clean Water Act. Incorporates N.J.S.A. 58:10A-6(g) and N.J.S.A. 58:10A-10.3(a) and (c).
7:14A-2.12	Studies	Consistent with 40 CFR 30, 31, 35, 122.41, 122.43, 122.44, 130.4(b), 144.52, 48 CFR 46 and Section 308 of the Federal Clean Water Act.
7:14A-2.13	Specific criteria for concentrated animal feeding operations	Incorporates 40 CFR 122.23(a), (b)(2), (4), and (6), (c), and (d)(1). Portion similar in purpose to Section 308 of Federal Clean Water Act.
7:14A-2.14	Specific criteria for concentrated aquatic animal production facilities	Incorporates 40 CFR 122.24 and 40 CFR 122 appendix C. Portion similar in purpose to Section 308 of Federal Clean Water Act.
7:14A-2.15	Reclaimed water for beneficial reuse (RWBR)	Implements Section 201(b) of Federal Clean Water Act, and is consistent with USEPA's 2004 <i>Guidelines for Water Reuse</i> where applicable.

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N.J.A.C. 7:14A-3 Determination of Permit Fees

N.J.A.C. 7:14A-3 pertains to the establishment and determination of permit fees. All persons who wish to discharge wastewater in the State are required to obtain a NJPDES discharge permit from the Department. Pursuant to N.J.S.A. 58:10A-9, the Department is authorized to establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering NJPDES permits. Fees are assessed to cover the Department's cost to issue and manage NJPDES permits. The NJPDES budget and fee schedule covers activities including the review of NJPDES permit applications, the development of specific permit terms and conditions including wasteload allocations, stream monitoring and modeling, conducting compliance and 24-hour sampling inspections, groundwater compliance sampling, supervising the installation of groundwater monitoring wells, evaluating and approving groundwater remediation alternatives, evaluating compliance with the terms and conditions of each NJPDES permit, and providing for the general administrative costs of the NJPDES program including regulatory support, data processing, and budgeting.

There is no Federal counterpart to N.J.A.C. 7:14A-3.1. However, Section 1447(a) of the Federal Safe Drinking Water Act (42 U.S.C. §300j6(a) and Section 6001(a) of the Resource Conservation and Recovery Act (42 U.S.C. §6961(a)) expressly recognize that delegated states may charge fees for underground injection, solid waste, or hazardous waste permits.

The USEPA does not currently administer a NPDES, UIC, or RCRA fee program, or require delegated states to assess permit fees to cover the costs of implementing their delegated permit programs. Decisions on how to fund program costs are made by each state under

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Since the Federal Water Pollution Control Act and the Federal Safe Drinking Water Act do not contain any standards or requirements regarding fees, the Department has determined that existing requirements and the proposed amendments to N.J.A.C. 7:14A-3.1 do not contain any standards or requirements that exceed any standards or requirements imposed by Federal law. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), do not require further analysis.

Reference	Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>
	<u>Related Federal Law or Guidance</u>
7:14A-3.1	Fee schedule for NJPDES permittees and applicants
	No comparable Federal requirement

N.J.A.C. 7:14A-4 Permit Application Requirements

N.J.A.C. 7:14A-4 pertains to the filing of applications for discharge permits. It specifies the administrative and technical information needed for various types of discharge permits. It incorporates the Federal requirements at 40 CFR 122.21, 122.22, 122.41, and 122.44 as tabulated with the exceptions listed below:

N.J.A.C. 7:14A-4.3 includes the following provisions, which are different from Federal requirements.

The provisions of N.J.A.C. 7:14A-4.3 that are required in accordance with 40 CFR 122.21(g), (h), and (k), are applicable to all dischargers. The Department has differentiated three categories of discharges: (1) POTWs and DTWs, (2) discharges of process wastewater including

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industrial discharges covered under categorical effluent guidelines, and (3) discharges of non-process wastewater. The Department treats all discharges under the same set of rules, since it is the Department's intent to issue permits for all discharges or activities in a manner that is as uniform as possible, and since most of the information required is applicable to all discharges or activities in one form or another. Since the requirements listed under the Federal regulations are similar regardless of category, the Department believes that there will not be any additional costs to permittee. However, where a Federal requirement is specific to a primary industrial category, the Department has not applied those to POTWs and DTWs, since those requirements are specific to distinct categories of discharges, and application across other categories was not appropriate.

N.J.A.C. 7:14A-4.3(c) uses the term "operating entity" rather than "operator" in describing who must obtain a NJPDES permit. The definition of "operating entity" or "operator" in N.J.A.C. 7:14A-1.2 does not exceed USEPA's interpretations of the often-applicable USEPA definitions of "operator." The Department believes that this definition is consistent with USEPA discussions about who is an "operator" that requires a NPDES permit under 40 CFR 122.21(b). (See 57 Fed. Reg. 41190-41191 (September 9, 1992); USEPA Form 1 (revised August 1990); an October 28, 1988 USEPA memorandum from James R. Elder, Director, Office of Water Enforcement and Permits; and 45 Fed. Reg. 33295, 33299 (May 19, 1980).)

The Department is requesting basic identification information from applicants in N.J.A.C. 7:14A-4.3(a)6 through 8. This information is not directly required under Federal regulation, but helps the Department to identify the permittees and co-permittees when more than one permittee (or potential permittee) exists at a given facility or activity. Confusion arises, for instance, when a person owns property, but leases the property to a potential discharger. Determining who is or

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The Department is requesting historical enforcement information from applicants in N.J.A.C. 7:14A-4.3(a)10, such as the existence of any administrative consent orders. This information is not directly required under Federal regulation, but helps the Department to ensure that past problems are identified and resolved during the permit process. This requirement does not result in any direct additional expense to the permittee.

The Department is requesting evidence that a water quality management plan amendment approval, or favorable consistency determination, has been received at N.J.A.C. 7:14A-4.3(a)12. This is consistent with the State Act at N.J.S.A. 58:10A-6(e)4. This information is not required under Federal regulation. This requirement is needed to ensure that a permittee does not invest extensive capital in a project (for example, hiring a contractor, consultant, designing a treatment system, constructing) and then have the project denied because it does not meet the requirements for a plan amendment. No additional expenditure is required to submit this information to the Department, but by including this information, the applicant is acknowledging that any construction done without prior water quality management plan approval, is done “at risk.”

In N.J.A.C. 7:14A-4.3(a)13, the Department requires written comments or objections, if any, from the municipality or local agency, to be submitted with the NJPDES permit application. The applicant must submit evidence that the application has been submitted to the local agency and municipality. This requirement will enable the Department to go forward with an application if the local authority has failed to review or comment on a permit application within a specified time period. There are no comparable Federal requirements.

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N.J.A.C. 7:14A-4.8(a) identifies additional application information requirements for concentrated animal feeding operations (CAFOs). There are several areas in which N.J.A.C. 7:14A-4.8(a) differs from 40 CFR 122.21(i)(1). For example, N.J.A.C. 7:14A-4.8(a) has a requirement (removed from the USEPA rules in 2003) for "the number of acres used for confinement feeding," but does not have the requirement (added to the USEPA rules in 2003) for "the total number of acres under control of the applicant available for land application of manure, litter, or process wastewater." As in the Federal Standards discussion of N.J.A.C. 7:14A-2.13, above, the Department intends to conform to the provisions in a future rulemaking, after the USEPA promulgates its rules regarding CAFOs in response to the *Waterkeeper Alliance* decision.

Existing N.J.A.C. 7:14A-4 Appendix A, Table II and III are consistent with 40 CFR 122 Appendix D. The Department proposes to amend the pollutant lists in these tables to include toxic parameters that the Federal rule does not include, since the State has adopted surface water criteria for these parameters. Monitoring and reporting requirements for these additional toxic parameters are currently being required in the DSW permits for the existing domestic treatment works, and for some industrial dischargers. Although the Department has added pollutants for which the regulated entities must test, the additional pollutants will be part of the scan for the entire fraction (for example, acid compounds or base neutral compounds); therefore, there should not be an additional cost to conduct the required testing.

The table below lists the contents of the subchapter and the related Federal law or guidance.

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Reference	Comparison with
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<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-4.1	Purpose and scope	
7:14A-4.2	Application requirements	Incorporates 40 CFR 122.21(a) through (c), 122.26, 144.31, 403.8(f)iii.
7:14A-4.3	Application information requirements	Incorporates 40 CFR 122.21, 144.31, 403.5(c), 501.15(a).
7:14A-4.4	Additional application requirement for DSWs	Incorporates 40 CFR 122.21, 122.44, 122.45, 136.
7:14A-4.5	Specific technical application requirements for direct discharges to surface water	Consistent with requirements of 40 CFR 122.41 and 122.44. No comparable Federal requirement.
7:14A-4.6	Additional application requirements for significant indirect users	Consistent with requirements of 40 CFR 403.8(f), 122.41 and 122.44 for SIUs.
7:14A-4.7	Additional application requirements for discharges to ground water	No comparable Federal requirement
7:14A-4.8	Additional application requirements for specific DSW discharges	Incorporates 40 CFR 122.24 and part of 40 CFR 122.21(i)1.
7:14A-4.9	Signatory requirements for permit applications and reports	Incorporates 40 CFR 122.22(a)1ii, 122.41(k), 144.32, 144.51.

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7:14A-4 Permit application testing Incorporates 40 CFR 122 Appendix D.

Appendix requirements/pollutant listings

A

N.J.A.C. 7:14A-6 Conditions Applicable to All NJPDES Permits

N.J.A.C. 7:14A-6 specifies the general conditions applicable to all NJPDES permits.

This subchapter sets forth requirements for such topics as schedules of compliance, monitoring, recordkeeping, monitoring result reporting, signatory requirements for MRFs, noncompliance reporting, general permits, and residuals management, along with general conditions. It also sets forth requirements for notice requirements for facility alterations, affirmative defenses, operation, maintenance and emergency conditions, and emergency permits. The format of this subchapter is similar to that of the Federal regulations at 40 CFR Parts 122 and 144.

Proposed amended N.J.A.C. 7:14A-6.2(a)4i requires compliance with pretreatment standards for toxic pollutants. The proposed amended rule incorporates Section 307(b) of the Federal Act for toxic pollutants, in addition to Sections 307(a) and (c) that are in the existing rule.

The Department proposes to amend N.J.A.C. 7:14A-6.5(b)2ii as a result of significant changes to surface water quality criteria for bacterial indicators and their application contained in the adopted amendments to the Surface Water Quality Standards at N.J.A.C. 7:9B-1.14(d)1 (see 38 N.J.R. 4449(a), October 16, 2006). The Surface Water Quality Standards no longer include fecal coliform criteria for water designated “FW2,” “SE1” and “SC2,” or enterococcus criteria for waters designated “FW2.” The standards do have E. coli criteria for “FW2” waters. The amended Surface Water Quality Standards indicate that the geometric mean values (not the

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On March 12, 2007, USEPA adopted methods in 40 CFR Part 136 for enterococcus and E. coli in wastewater (72 Fed. Reg. 11212). The Department has determined that the existing effluent standard at N.J.A.C. 7:14A-12.5(b) based on fecal coliform should remain unchanged. These amendments to the Surface Water Quality Standards were largely the result of the Federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 and the Department's experience with implementing beach monitoring with enterococcus. For further discussion of the basis for the amendments to the Surface Water Quality Standards, see 37 N.J.R. 3480(a) (September 19, 2005).

The Department proposes to amend N.J.A.C. 7:14A-6.8 to reflect the monitoring report forms currently used by the Department. It also proposes to amend N.J.A.C. 7:14A-6.8(a) to inform permittees approved under the New Jersey Pollutant Discharge Elimination System Electronic Data Interchange (NJPDES EDI) program that monitoring report forms may also be accessed for completion via use of an internet service. These amendments are consistent with the intent of 40 CFR Parts 122 and 144 and are not more stringent than these Federal regulations.

The Department proposes to amend N.J.A.C. 7:14A-6.9 to reflect the monitoring report forms currently used by the Department. The Department also proposes to amend N.J.A.C. 7:14A-6.9(a) to reflect an amendment to the Water Pollution Control Act at N.J.S.A. 58:10A-6f (5), effective January 22, 1993, clarifying who must sign forms for local agencies. These amendments are consistent with the intent of 40 CFR Parts 122 and 144 and are not more stringent than these Federal regulations.

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The Department proposes amendments to N.J.A.C. 7:14A-6.10 to conform to 40 CFR

122.41 with respect to residual use or disposal practices. An exceedence of a standard for residual use or disposal is a reportable event even if a discharge has not occurred. 40 CFR 122.41 requires an oral report within 24 hours, and a written submission within five days for such instances of noncompliance. Therefore, the Department proposes to amend this section to clarify this requirement.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-6.1	Purpose and scope	Incorporates 40 CFR 122.41 and 122.43(c), 144.45, 144.51.
7:14A-6.2	General conditions applicable to all permittees	Incorporates 40 CFR 122.1, 122.5(b), 122.5(c), 122.41(a), (d), and (l)(3), 122.44(b), (c)(1) and (4), (f), (k), (m) and (n), 122.45(f), 144.35, 144.51.
7:14A-6.3	Establishing permit conditions	Incorporates 40 CFR 122.43(a) and (b)(1), 144.52.
7:14A-6.4	Schedules of compliance	Incorporates 40 CFR 122.41(l)(5) and 122.47, 144.51(j)(1), 144.53.
7:14A-6.5	Monitoring	Incorporates 40 CFR 122.41(j)(1) and (4), 122.48, 144.51(j)(1), 144.54.

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7:14A-6.6	Recordkeeping	Incorporates 40 CFR 122.41(j)(2) and (3), 122.21(p), 144.51(j)(2) and (3), 144.31(f).
7:14A-6.7	Notice requirements for facility alterations and additions	Incorporates 40 CFR 122.41(l)(1), 144.51(l)(1).
7:14A-6.8	Reporting monitoring results	Incorporates 40 CFR 122.41(l)(4) and (7), 122.48, 144.51(l)(4) and (7), 144.54.
7:14A-6.9	Signatory requirements for MRSF and BR	Incorporates 40 CFR 122.41(l)(4) and (7), 144.51(l)(4) and (7).
7:14A-6.10	Noncompliance reporting	Incorporates 40 CFR 122.41(l)(6) through (8), (m), and (n), 144.51(l)(6) through (8)
7:14A-6.11	Affirmative defenses	Incorporates 40 CFR 122.41(m)(2) through (4) and (n)(2) through (4).
7:14A-6.12	Operation, maintenance, and emergency conditions	Incorporates and clarifies 40 CFR 122.41(e), 144.51(e).
7:14A-6.13	General permits	Incorporates 40 CFR 122.28.
7:14A-6.14	Emergency permits	Incorporates 40 CFR 144.34.
7:14A-6.15	Residuals management	Incorporates 40 CFR 122.44(a)(2) and (b)(2) and 122.44(o), 405(f).
7:14A-6.16	Pretreatment requirements for local agencies	Incorporates 40 CFR 122.44(j)(3).

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7:14A-6.17 Adjustment of DSW Incorporates 40 CFR 122.50.

limitations for alternative

disposal of pollutants

N.J.A.C. 7:14A-7 Requirements for Permits to Discharge to Ground Water (DGW)

N.J.A.C. 7:14A-7 establishes the requirements for NJPDES discharge to ground water permits, which include detailed requirements for conducting ground water monitoring programs and for implementing ground water protection programs. This subchapter is applicable to all types of discharges to ground water for which NJPDES permits are required pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., except for those discharges to which N.J.A.C. 7:14A-9 and 10 apply, and discharges associated with land application of residuals (which is regulated under N.J.A.C. 7:14A-20). The scope of this subchapter includes ongoing discharges from industrial septic systems; ongoing discharges from sanitary septic systems discharging greater than 2,000 gallons per day; ongoing discharges from sanitary septic systems used by a multiple dwelling, community, or regional facility that is not a single family residential system; ongoing discharges of industrial, sanitary, and certain stormwater pollutants onto the land surface, into the subsurface environment, or into infiltration basins; and disposal of contaminated dredge spoils. This subchapter also establishes several categories of permits-by-rule for ongoing discharges to the ground water from injection wells and other activities that do not endanger underground sources of drinking water, but are otherwise required to be covered under a permit.

The authority for regulating the types of discharges to ground water covered by this subchapter comes primarily from State statutes including N.J.S.A. 58:10A-1 et seq., and has no

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not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements (except as discussed below).

Some of the units regulated under N.J.A.C. 7:14A-7 are injection wells that are also regulated under N.J.A.C. 7:14A-8. An underground injection control (UIC) permit issued in accordance with N.J.A.C. 7:14A-8 is a DGW permit that is also subject to certain provisions of N.J.A.C. 7:14A-7. In addition, injection wells are regulated under USEPA rules for the Federal Underground Injection Control Program created pursuant to Part C of the Federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§300(f) et seq.). These USEPA rules are found mainly at 40 CFR Parts 144 through 148. To the extent that some N.J.A.C. 7:14A-7 provisions regulate injection wells, N.J.A.C. 7:14A-7 might be considered one of the means by which the Department participates in the UIC program established under Federal law. However, all NJPDES rule provisions that impose standards or requirements specific to injection wells are found in N.J.A.C. 7:14A-8 rather than in N.J.A.C. 7:14A-7. To the extent that some N.J.A.C. 7:14A-7 provisions affect injection wells, those provisions implement Federal UIC mandates; they do not go beyond them.

N.J.A.C. 7:14A-8 Additional Requirements for Underground Injection Control Program (UIC)

The Underground Injection Control (UIC) program is a Federally mandated program, and New Jersey assumed primary responsibility for administering the program in 1982 from the USEPA. The UIC program regulates wells that are used to inject fluids into the ground,

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Federal Underground Injection Control rules at 40 CFR 144.87 and 144.88 provide requirements for underground injection wells. New Jersey has primacy for implementing the Federal program and is required by its primacy agreement with USEPA to maintain this rule to be consistent with the Federal rule. The proposal to amend N.J.A.C. 7:14A-8.4(a)3 avoids a situation where the Department could re-authorize existing injection wells that are currently unlawful and pose a substantial risk to underground sources of drinking water, such as large-capacity cesspools and motor vehicle waste disposal wells that are not authorized by N.J.A.C. 7:14A-8. This avoids a situation where this rule and Federal rule deadlines and closure requirements for injection wells would be different. The proposal does not result in any new costs, and maintains consistency with the Federal rule. The amended rule is no more stringent than the Federal rule.

Under 40 CFR 144.88(b)(1)(iv), UIC permits for motor vehicle waste disposal wells must include requirements to meet maximum contaminant levels (MCLs) and other health based standards at the point of injection. N.J.A.C. 7:14A-8.4(a)3 includes a requirement to meet Ground Water Quality Standards (N.J.A.C. 7:9C) at the point of injection. Under the NJPDES rules, permits for discharges to groundwater (including UIC permits) are required to comply with the Ground Water Quality Standards. Any applicable requirements in the Ground Water Quality

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Types of Class V injection wells not identified in N.J.A.C. 7:14A-8.5 as eligible for a permit-by-rule require a general or individual NJPDES UIC permit that differs from the authorization by rule that 40 CFR 144.24 and 144.84 provide for some Class V wells. This requirement is authorized by 40 CFR 144.82(d), which recognizes that States can establish additional requirements for Class V wells to protect underground sources of drinking water.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-8.1	Purpose and scope	Incorporates 40 CFR 144.1.
7:14A-8.2	Classification of injection wells	Incorporates 40 CFR 144.6, 144.80, 144.81, and 146.5.
7:14A-8.3	Prohibition of unauthorized injection	Incorporates 40 CFR 144.11.
7:14A-8.4	Prohibition of movement of fluid into underground sources of drinking water	Incorporates 40 CFR 144.12 and 144.82(a). Also based on 40 CFR 144.81(2) and (16), 144.84(b), 144.85, 144.87, 144.88, and 144.89(b).
7:14A-8.5	Authorization of injection into Class V wells by permit by rule	Incorporates 40 CFR 144.24 and 144.84 for specific types of injection activities eligible

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under this section for a permit-by-rule.

Implements 40 CFR 144.82(d) and
144.83(a).

7:14A-8.6	Identification of underground sources of drinking water	Incorporates 40 CFR 144.7.
7:14A-8.7	Prohibition and elimination of underground injection of hazardous and radioactive wastes	Incorporates 40 CFR 144.13 and 144.23(c).
7:14A-8.8	Authorization by permit	Incorporates pertinent parts of 40 CFR 144.31 through 144.41.
7:14A-8.9	Additional conditions applicable to Class I, II, III, and V UIC permits	Incorporates 40 CFR 144.51.
7:14A-8.10	Establishing UIC permit conditions	Incorporates 40 CFR 144.52.
7:14A-8.11	Corrective or preventive action	Incorporates 40 CFR 144.55.
7:14A-8.12	General operating criteria and construction standards	Incorporates 40 CFR 146.6, 146.7, 146.8, and 146.10(a). Also based on 40 CFR 144.12(a).
7:14A-8.13	Specific operating criteria and construction standards applicable to Class I wells	Incorporates 40 CFR 146.11 through 146.15.

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- 7:14A-8.14 Specific operating criteria and Incorporates 40 CFR 146.21 through
construction standards applicable 146.25.
to Class II wells
- 7:14A-8.15 Specific operating criteria and Incorporates 40 CFR 146.31 through
construction standards applicable 146.35.
to Class III wells
- 7:14A-8.16 Specific operating criteria and Incorporates 40 CFR 146.51. Also
construction standards applicable implements 40 CFR 144.12(a), 144.82,
to Class V injection wells 144.89, and 146.10(c).
- 7:14A-8.17 Additional requirements for Incorporates 40 CFR 146.14, 146.24, and
applications for individual UIC 146.34. Requirements are also consistent
permits with overall NJPDES permit filing
requirements.
- 7:14A-8.18 Specific operating criteria and Implements 40 CFR 144.82(d) and 144.83.
construction standards applicable
to permit by rule authorizations
for underground injection into
seepage pits
- 7:14A-8 Equation for area of review Incorporates 40 CFR 146.6

Appendix

A

N.J.A.C. 7:14A-9 Ground Water Monitoring Requirements for Sanitary Landfills

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N.J.A.C. 7:14A-9 provides the requirements for conducting ground water monitoring and corrective measures at sanitary landfills in New Jersey. Sanitary landfills are divided into two groups, based on whether or not a landfill is subject to Federal law. The first group is comprised of sanitary landfills that meet the definition of a Municipal Solid Waste Landfill (MSWLF) in the Federal rules at 40 CFR Parts 257 and 258, because they continued to operate after 1993. This MSWLF group of sanitary landfills is required to comply with 40 CFR Parts 257 and 258. This subchapter incorporates 40 CFR Parts 257 and 258 in substantially identical form. The second group consists of sanitary landfills that are not identified under Federal rule as MSWLFs. The ground water monitoring and corrective measures programs for these sanitary landfills are not regulated by any comparable Federal law.

For the group of sanitary landfills identified as MSWLFs, the Department has compared these rules to the applicable Federal standards set forth in 40 CFR Parts 257 and 258. This subchapter, as it applies to MSWLFs, is substantively identical to the Federal rules. Therefore, the Department has determined that these rules do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law, and no further analysis is required.

For the group of sanitary landfills that are not identified as MSWLFs under Federal rules, N.J.A.C. 7:14A-9 is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27(1994) and P.L. 1995, c. 65 do not require a comparison with Federal law.

The table below lists the contents of the subchapter and the related Federal law or

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Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-9.1	Scope and purpose	Incorporates 40 CFR 258.1.
7:14A-9.2	Applicability	Incorporates 40 CFR 258.50.
7:14A-9.3	Ground water monitoring system performance standards	Incorporates 40 CFR 258.51.
7:14A-9.4	General ground water monitoring well requirements	Incorporates 40 CFR 258.51.
7:14A-9.5	Ground water monitoring program requirements for sanitary landfills	Incorporates 40 CFR 258.53.
7:14A-9.6	Relevant point of compliance	Incorporates 40 CFR 258.40.
7:14A-9.7	Leak detection monitoring program	Incorporates 40 CFR 258.54.
7:14A-9.8	Assessment monitoring program	Incorporates 40 CFR 258.55.
7:14A-9.9	Assessment of corrective measures	Incorporates 40 CFR 258.56.
7:14A-9.10	Selection of remedy	Incorporates 40 CFR 258.57.
7:14A-9.11	Implementation of the Corrective Action Program	Incorporates 40 CFR 258.58.
7:14A-9.12	Application requirements for NJPDES- DGW permits for sanitary landfills	Incorporates 40 CFR 258.40.
7:14A-9	Constituents for Detection	Incorporates Appendix 1 to 40 CFR Part

Appendix Monitoring 258.

A

N.J.A.C. 7:14A-10 Ground Water Monitoring Requirements for Hazardous Waste

Facilities

N.J.A.C. 7:14A-10 incorporates requirements for conducting ground water monitoring and corrective action programs at hazardous waste facilities as required by Federal law in accordance with the Federal Resource Conservation and Recovery Act (RCRA) and its implementing regulations. This subchapter is proposed to be readopted without amendment. For the hazardous waste facilities affected by this subchapter, the Department has compared the NJPDES rules to the applicable Federal standards set forth in 40 CFR Part 264. In one area, these rules have requirements that are not the same as in the comparable Federal rule. Under N.J.A.C. 7:14A-10.8, and the Federal rule (40 CFR 264.94), all facilities are required to monitor for 14 constituents for the purpose of establishing ground water protection concentration limits. Of the 14, eight constituents in Table 1 of N.J.A.C. 7:14A-10.8 have more stringent criteria or standards under New Jersey's Ground Water Quality Standards at N.J.A.C. 7:9C. It is necessary to utilize the more stringent State criteria because, in accordance with N.J.A.C. 7:9C, all NJPDES permits must incorporate State ground water criteria, with no exceptions.

The New Jersey equivalent to the Federal concentration limits are the criteria in the ground water quality standards of N.J.A.C. 7:9C. To determine whether any of New Jersey's human health based ground water quality criteria at N.J.A.C. 7:9C are more stringent than corresponding Federal criteria, the Department compared them parameter-by-parameter with 40 CFR 264.94 Table 1. The New Jersey criteria may be considered more stringent than Federal

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corresponding Federal promulgated criteria revealed that New Jersey criteria are more stringent than Federal criteria for eight constituents: arsenic, cadmium, lead, lindane, methoxychlor, silver, toxaphene, and 2,4-D (see Table 1 below). However, the New Jersey criteria are more stringent than Federal criteria because different toxicological bases or carcinogenicity classifications were used to derive them. With the exception of the criterion for lead, the Department proposed and adopted these criteria using USEPA Integrated Risk Information System (IRIS) data updated to July 31, 2003. The Federal criteria are based on the Maximum Contaminant Levels (MCLs) in the National Interim Primary Drinking Water Regulations, which were adopted in June of 1977. These MCLs were revised and updated by the USEPA on January 30, 1991 (see 56 Fed.Reg. 3526). Table 1 in 40 CFR 264.93 has not been updated by the USEPA to reflect the modern MCLs. The Department believes its criteria reflect the best available scientific information, compared with the Federal criteria found at 40 CFR 264.93 Table 1. The Department believes the Federal limits are outdated.

Table 1 Concentration Limits for eight constituents.

<u>Constituent</u>	<u>New Jersey Criteria (µg/L)</u>	<u>USEPA Concentration Limits</u> <u>(µg/L)</u>
Arsenic	3	50
Cadmium	4	10
Lead	5	50
Lindane	0.03	4
Methoxychlor	40	100

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2,4-D	70	100
Silver	40	50
Toxaphene	0.03	5

The New Jersey criteria for lead are based on adverse effects relating to neurological development of children and consideration of the sources of lead in drinking water. Unlike most other noncarcinogenic effects, no threshold dose exists for the effects of lead on the neurological development of children. Therefore, any level of lead exposure is suspected to result in a decreased intellectual function in children. Because a significant portion of New Jersey children have been found to have blood lead levels above an acceptable level (New Jersey Department of Health, Childhood lead database, Division of Maternal and Child Health, 1992 Summary Data) and additional exposure to lead from drinking water may come from both the source water and from corrosion within the drinking water distribution system, the Department considers it appropriate to limit the exposure to lead in New Jersey to the greatest extent possible. Thus, for lead, the New Jersey criteria are more stringent than the Federal concentration limits.

In order to evaluate whether or not the more stringent State concentration limits based on N.J.A.C. 7:9C increase costs to permitted hazardous waste facilities, it is important to stress that the maximum concentration limits for the parameters listed in N.J.A.C. 7:14A-10.8 Table 1 apply to hazardous waste facilities only where an unpermitted release of hazardous constituents occurs, and the facility is required to institute compliance and corrective action programs in accordance with N.J.A.C. 7:14A-10.13 and 10.14, which are identical to 40 CFR 264.99 and 264.100. Facilities that instituted compliance and corrective action in accordance with the former rule at N.J.A.C. 7:14A-6.15 (repealed May 5, 1997), which was equivalent to the existing

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permits written in accordance with former N.J.A.C. 7:14A-6.15(e)1iii (repealed May 5, 1997), under which the more stringent of either the Federal maximum concentration limits or the N.J.A.C. 7:9C ground water quality standards were applied. Therefore, for hazardous waste facilities remediating the effects of prior releases of hazardous constituents, compliance with the existing and proposed rules did not and will not result in any additional costs.

For hazardous waste facilities that are operating under NJPDES detection monitoring permits, where no release of hazardous constituents has been detected, “state of the art” engineering design and monitoring systems preclude instituting the concentration limits of Table 1. This is because in those rare situations where a leak is detected, the compliance and corrective action responses required by Federal rules and by N.J.A.C. 7:14A-10.13 and 10.14 will effect remediation prior to the time the concentration limits would need to be compared to the ground water quality at the relevant point of compliance monitoring wells.

In one other area these rules contain a requirement to evaluate permit compliance with standards. This requirement is found at N.J.A.C. 7:14A-10.12(g)2, which is substantively the same as 40 CFR 264.98, except that where the Federal rule specifies analysis for 40 CFR Part 264 Appendix IX parameters, the State’s rule requires the practical quantitation levels (PQLs) for that analysis to be those listed in N.J.A.C. 7:9C. Achieving PQLs that are lower than the Federal rule could potentially result in an additional cost to a permittee, because higher quality laboratory standards would be required, which means that higher cost laboratories would need to be employed to achieve those PQLs. However, this requirement is not more stringent than the Federal rule, because the Federal rule explicitly states in a footnote to Appendix IX that the PQLs are not part of the regulation. Thus, there is no comparable Federal counterpart to the PQL

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The monitoring required by this subchapter is identical to the requirements of the Federal law. For hazardous waste facilities required to implement compliance monitoring and corrective action response, eight standards are more stringent than the promulgated Federal standards. However, seven of the eight standards are outdated, and conflict with State standards developed in accordance with Federal rules. Therefore, only the State ground water quality standard for lead is clearly more stringent than in the Federal rule. However, since the more stringent standards for all five constituents were required under the former State rules, and since all facilities instituting corrective action already have permits issued in accordance with the former State rules, the existing and proposed rule did not and will not increase costs for hazardous waste facilities required to conduct remediation. Also, even when lead or any of the other seven constituents exist in ground water at concentrations that exceed the contaminant limit of N.J.A.C. 7:14A-10.8, remediation of these constituents is not performed by active methods. Remediation typically consists of establishment of Classification Exception Areas in accordance with N.J.A.C. 7:9C. Delineation of a Classification Exception Area consists of specifying in the permit or equivalent control document an area on a map, and is an insignificant cost for the Department, a zero cost for the permittee, and a significant benefit for any potential ground water users who will be protected by knowing that at the perimeter of the Classification Exception Area, ground water meets the State quality standards.

The table below lists the contents of the subchapter and the related Federal law or guidance.

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Reference	Comparison with
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<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-10.1	Scope and purpose	This section is required to connect these rules to the pertinent requirements pursuant to N.J.A.C. 7:26G and 40 CFR 264 and 265.
7:14A-10.2	Applicability	Incorporates 40 CFR 264.90.
7:14A-10.3	Exemptions	Incorporates 40 CFR 264.90.
7:14A-10.4	General ground water monitoring well requirements	Incorporates 40 CFR 264.97.
7:14A-10.5	Ground water monitoring program requirements for hazardous waste facilities	Incorporates 40 CFR 264.91.
7:14A-10.6	Ground water protection standard	Incorporates 40 CFR 264.92.
7:14A-10.7	Hazardous constituents	Incorporates 40 CFR 264.93.
7:14A-10.8	Concentration limits	Incorporates 40 CFR 264.94.
7:14A-10.9	Relevant point of compliance	Incorporates 40 CFR 264.95.
7:14A-10.10	Compliance period	Incorporates 40 CFR 264.96.
7:14A-10.11	Ground water monitoring system performance standards	Incorporates 40 CFR 264.97.
7:14A-10.12	Leak detection monitoring program	Incorporates 40 CFR 264.98.

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7:14A-10.13 Compliance monitoring program Incorporates 40 CFR 264.99.

7:14A-10.14 Corrective action program Incorporates 40 CFR 264.100.

7:14A-10.15 Application requirements for NJPDES-DGW permits for hazardous waste facilities

No comparable Federal requirements.

These requirements comply with administrative requirements of NJPDES program.

7:14A-10.16 Application requirements for NJPDES-DGW permits for hazardous waste facilities with surface impoundments

No comparable Federal requirements.

These requirements comply with administrative requirements of NJPDES program.

7:14A-10.17 Application requirements for NJPDES-DGW permits for hazardous waste facilities with land discharge by infiltration/percolation lagoons

These are the same as requirements for similar nonhazardous pollutant sources regulated under N.J.A.C. 7:14A-7.

7:14A-10.18 Application requirements for NJPDES-DGW permits for hazardous waste landfills

These are the same as requirements for nonhazardous sanitary landfills pursuant to N.J.A.C. 7:14A-9.12.

N.J.A.C. 7:14A-11 Conditions and Procedures Applicable to Discharges to Surface Water

Requirements of readopted N.J.A.C. 7:14A-11 are equivalent to the corresponding Federal requirements, except for the provisions outlined below.

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Proposed N.J.A.C. 7:14A-11.3(a) includes a reporting requirement that is more stringent than the Federal reporting requirements at 40 CFR 122.42. In some cases, it may require more frequent reporting of toxic discharges to the Department than are mandated by Federal requirements. The Federal requirement at 40 CFR 122.42 requires reporting to the Department if a non limited toxic pollutant exceeds the specified level for discharges which occur on a “routine/frequent” basis or exceeds the specified level for discharges which occur on a “non routine/infrequent” basis.

In contrast, proposed N.J.A.C. 7:14A-11.3(a) requires reporting to the Department whether or not the discharge occurs on a “routine/frequent” basis, or occurs on a “non routine/infrequent” basis. The proposed rule uses the more stringent Federal level established for “routine/frequent” discharges.

The additional cost of this potentially more frequent reporting is the cost to comply with the monitoring and reporting requirements specified in N.J.A.C. 7:14A-6.5 and 6.10. This cost is minimal and worth the additional cost because it will alert the Department if a toxic discharge has or will occur and allow the Department to take appropriate responses to safeguard the public health and/or the environment.

Additionally, this provision eliminates confusion that results from the Federal rule’s failure to define what is "routine/frequent" and what is "non routine/infrequent." The proposed rule applies the same requirement to each.

The provision for a variance to publicly owned treatment works (POTWs) under 40 CFR Part 122.21(n)1 is not reflected in the table below. Variances under the Federal provision were available to POTWs for a limited time as a variance from the secondary treatment requirements for some discharges to the ocean. The variance is no longer available under the Federal

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provisions and no facilities in New Jersey were granted the variance during the time that it was available. Subsequently, public funds were used to install secondary treatment facilities at all facilities in the State.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-11.1	Purpose and scope	Incorporates 40 CFR 122.1, except that the scope of the DSW permit program has been expanded to include stormwater discharge into surface waters of the State from point and nonpoint sources regulated under N.J.A.C. 7:14A-24.2(a), and to include the discharge of pollutants into surface waters of the State from agricultural and silvicultural activities regulated under N.J.A.C. 7:14A-2.5(d).

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7:14A-11.2	Establishing DSW permit conditions	Incorporates 40 CFR 122.44. Also see the discussion of N.J.A.C. 7:14A-24.9 and 25 below in regard to stormwater discharges associated with industrial activity or small construction activity, and in regard to MS4s.
7:14A-11.3	Additional requirements for all existing manufacturing, commercial, mining, silviculture, and research facilities	Incorporates 40 CFR 122.42.
7:14A-11.4	Permit denial or conditions requested by other governmental agencies	Incorporates 40 CFR 124.59(b).
7:14A-11.6	Federal criteria and standards for DSW permits	Incorporates 40 CFR 125, Parts A, B, D, H, I, J.
7:14A-11.7	Variances and modifications under the State and Federal acts	Incorporates variance provisions under 40 CFR 125 and 122.21, except that variance under 122.21(n)(1) was excluded. This variance was available to POTWs for a limited time and no variances were granted to facilities in New Jersey.

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7:14A-11.8	Decisions on variances	Incorporates 40 CFR 124.62.
7:14A-11.9	Procedures for variances	Incorporates 40 CFR 124.63.
7:14A-11.10	Public notice of Section 316(A) request	Incorporates 40 CFR 124.57.
7:14A-11.11	Special procedures for decisions on thermal variances under Section 316(A)	Incorporates 40 CFR 124.66.
7:14A-11.12	Discharges from combined sewer overflows	See Appendix C, below.
7:14A-11.13	NJPDES/DSW PCB pollutant minimization plans for major facilities discharging to PCB impaired waterbodies	No comparable Federal requirement
7:14A-11 - Appendix C	Federal Policy on Combined Sewer Overflows	This Appendix incorporates the Federal policy on combined sewer overflows published in the Federal Register on April 19, 1994.

N.J.A.C. 7:14A-12 Effluent Standards Applicable to Direct Discharges to Surface Water and Indirect Discharges to a Domestic Treatment Works

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N.J.A.C. 7:14A-12 sets forth State effluent standards based on the Federal provisions regarding establishment of effluent standards under Section 301(b)(1)(C) of the Clean Water Act and Federal regulations at 40 CFR Part 122. The subchapter establishes minimum effluent treatment standards for conventional pollutants, phosphorus, oil and grease and chemical specific toxic pollutants prior to the establishment of water quality based effluent limitations for those pollutant parameters.

Since the effluent standards at N.J.A.C. 7:14A-12 are State effluent standards under Section 301(c)(3) of the Federal statute, there are no equivalent Federal rules or standards for comparison. In most cases where an effluent standard would be included in the discharge permit, the permittee has the option of completing a water quality study to provide the Department with the necessary information to determine a water quality based effluent limitation.

The Federal requirements require developing TMDLs for waterbodies and incorporating water quality based limits in discharge permits. The State standards for BOD₅ and phosphorus are a preliminary step in the process of including water quality based limits in NJPDES-DSW permits. These State standards are less stringent than requiring immediate completion of the necessary water quality studies to determine water quality based limits for all discharges and compliance with water quality based limits.

Conventional Pollutants

There is no comparable Federal requirement to the BOD₅ effluent standards contained at N.J.A.C. 7:14A-12.4. However, there are Federal rules that require inclusion of water quality based limits in discharge permits for all pollutants, including conventional pollutants. Since

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Phosphorus

There is no comparable Federal requirement. Since this effluent standard has been implemented for more than 20 years, many dischargers are currently in compliance with the phosphorus effluent standard and the Department does not anticipate costs to those permittees.

Oil and Grease

There are similar Federal requirements pertaining to oil and grease which prohibit the discharge of a visible oil sheen. The State standards are equivalent numerical effluent standards that the Department believes provide a quantifiable measure of “no visible sheen.” Since this effluent standard has been fully implemented, most dischargers are currently in compliance with the oil and grease effluent standard. The Department does not anticipate any costs to permittees attributable to this provision.

Chemical Specific Toxic Pollutants

There is no comparable Federal requirement for effluent standards applicable to new permittees or those conducting groundwater remediations as a whole. There are Federal effluent standards (effluent limitations guidelines and categorical standards) applicable to specific classes of permittees. In addition, there are Federal rules that require inclusion of water quality based

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standards are used for remediation in an effort to expedite the remediation. The effluent standards for new dischargers are applicable only if violation of a SWQS will not result. Since the effluent standards applicable to groundwater remediation discharges should be attained with standard treatment, such as air strippers and carbon, the Department does not anticipate any additional cost to permittees.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-12.1	Purpose and scope	N/A
7:14A-12.2	Secondary treatment effluent standards	Incorporates 40 CFR 133.102.
7:14A-12.3	Secondary treatment special considerations	Incorporates 40 CFR 133.103, except for the provisions noted above. Incorporates guidance from USEPA Handbook For Sewer System Evaluation, MCD-19.
7:14A-12.4	Minimum BOD ₅ effluent standards	Clarifies 40 CFR 122.44(d) as it applies to the interim period prior to the development of TMDLs.

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7:14A-12.5	Disinfection	Clarifies and quantifies provisions under Section 301 of the Federal Act which restricts discharges from adversely affecting human health and potability of water.
7:14A-12.6	Foam	USEPA 440/5-86-001 (Quality Criteria for Water, dated 1986, commonly termed “The Gold Book”).
7:14A-12.7	Phosphorus effluent standard	No specific Federal equivalent. Generally implements 40 CFR 122.44.
7:14A-12.8	Oil and grease effluent standards	Clarifies and defines 40 CFR 110.3(b) prohibition of visible oil sheen.
7:14A-12.10	Petroleum hydrocarbon exemptions	Clarifies 40 CFR 110.3(b).
7:14A-12.11	Toxic effluent standards	Clarifies Federal provisions for establishing effluent standards.
Appendix A	Reserved	

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Appendix B Effluent Standards for Site State 301(c)3 standards. No Federal

Remediation Projects equivalent. In addition, provides option for expedited permit issuance. Clarifies 40 CFR 122.44(d) for situations when need for water quality based limits for new discharges from site remediation projects has not been assessed. Less stringent than 40 CFR 122.44(d) since effluent standards may be substituted for site specific water quality study.

Appendix C Effluent Standards for New State 301(c)3 standards. No Federal
Sources, New Discharges or equivalent. In addition, provides option
Expanded Direct for expedited permit issuance Clarifies 40
Discharges CFR 122.44(d) for situations when need
for water quality based limits for new
dischargers has not been fully assessed.
Less stringent than 40 CFR 122.44(d)
since default limits may be substituted for
site specific water quality study for new
discharges.

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N.J.A.C. 7:14A-13 Effluent Limitations for DSW Permits

N.J.A.C. 7:14A-13 incorporates the corresponding Federal requirements at 40 CFR 122.44, 122.45, and 125.3. In general, the Federal regulations specify that a type of requirement (such as an effluent limitation) must be included in a discharge permit, but do not specify the procedures to determine the specific requirement. The specific procedures, such as those to calculate an effluent limitation, are included in Federal guidance documents. In accordance with the State Administrative Procedure Act, those procedures that are generally applicable to broad classes of dischargers have been incorporated into the rules proposed for readoption with amendments.

N.J.A.C. 7:14A-13 includes the following technical procedures that are not included in the Federal regulations but that are based on Federal guidance documents:

1. Procedures to determine seasonal effluent limitations;
2. Establishment of surrogate parameters;
3. Implementation of toxicity identification and reduction procedures by the permittee;
4. Specific procedures to determine if a particular discharge has the reasonable potential to cause or contribute to an exceedance of the ambient water quality standards;
5. Procedures to calculate water quality based effluent limitations;
6. Procedures to determine the existing effluent quality and to calculate effluent limits based on the existing quality;

In some cases, the requirements of this subchapter are more flexible than the corresponding Federal requirements.

1. Federal requirements at 40 CFR 122.44(d) require incorporation of water quality based limits for discharges following a determination of reasonable potential. N.J.A.C. 7:14A-

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13.21 combined with N.J.A.C. 7:14A-12 Appendices B and C provide a mechanism to determine interim limitations during the time period when the appropriate data are being collected to develop scientifically based TMDLs, WLAs, and water quality based effluent limitations for discharges.

2. Designation of an alternate point of compliance for whole effluent toxicity for some dischargers. The Department may establish an alternate compliance point for dischargers that meet a set of specific qualifications. This provision will generally apply to those dischargers to waters classified as SC where the outfall pipe is also used as the chlorine contact chamber.
3. Determination of reasonable potential for a discharge to cause or contribute to an exceedance of the ambient water quality standards when the pollutant of interest is present in the source water for the facility or domestic water supply.
4. Inclusion of action levels for various parameters (for example, pH, alkalinity, hardness, or temperature) that affect the final concentration of a pollutant of interest in the ambient waterbody. This provision allows the Department to base the final effluent limitation(s) on the actual or anticipated range of the parameter, rather than the theoretical range, reducing the likelihood of incorporating effluent limits which are more restrictive than necessary to protect ambient water quality.
5. N.J.A.C. 7:14A-13.9 specifies how the Department will determine seasonal water quality based effluent limits. There is no comparable Federal requirement. The Federal law neither expressly allows nor prohibits seasonal effluent limits.

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6. N.J.A.C. 7:14A-13.11 provides the option to include interim effluent limitations. There

is no comparable Federal requirement. The Federal law neither expressly allows nor prohibits interim effluent limits.

7. N.J.A.C. 7:14A-13.12 provides the option to include wet weather limitations during the

period when the facility is taking steps to correct excessive inflow and infiltration. There is no comparable Federal requirement. The Federal law neither expressly allows nor prohibits these specific interim effluent limits.

8. N.J.A.C. 7:14A-13.16 provides the option to include a chlorine produced oxidant (CPO)

decay factor in a permit where there is a significant period of time between where the final effluent sample for CPO is taken and the point of discharge. Also, a chlorine demand factor may be applied to adjust the measured CPO concentration of an effluent sample when the CPO demand factor and procedure to be followed are in the permit. The Federal law neither expressly allows nor prohibits CPO decay factors or demand factors.

9. N.J.A.C. 7:14A-13.18(f) provides for implementation of action levels for acute whole effluent toxicity (WET) for some permittees that currently must comply with the acute WET effluent standard of an LC50 greater than or equal to 50 percent as an effluent limit.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference	Comparison with	
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-13.1	Purpose and scope	N/A
7:14A-13.2	Types of effluent limitations	Incorporates 40 CFR 122.44(a) through (e).

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7:14A-13.3 Applicability of effluent Incorporates 40 CFR 122.44(a) through (e).

limitations

7:14A-13.4 Establishment of technology Incorporates 40 CFR 125.3.

based limitations

7:14A-13.5 Determination of reasonable Incorporates 40 CFR 122.44(d).

potential to cause an Consistent with USEPA guidance based on
excursion above the SWQS as Technical Support Document for Water
a basis for requiring inclusion Quality Based Toxics Control (EPA/505/2-
of water quality based effluent90-001). Calculation procedures are no more
limitations. restrictive than Federal guidance.

Intake credits for water quality based limits
patterned after Great Lakes Initiative
published at 40 CFR 132 Appendix F,
Procedure 5E.

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7:14A-13.6 Calculation of water quality Incorporates 40 CFR 122.44(d) and 40 CFR

based limitations 122.45(d) and (f). Includes implementation procedures which incorporate USEPA guidance based on Technical Support Document for Water Quality Based Toxics Control (EPA/505/2-90-001). Calculation procedures are no more restrictive than Federal guidance. An addition to this section at N.J.A.C. 7:14A-13.6(b) is proposed to codify existing practices to address difficulties in monitoring effluent concentrations where dischargers have long outfall pipes. This addition allows use of CPO demand when a chlorine demand analysis has been performed and can be used in calculating a less stringent final CPO water quality based effluent limitation to be applied in the permit. There is no comparable Federal requirement.

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7:14A-13.7	Determination of water quality based effluent limitations based on narrative criteria	Incorporates 40 CFR 122.44(d)(1)(vi) Consistent with USEPA guidance based on Technical Support Document for Water Quality Based Toxics Control (EPA/505/2-90-001).
7:14A-13.8	Calculation of effluent limitations using existing effluent quality	Consistent with 40 CFR 122.44 when need to determine limits based on existing effluent quality. There are no specific Federal rules regarding calculation procedures for limits based on existing effluent quality. This section applies USEPA guidance from the Technical Support Document for Water Quality Based Toxics Control to evaluating existing effluent quality.
7:14A-13.9	Seasonal effluent limitations	No comparable Federal requirement.
7:14A-13.10	Surrogate effluent limitations	Incorporates 40 CFR 122.44(d)(1)(vi)C and (e)2.
7:14A-13.11	Interim effluent limitations	No comparable Federal requirement.
7:14A-13.12	Wet weather effluent limitations	No comparable Federal requirement.

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7:14A-13.13	Quantity of flow used in the development of effluent limitations	Incorporates 40 CFR 122.45(b).
7:14A-13.14	Expression of effluent limitations	Incorporates 40 CFR 122.45(c) and (f).
7:14A-13.15	Permit averaging periods	Incorporates 40 CFR 122.45(d).
7:14A-13.16	Point of compliance for effluent limitations	Incorporates 40 CFR 122.45(a). Changes in this section are being made to codify existing practices to address difficulties in monitoring effluent concentrations where discharges have long outfalls. This is a new provision that allows for the use of chlorine decay factors for calculating the final CPO effluent concentration when the procedures and equations are specified in a permit. There is no comparable Federal requirement.
7:14A-13.17	Toxicity reduction evaluations	Consistent with USEPA guidance: Methods for Aquatic Toxicity Identification Evaluations.

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7:14A-13.18	Inclusion of action levels for water quality based effluent limitations	Consistent with USEPA guidance based on Technical Guidance Manual for Performing Wasteload Allocations for parameters such as metals which are dependent on other measurements such as pH, hardness, or temperature. The procedures provide implementation details for 40 CFR 122.44(d) and (f). There is no Federal equivalent of the WET action level.
7:14A-13.19	Antibacksliding	Incorporates 40 CFR 122.44(l) and USEPA guidance.
7:14A-13.20	Limitations for non-continuous discharges	Incorporates 40 CFR 122.45(e).
7:14A-13.21	Implementation of water quality based effluent limitations	Consistent with 40 CFR 122.44(d) for situations when need for water quality based limits has not been assessed. Less stringent than 40 CFR 122.44(d) since most water quality based limits would be delayed until after a TMDL is adopted. With N.J.A.C. 7:14A-13.13 and N.J.A.C. 7:14A-12 Appendices B and C, provides interim strategy to eventually attain SWQS.

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N.J.A.C. 7:14A-14 Monitoring Requirements Applicable to DSW and SIU Permits

N.J.A.C. 7:14A-14 specifies monitoring requirements for parameters included in a DSW or SIU permit as an effluent limitation or as a monitor only requirement. This subchapter sets forth monitoring frequencies, including the reasons for an increase or decrease in the frequency.

Inclusion of minimum monitoring frequencies provides a consistent database for use in evaluating facility performance. The Federal rules at 40 CFR 122.44 and 122.48 require that effluent monitoring be conducted in such a way as to be representative of the regulated activity. Federal guidance documents specify that the monitoring must be at a frequency that provides meaningful information regarding effluent quality and considers effluent variability. The monitoring frequency varies with the anticipated variability of the specific parameter, the ease and relative expense of monitoring, and the size and type of facility. Although minimum monitoring frequencies are not set by either Federal rule or guidance, several guidance documents recommend a weekly minimum monitoring frequency to provide adequate representation of effluent variability. The Department believes that the monitoring frequencies set forth in N.J.A.C. 7:14A-14 constitute the minimum monitoring frequency to provide meaningful and adequate information regarding effluent quality. These monitoring frequencies provide a baseline for establishing monitoring frequencies for pollutants in permits, and are somewhat less stringent than the frequencies recommended in the USEPA's "Technical Support Document for Water Quality-based Effluent Limitations." (EPA/505/2-90-001)

The table below lists the contents of the subchapter and the related Federal law or guidance.

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Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-14.1	Purpose and scope	N/A
7:14A-14.2	Monitoring frequency requirements for direct surface water discharges	Incorporates 40 CFR 122.44(I) and 122.48 in accordance with recommendations in Technical Support Document for Water Quality Based Toxics Control (EPA/505/2-90-001).
7:14A-14.3	Monitoring requirements for NJPDES-SIU permits	Incorporates requirements of 40 CFR 403.12(g).
7:14A-14.4	Monitoring frequency requirements for polychlorinated biphenyls (PCBs) effluent characterization	No comparable Federal requirement.

N.J.A.C. 7:14A-15 Procedures for Decision Making - NJPDES Permit Processing Requirements

N.J.A.C. 7:14A-15 incorporates the requirements of 40 CFR Part 124. These provisions are designed to enable the Department in issuing final permits in a timely and efficient manner. Each of the provisions proposed for readoption is less stringent than the corresponding Federal provision. The Department believes that these procedures will reduce administrative cost and effort and hence the cost of processing permit applications. These provisions will not have a

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reduction in program costs for the Department. The following lists ways that the rules proposed for readoption with amendments will decrease the overall costs of administering the permitting program:

1. When a public comment period is extended for 15 days or less, the Department is not requiring publication of a public notice in a newspaper. In most cases, publication of a formal legal notice in the newspaper requires a minimum of three to four weeks, so that the resulting comment period is often extended for six to eight weeks rather than 15 days. The rule provides that the applicant and all persons who commented on the draft permit would be notified by other means.
2. When comments are submitted regarding a specific permit action or provision, the comments must be relevant to the permit and of a legal or factual nature to be considered.
3. When a public hearing on a permit action is requested, the party requesting the public hearing must indicate why a hearing is necessary as compared to submittal of written comments. Since scheduling a public hearing is both expensive and requires a minimum of an additional two to four months of time prior to permit issuance, public hearings should be utilized when there is sufficient public interest in a permit action that can not be as readily addressed through submittal of written comments.
4. An applicant or permittee will have the option to make some of the logistical arrangements related to permit issuance, such as publication of the notice and scheduling the public hearing. The Department has found that the permittee is often able to complete these logistical arrangements in a shorter time frame than the Department. No permittee is required to make these arrangements, so there is no mandatory cost to a permittee. This

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provision provides additional administrative efficiency, and by reducing the total permit processing time may provide financial benefit to, for example, an applicant for a new or expanded discharge with a limited time to begin production or occupy commercial or residential properties.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-15.1	Purpose and scope	N/A
7:14A-15.3	Preapplication conferences, permit check lists and technical manuals	Incorporates requirements of N.J.S.A. 58:10A-1 et seq. for providing information to permittees about application requirements. Consistent with 40 CFR 124.
7:14A-15.4	Procedures for Department review of individual NJPDES permit applications	Incorporates 40 CFR 124.3. Minor editorial changes in wording.
7:14A-15.5	Consolidation of permit processing	Incorporates 40 CFR 124.4. Minor editorial changes in wording.
7:14A-15.6	Draft permits	Incorporates 40 CFR 124.6. Minor editorial changes in wording.
7:14A-15.7	Statement of basis	Incorporates 40 CFR 124.7. Minor editorial changes in wording.

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7:14A-15.8 Fact sheet Incorporates 40 CFR 124.8. Minor editorial changes.

7:14A-15.9 Administrative record for the draft permit Incorporates 40 CFR 124.9.

7:14A-15.10 Public notice of permit actions and public comment period Incorporates 40 CFR 124.10. Allows greater flexibility by allowing applicant or permittee to place the public notice in the newspaper. Provides that when a comment period is extended for 15 days or less, an additional public notice is not required.

7:14A-15.11 Public comments and requests for public hearing Incorporates 40 CFR 124.11. Clarifies that comments submitted on a permit must be relevant legal or factual comments. Also clarifies that the party requesting a public hearing must explain why a public hearing is necessary.

7:14A-15.12 Public hearings Incorporates 40 CFR 124.12. Provides additional flexibility in scheduling a hearing in that the applicant may be permitted to make the logistical arrangements.

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7:14A-15.13 Obligation to raise issues and Incorporates 40 CFR 124.13.

provide information during

the public comment period

7:14A-15.14 Reopening of the public Incorporates 40 CFR 124.14.

comment period

7:14A-15.15 Final permit decision and Incorporates 40 CFR 124.15. Provides
issuance and effective date of flexibility for the Department to specify an
a permit effective date for the permit less than 30 days
from the issuance date if there were no
comments (other than from the permittee) on
the draft permit.

7:14A-15.16 Response to comments Incorporates 40 CFR 124.17. Clarifies that
comments submitted on a permit must be
relevant legal or factual comments.

7:14A-15.17 Administrative record for the Incorporates 40 CFR 124.18. Clarifies that a
final permit party who wishes to review the
administrative record needs to make an
appointment in advance so that the record
will be complete and readily available.

7:14A-15 – Guide to the NJPDES Permit No comparable Federal requirement.

Appendix A Processing Requirements

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Suspension, and Revocation of Existing Permits

N.J.A.C. 7:14A-16 includes the provisions regarding the transfer, modification, revocation and reissuance, renewal, suspension, and revocation of existing NJPDES permits.

The subchapter is consistent with 40 CFR 122 and 144, except that:

1. In accordance with N.J.S.A. 58:10A-6(k), N.J.A.C. 7:14A-16.3(b)4 requires that all permit fees and fines must be paid prior to issuing a permit modification incorporating a less stringent effluent limitation.

2. The Department may revoke and reissue a permit without the consent of the permittee. This allows the Department to efficiently convert the issuance schedule for permits to a TMDL based or other watershed based schedule and would be beneficial for any shift to watershed based permit issuance. Conversion to a watershed based permit scheduling may result in significantly increased efficiency in permit issuance and positive economic and environmental impacts, and would not require any expenditure by the permittee. In addition, this provision allows the Department to revoke and reissue a general permit for which there may be so many permittees that obtaining the consent of every permittee may be impossible for practical purposes. Revoking and reissuing a general permit may have positive or negative economic impacts on permittees or applicants depending on the nature of the change to the permit. There is no similar Federal provision.

3. N.J.A.C. 7:14A-16.5 includes the scope of changes to discharge permits that can be accomplished through minor modifications of permits. The allowable changes are not more stringent than the Federal requirements, but result in reduced costs to both the Department

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and affected permittees through more efficient processing of some permit modifications, and provide administrative flexibility to the Department.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-16.1	Purpose and scope	N/A
7:14A-16.2	Transfer of a permit	Incorporates 40 CFR 122.61 and 144.38.
7:14A-16.3	Procedures for the modification, revocation and reissuance, renewal, suspension, or revocation of a permit	Incorporates 40 CFR 122.62 and 144.39. Incorporates requirement of N.J.S.A. 58:10A-1 et seq. requiring payment of all permit fees prior to requesting a permit modification for less stringent effluent limitations.
7:14A-16.4	Causes for major modification or revocation and reissuance of a permit	Incorporates 40 CFR 122.62 and 144.39, except that the consent of the permittee is not required if the Department determines that a permit should be revoked and reissued.
7:14A-16.5	Minor modification of a permit	Incorporates 40 CFR 122.63 and 144.41. Expands the causes for issuing minor modifications.

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7:14A-16.6 Causes for suspension or revocation of a permit or denial of a permit renewal Incorporates 40 CFR 122.64 and 144.40, except that provisions in 40 CFR 122.64(b) that pertain to a permanently terminated discharge are incorporated and clarified in N.J.A.C. 7:14A-2.7.

N.J.A.C. 7:14A-17 Procedures for Decision Making – Adjudicatory Hearings and Stays of Permit Conditions

N.J.A.C. 7:14A-17 pertains to the procedures for requesting, evaluating and processing a request for an adjudicatory hearing and a stay of permit conditions. It incorporates USEPA requirements at 40 CFR 124.16, 124.74, 124.75, 124.77 and 124.85 for conducting adjudicatory hearings with the following exceptions.

Parties other than the permittee are permitted to request a hearing to contest a permit action and a stay of permit conditions in accordance with N.J.S.A. 58:10A-7. There is no similar Federal provision. The rules provide that requests for a hearing made by a third party must be accompanied by a justifiable reason. The rules allow the Department to make a determination on a request that the request for a hearing does not have merit and thus deny the request. In the event a hearing were provided to a third party, the permittee could incur the cost of participating in the hearing. These costs could include attorney's fees, and costs of any consultants that the party chose to rely upon. The permittee is not required to participate in a hearing involving a third party.

The Federal rules provide for an automatic stay of permit conditions when an adjudicatory hearing is granted. Under the rules proposed for readoption, a stay of permit

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or third party. This provision provides flexibility without increasing the cost of complying with discharge permits. A request for a stay of permit conditions is not precluded by this provision. It is only required that such a request be specifically made. Therefore, there is no additional cost in requesting a stay. When a stay is granted, the previous permit conditions remain in effect. There are no Federal provisions that allow the previous permit conditions to be modified. These rules provides flexibility to include interim limits during the adjudication period. This provision can potentially reduce cost (such as the cost to construct a new treatment facility) while maintaining or improving effluent quality.

N.J.A.C. 7:14A-17 provides an avenue of relief to a permittee who wishes to contest the terms and conditions of a NJPDES permit and imposes no additional cost beyond Federal requirements.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference	Comparison with	
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-17.1	Purpose and scope	N/A
7:14A-17.2	Request for an adjudicatory hearing	Incorporates 40 CFR 124.74. Minor editorial changes in wording.
7:14A-17.3	Consideration as a party to the action	No comparable Federal requirement.

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7:14A-17.4	Granting or denying hearing requests	Incorporates 40 CFR 124.75. Minor editorial changes in wording.
7:14A-17.5	Notice and conduct of an adjudicatory hearing	Incorporates 40 CFR 124.77 and 124.85.
7:14A-17.6	Stays of contested permit conditions	Incorporates 40 CFR 124.16 and 124.60, but does not provide for an automatic stay of permit conditions when an adjudicatory hearing is requested.
7:14A-17 –	Guide to the NJPDES	No comparable Federal requirement.
Appendix A	Permit Appeal and Stay Process	

N.J.A.C. 7:14A-18 Public Access to Information and Requirements for Department Determination of Confidentiality

N.J.A.C. 7:14A-18 incorporates 40 CFR 122.7 and 144.5, and clarifies the information required to make a determination and the procedures that the Department will follow in making confidentiality determinations. These procedures ensure that confidentiality is maintained for the submitted information that qualifies for such treatment. N.J.A.C. 7:14A-18 does not place requirements or restrictions on applicants or permittees.

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Reference	Comparison with
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<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-18.1	Public access to information and scope of authority	N/A
7:14A-18.2	Confidentiality	Incorporates and clarifies 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.3	Procedures for asserting confidentiality	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.4	Fees for a claim of confidentiality	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.5	Procedure for confidentiality determinations	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.6	Substantive criteria for confidentiality determinations	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.7	Class determinations	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.8	Access to and safeguarding of confidential information	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.

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7:14A-18.9 Disclosure of confidential information to State, interstate and Federal agencies with the exception of the USEPA and the U.S. Department of Justice

Minor editorial changes in wording.

7:14A-18.10 Disclosure of confidential information to authorized agents

Incorporates 40 CFR 122.7 and 144.5.

Minor editorial changes in wording.

7:14A-18.11 Designation by person of an addressee for notices and inquiries

Incorporates 40 CFR 122.7 and 144.5.

Minor editorial changes in wording.

7:14A-18.12 Access to information for the USEPA and U.S. Department of Justice

Incorporates 40 CFR 122.7 and 144.5.

Minor editorial changes in wording.

7:14A-18.13 Use of confidential information in rulemaking, permitting and enforcement proceedings

No comparable Federal requirement.

N.J.A.C. 7:14A-19 Pretreatment Program Requirements for Local Agencies

N.J.A.C. 7:14A-19 addresses the industrial pretreatment program requirements mandated by the New Jersey Water Pollution Control Act, and the Federal General Pretreatment

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As a result of the streamlining modifications to the Federal General Pretreatment Regulations (see 70 FR 60134, October 14, 2005), the Department proposes to readopt this subchapter with amendments to incorporate specific provisions from those changes.

Proposed amended N.J.A.C. 7:14A-19.3(b)2ii requires that local agencies provide information in their annual reports regarding acceptance or denial of hauled wastes. If a local agency accepts hauled waste at its treatment plant, it must specify what types of wastes are accepted. This information will allow the Department to better track where wastewater is managed throughout the State. There is no Federal equivalent to this requirement.

Proposed amended N.J.A.C. 7:14A-19.3(c)7i adds the parameters molybdenum, ammonia, and phosphorus to the list of pollutants for which an annual pollutant scan must be completed. Molybdenum and ammonia were newly listed as “pollutants of concern” under the *Local Limits Development Guidance* (EPA, Office of Wastewater Management, July 2004) and, therefore, including these parameters in the annual monitoring evaluation is consistent with the updated USEPA guidance. Phosphorus has been added to the list so that the Department and/or local agencies can generate data on phosphorus removal efficiencies at POTWs. This information will be utilized as a tool to help local agencies to achieve or maintain compliance

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with the surface water quality standard for this parameter. A majority of local agencies already conduct phosphorus monitoring on their effluent so, in most cases, the additional costs would be associated only with conducting the phosphorus monitoring on the treatment plant influent. At a yearly cost of less than \$25.00 for analysis of phosphorus, the Department does not believe that this is an excessive burden on the treatment plants.

Proposed amended N.J.A.C. 7:14A-19.3(e) specifies the provisions that must be included in the rules and regulations or sewer use ordinance of a delegated local agency in order to implement the streamlining provisions under the 40 CFR Part 403 regulations. These proposed amendments are intended to reduce the regulatory burden on delegated local agencies without adversely affecting environmental protection. These amendments are intended to allow delegated local agencies to better focus oversight resources on indirect users with the greatest potential for affecting treatment plant operations or the environment. The proposed amendments are consistent with the Federal regulations under 40 CFR Part 403.

Proposed amendments to N.J.A.C. 7:14A-19.6(a)7 include deletion of the requirement that SIUs be evaluated every two years for the need of a slug control plan, and the incorporation of new language specifying that SIUs must be evaluated once for the need of such a plan. These modifications are consistent with 40 CFR 403.8(f)(2)(vi).

The proposed amendment to N.J.A.C. 7:14A-19.6(f) incorporates the language regarding the signatory requirements for reports submitted by delegated local agencies. This is consistent with 40 CFR 403.12(m).

Proposed amendments to N.J.A.C. 7:14A-19.7(a) through (c) specify the criteria that a local agency must meet in order to perform limited sampling in lieu of conducting a complete headworks analysis, as well as the criteria for exemptions to conducting the headworks analysis.

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Additionally, the USEPA Local Limits guidance anticipates only that headworks analyses will be completed to control non-domestic discharges. As such, the amendments proposed under this subsection do not exceed standards or requirements imposed by Federal law.

Proposed amendments to N.J.A.C. 7:14A-19.7(f) specify that the local limit re-evaluation to be completed by delegated local agencies must be submitted after the NJPDES discharge permit has been renewed by the Department. This modification is consistent with 40 CFR 122.44(j).

N.J.A.C. 7:14A-19.8(d) requires that delegated local agencies include in their rules and regulations or sewer use ordinance the procedural and substantive requirements for IPP permit application, permit renewal, modification, suspension or revocation consistent with N.J.A.C. 7:14A-16. These requirements also clarify that the permit processing requirements must be consistent with those followed by the Department under N.J.A.C. 7:14A-15.10 through 15.16. Additionally, it clarifies that DLA-issued permits are subject to the same permit appeal process as Department-issued NJPDES permits, and must follow the permit appeal process under N.J.A.C. 7:14A-17. There are no comparable Federal rules for indirect discharge permits.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference	Comparison with
<u>(N.J.A.C.)</u>	<u>Related Federal Law or Guidance</u>
7:14A-19.1	Purpose and scope
	Incorporates 40 CFR 403.1, 403.2 and 403.4.

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7:14A-19.2	Industrial pretreatment program development by local agencies	Incorporates 40 CFR 403.8. Minor editorial changes in wording.
7:14A-19.3	Industrial pretreatment program requirements for all local agencies	Incorporates 40 CFR 403.8. Minor editorial changes in wording.
7:14A-19.4	Enforcement response plans	Incorporates 40 CFR 403.8 and 403.18. Minor editorial changes in wording.
7:14A-19.5	Enforcement requirements in an industrial pretreatment program	Incorporates 40 CFR 403.8 and N.J.S.A. 58:10A-1 et seq. Minor editorial changes in wording.
7:14A-19.6	Additional requirements for delegated local agencies	Incorporates 40 CFR 403.8 and N.J.S.A. 58:10A-1 et seq. Minor editorial changes in wording.
7:14A-19.7	Development of local limits by local agencies	Incorporates 40 CFR 403.5, 403.18 and 122.21. Minor editorial changes in wording.
7:14A-19.8	Requirements for issuance of IPP permits by delegated local agencies	Incorporates 40 CFR Part 403.8. Minor editorial changes in wording.
7:14A-19.9	Modifications of an industrial pretreatment program	Incorporates 40 CFR 403.18. Minor editorial changes in wording.
7:14A-19.10	Public notice and public hearing requirements for delegated local agencies	Incorporates 40 CFR 403.8 and 403.25. Minor editorial changes in wording.

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7:14A-19.11	Enforcement action for failure to	Incorporates Federal Clean Water Act,
	implement or enforce an approved	Section 309(g), and N.J.S.A. 58:11-55.
	industrial pretreatment program	Minor editorial changes in wording.
7:14A-19 –	Enforcement Response Plan	Incorporates 40 CFR 403.8(f)(5) and
Appendix A		N.J.S.A. 58:10A-1 et seq.

N.J.A.C. 7:14A-20 Standards for the Use or Disposal of Residual

USEPA's Standards for the Use and Disposal of Sewage Sludge state that nothing precludes a State from imposing requirements for the use or disposal of sewage sludge more stringent than the requirements in 40 CFR Part 503 or from imposing additional requirements for the use or disposal of sewage sludge. See 40 CFR 503.5(b). The Department is proposing to readopt N.J.A.C. 7:14A-20 with amendments, repeal and new rules. Subchapter 20 incorporates the Federal standards at 40 CFR Part 503 for the land application of sewage sludge. The rules proposed for readoption with amendments, repeal and new rules that include standards that exceed those established by Federal law are summarized below. All requirements described below that exceed Federal standards are achievable under current technology.

Case-by-Case Permitting

40 CFR Part 503 allows the permitting authority to impose case-by-case standards or additional requirements that are more stringent than the standards or requirements expressed in the rule. See 40 CFR 503.5(a), and 58 Fed. Reg. 9324, 9328 and 9388 (February 19, 1993). The Department adopted this provision in 1997 at N.J.A.C. 7:14A-20.5(a). The Department proposes to readopt N.J.A.C. 7:14A-20.5(a) with amendments that identify additional cases

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Environmental Assessment

The Department proposes to readopt N.J.A.C. 7:14A-20.6 with amendments that add a list of operations that are exempt from the requirement to submit an environmental assessment. N.J.A.C. 7:14A-20.6 addresses locations where residual are treated. Federal rules do not address sites that treat residual. Therefore a Federal standards analysis is not required.

Site Approval

For non-exceptional quality sewage sludge, 40 CFR Part 503 includes certain requirements for notifying the permitting authority before sewage sludge is land applied. Federal law also establishes certain site restrictions, but does not provide for a site-specific review and approval of sites proposed for land application of non-exceptional residual. The Department proposes to readopt with amendments its existing requirement that it review proposed non-exceptional quality residual land application sites and, if suitable, approve them with a "Letter of Land Application Management Approval" or "LLAMA." See the discussion of proposed N.J.A.C. 7:14A-20.7(a)3 and (h)2vii in the Summary above. In the Department's opinion, a LLAMA is necessary in order to document and enforce the site specific restrictions, recordkeeping and reporting appropriate for each land application site receiving

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residual. Conditions such as slope, run-off control, public access, buffer zones, drinking water wells, dwellings, depth to ground water, site soil texture and parent geologic material must be delineated by the LLAMA applicant. Also, the Department requires the LLAMA applicant to issue a local public notice and to provide a copy of the LLAMA application to the municipality where the proposed land application site is located, thus allowing opportunity for public involvement in the review process.

One requirement of an application for a LLAMA that is not required by Federal law is that the applicant obtain and implement a conservation plan or soil erosion and sediment control plan. The State requirement for conservation planning on land to which certain residuals are applied predates the 1993 Federal rules at 40 CFR Part 503. Farms that implement conservation plans garner many benefits, including decreased nutrient loss from fertilizers such as residual. Therefore, the Department encourages all farms to implement conservation plans prior to the land application of bulk quantities of any fertilizer or soil amendment. See 28 N.J.R. 380(a), 483 (February 5, 1996). There is no fee for obtaining a conservation plan through the United States Department of Agriculture Natural Resources Conservation Service (USDA-NRCS); however, due to resource constraints, some USDA-NRCS offices do not have the resources to provide timely planning services for LLAMA applicants. The Department proposes to accept LLAMA applications that include equivalent conservation plans prepared by a person equally qualified in nutrient management and conservation/erosion control planning. See the discussion of N.J.A.C. 7:14A-20.7(a)3i(7) in the Summary above. Such planning will cost up to \$1,200 per 100 acres of farmland. Applicants can still opt for the free USDA-NRCS service.

The Department also proposes to expand the LLAMA application requirements at N.J.A.C. 7:14A-20.7(a)3i(1) to include an evaluation of local transportation patterns, a delineation of

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proposed fields with labeled acreage, and an aerial photograph showing the location of the proposed residual land application site. The remainder of site specific information required to apply for a LLAMA are consistent with the requirements of 40 CFR Part 122 for submitting a Land Application Plan. The Department estimates that the cost of preparing a complete LLAMA application ranges from \$20.00 to \$125.00 per acre.

Management Practices

In general, management practices are intended to restrict residual land application on certain areas and during periods that have a high risk of nutrient and sediment runoff or leaching in order to minimize the loss of residual constituents (especially nutrients) to the waters of the State. The Department proposes amendments to N.J.A.C. 7:14A-20 in order to strengthen non-point source controls from agricultural land application of residual. As compared to the existing rule, proposed amendments to N.J.A.C. 7:14A-20 increase the number of buffered acres for some farmland. As explained in detail in the Summary of this proposal, management practices at N.J.A.C. 7:14A-20.7(b)2ii include conditions more stringent than those found at 40 CFR 503.14. These include restrictions from applying residual to ponded ground; saturated or shallow soils; land subject to seasonal flooding; land within 200 feet of surface water; or land that is within close proximity to drinking water supply wells. For any farmer using residual or contemplating using residual, costs to manage land buffered out by the proposal can be expected to be higher than costs to manage land fertilized with residual. Specific estimates of these costs are presented in the Agricultural Industry Impact, below. The Department believes that the cost of managing buffered land without biosolids is reasonable since the farmer still realizes significant savings on

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Cumulative Loadings

Pursuant to 40 CFR 503.12, the cumulative amount of each pollutant in sewage sludge applied to a site must be tracked commencing July 20, 1993 for a bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2). The Department proposes to readopt the requirement that all historical cumulative pollutant loadings kept pursuant to its NJPDES permits be included in the tracking of the cumulative pollutant loading rates. See proposed readopted N.J.A.C. 7:14A-20.7(b)v. Since many states did not have a sewage sludge program that required the tracking of cumulative metal loadings, it would have been impossible for the USEPA to establish a national rule requiring such historical loadings to be included. However, the Department did implement a residuals land application program prior to adoption of 40 CFR Part 503 and believes that it is consistent with the purpose and intent of 40 CFR Part 503 to use this information in calculating cumulative pollutant loading rates, since the USEPA would likely have used pre-July 20, 1993 data if it had been available nationally. In addition, the Department believes that it is environmentally responsible to include known metal loading on existing land application sites. Tracking historical loadings will not increase the cost of land application programs but may, marginally, reduce the life of an existing land application site.

Elimination of Ceiling Quality Bagged Residual Program

The Department proposes to prohibit the distribution in a bag or other container non-exceptional quality residual as currently allowed by Federal law and existing N.J.A.C. 7:14A-

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20.7(h)4. The type of non-exceptional quality residual contemplated for distribution at existing N.J.A.C. 7:14A-20.7(h)4 fails to meet the pollutant concentrations in 40 CFR 503.13(b)3, and is inconsistent with the Department's intent to promote use of the highest quality residuals. The proposed amendment is more stringent than the Federal rule, which would allow such distribution.

The Department has never received a request for permission to distribute this type of residual in a bag or other container. Moreover, most sewage sludge samples taken by New Jersey generators meet the cited criteria. Accordingly, the Department does not anticipate that there will be a cost associated with the proposed amendment.

Foreign Material

The Department proposes to readopt N.J.A.C. 7:14A-20.7(e) regarding the screening of residuals prior to land application to remove non-biodegradable components without amendment. Federal rules do not address the screening of residual prior to land application. Therefore, a Federal standards analysis is not required.

Domestic Septage

The Department proposes to readopt N.J.A.C. 7:14A-20.7(f), regarding septage management, without amendment. The Department has chosen not to adopt the Federal requirements for land application of domestic septage at 40 CFR Part 503. Land application of septage has not been permitted in New Jersey since prior to adoption of the November 1987 Statewide Sludge Management Plan. N.J.A.C. 7:14A-20.7(f) reiterates the policy statement of the November 1987 Statewide Sludge Management Plan that the use of domestic treatment

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works is the most environmentally sound method for management of domestic septage. In this manner, domestic septage is introduced at the head of the treatment plant, is subject to the same treatment processes as sewage and, as a result, contributes to the sewage sludge produced by the domestic treatment works.

Although, N.J.A.C. 7:14A-20.7(f) does allow for the land application of domestic septage on a case-by-case basis only where an overriding public benefit is demonstrated and no reasonable alternative exists, no such demonstration has been made and the POTW alternative continues to exist. In addition, N.J.A.C. 7:14A-20.7(f) requires that all septage must be treated to the same standards applicable to other residuals intended for land application. Domestic septage is not currently land applied in New Jersey. If domestic septage were land applied in New Jersey, the cost would be equivalent to the cost of land application of other residual.

Agronomic Rate

The Department's rules regarding land application of residuals differ from the Federal rules. The Federal rule, 40 CFR Part 503, does not expressly impose the requirement that exceptional quality residuals be land applied at the agronomic rate; whereas, proposed N.J.A.C. 7:14A-20 does. Also, 40 CFR Part 503 does not extend the definition of agronomic rate to include nutrient factors other than nitrogen (such as phosphorus and pH). The Department's rules proposed for readoption do. Failure to require that exceptional quality residual be land applied at the agronomic rate would encourage over-application.

The only cost associated with the proposed rule is the nominal cost to label exceptional quality residual with appropriate agronomic rate. Although the cost is small, the benefit is considerable. Properly labeling the material will help the person applying the residual avoid over-

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application, which could cause excess nutrients to run off into the waters of the State. The rules proposed for readoption are not new, and regulated entities have been able to comply with them, using available technology. Accordingly, the Department knows the requirements are achievable. See N.J.A.C. 7:14A-1.2 and 20.7(g).

Monitoring

Residual monitoring requirements proposed for readoption with amendments at N.J.A.C. 7:14A-20.7(i) include requirements that exceed Federal law. The USEPA has established a residual monitoring frequency from annual to monthly based on the size of the facility. Under the rules proposed for readoption with amendments, the frequency of monitoring can be less than quarterly only if the activity involves a single source removing residual for land application no more frequently than three times per year and where the total removed is less than 290 metric tons per year. The potential increased cost associated with a small facility's having to monitor quarterly, rather than annually, is not expected to exceed \$3,000 per year per monitored location for monitoring for pollutant limits, pathogen requirements and vector attraction reduction. Nevertheless, considering the potential for residual quality to change over time, the Department does not believe that monitoring less often than quarterly for a land application operation is protective of public health and the environment.

There are also advantages to monitoring more frequently than is required under the Federal rule. For example, if a monitoring event identifies an exceedance of a pollutant limit, then all residual used or disposed after the monitoring results are generated may not be land applied until another sample is determined to indicate compliance. Where more frequent samples are obtained,

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The Department also proposed new N.J.A.C. 7:14A-20.7(i)6 to require monitoring of residual additives used in the production of a marketable residual product. Proposed N.J.A.C. 7:14A-20.7(i)6 does not have a Federal counterpart, and is not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law. Accordingly, no further analysis is required.

Recordkeeping

The Department proposes new N.J.A.C. 7:14A-20.7(j)3 to require daily records of exceptional quality residual bulk distribution outlets and the quantity delivered to each outlet. This exceeds Federal rules which require no records to be kept for distribution of exceptional quality residual. The recordkeeping requirement will ensure that necessary information is available to prove responsible marketing of exceptional quality residual. Permits currently issued by the Department require exceptional quality residual distribution recordkeeping; therefore, the regulated community is already complying with the requirement. Proposed N.J.A.C. 7:14A-20.7(j)3 will not result in costs that exceed activities currently compliant with 40 CFR Part 503, since distributors of exceptional quality residual must keep similar records as a business practice in order to facilitate product transportation, delivery and billing.

Reporting

The Federal rule at 40 CFR Part 503 requires facilities that land apply sewage sludge to submit annual reports. The Department's existing regulation at N.J.A.C. 7:14A-20.7(k) is more

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20.7(k) to eliminate the quarterly reporting requirement. Instead, the necessary reports would be governed by N.J.A.C. 7:14A-6.8, which establishes the basis for all reporting under NJPDES and requires that monitoring data be reported at intervals specified in a permit. The Department would, through the permitting process, establish the frequency of reporting, which could be more stringent than the Federal rule but would not be less frequent than annually.

For facilities involved in preparing residual for land application, 40 CFR Part 503 does not require the submission of reports by facilities under 1.0 MGD or that serve fewer than 10,000 people. This does not mean that these facilities are exempt from 40 CFR Part 503 (they are not), but they do not have to report information unless a determination on reporting is made. Under the proposed amended rule, as in the existing rule, the Department will continue to require such facilities to report.

Pursuant to the Regulatory Impact Analysis included in the Preamble to 40 CFR Part 503 (see 58 Fed. Reg. 9374), the reporting costs to comply with the Federal land application subpart are estimated to be \$20,000 annually. This represents a small percentage of the total cost to comply with the 40 CFR Part 503 land application subpart. The Department believes that the costs associated with more frequent reporting – which is possible under the proposed rule – are negligible. This is especially true since the information required to be reported must be recorded and maintained under proposed readopted N.J.A.C. 7:14A-20.7(j), which is fully consistent with 40 CFR Part 503.17(a).

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Residuals Crossing State Lines

The Department proposes to readopt and amend N.J.A.C. 7:14-20.7(l) regarding notification requirements for an out-of-State generator intending to land apply residual in New Jersey. The proposed amended subsection does not exceed Federal standards. Both Federal and proposed State rules require that notice must be given prior to transporting the residual across a state line. Therefore, the Department's requirements for notification are consistent with Federal law.

The Department proposes to readopt and amend N.J.A.C. 7:14-20.7(b)1ix, which establishes establishing a standard that exceeds Federal notification requirements regarding residual that is exported from New Jersey to be applied to the land. The Federal rule requires a person exporting residual for application to the land to provide advance notification to the receiving state's permitting authority including the location of the land application site; the approximate time residual will be applied; the identity of the person who prepares the residual for land application; and the identity of the person who will apply the residual. The Federal requirement at 40 CFR 503.12(i) remains applicable, since 40 CFR Part 503 is a self-implementing rule applicable to all persons involved in the land application of sewage sludge.

Proposed N.J.A.C. 7:14-20.7(b)1ix nominally exceeds Federal requirements by requiring the person exporting the residual to submit to the Department documentation that the exportation for land application is in compliance with the receiving state's law. The Department believes that such information is within the knowledge of the person exporting the residual, in order that the person can know whether he or she is complying with the receiving state's law. Therefore, the proposed requirement will not result in an additional cost beyond that associated with transmitting the information to the Department.

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Surface Disposal

The Department proposes to readopt with amendments portions of N.J.A.C. 7:14A-20 applicable to surface disposal of residual that include standards that exceed those established by Federal law. See N.J.A.C. 7:14A-1.2, 20.1, 20.2 and 20.8.

In proposing to readopt these rules with amendments, the Department maintains that operating surface disposal sites for use in sewage sludge disposal is equivalent to landfilling of sewage sludge, which is restricted under N.J.S.A. 13:1E-42 and the Statewide Sludge Management Plan. Therefore, the Department's rules do not allow the use of sewage sludge surface disposal sites, as would otherwise be provided under 40 CFR Part 503. There are currently no active sewage sludge surface disposal sites in New Jersey. However, in recognition of the existence of several inactive surface disposal sites, the Department's rules proposed for readoption will continue to allow in-situ closure applications and permits that provide for long-term monitoring and site restrictions.

Landfilling as a mode of waste disposal requires extensive and long-term commitment of land. This mode of sewage sludge disposal must be considered a method of last resort in New Jersey, which is the most densely populated State in the country and which has limited land available to be committed for waste disposal. This fact led to the findings in the New Jersey Solid Waste Management Act that New Jersey must move away from its current reliance on the landfilling of solid waste. See Part 4-V of the 1987 Statewide Sludge Management Plan. As stated, there are currently no active sewage sludge surface disposal sites.

Existing N.J.A.C. 7:14A-20.8 applies only to sewage sludge surface disposal sites. The Department proposes to readopt the rule with amendments intended to broaden the scope of the

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rule to include a number of existing, active, industrial surface impoundments that receive liquid residual discharges. Due to the size of and volume of residual that has accumulated in some impoundments, they are essentially surface disposal sites, regardless of the intent of their original design. Such facilities are not consistent with the intent of N.J.S.A. 13:1E-42. Therefore, the Department proposes amendments to clarify that the subchapter imposes standards on all residual surface disposal sites.

The Department anticipates that the economic impact of the rules on industrial surface disposal sites will vary depending on the extent to which site improvements are needed to mitigate environmental impacts. However, the Department expects that the majority of such surface disposal sites will incur only those costs already associated with ground water monitoring under N.J.A.C. 7:14A-7 and existing N.J.A.C. 7:9-6. For industrial surface disposal sites that must implement mitigative measures, the implementation schedule that must accompany submission of the closure plan will allow the Department to work with facilities to minimize financial impacts.

As indicated in the Regulatory Impact Analysis prepared by the USEPA as part of the 40 CFR Part 503 regulation, the estimated total annual nationwide cost to comply with the surface disposal subpart was \$18,335,000 compared to \$14,182,000 for land application and \$11,703,000 for incineration. See 58 Fed. Reg. 9371 (February 19, 1993). Total annual costs include management practice costs; monitoring, recordkeeping, and reporting costs; and in a few cases, costs for a change in use or disposal practices. Thus, from a cost perspective, surface disposal appears to be one of the least attractive residual management options. Nevertheless, as described above, the Department's decision not to adopt the 40 CFR Part 503 provisions for surface disposal was not based on costs alone.

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Reed Beds

The Department proposes to repeal existing N.J.A.C. 7:14A-20.9, Fact sheet, and replace it with standards, management practices and submission requirements for reed beds. Reed bed treatment combines the action of conventional drying beds with the effects of aquatic plants upon water-bearing substrates. Proposed N.J.A.C. 7:14A-20.9 has no Federal counterpart.

Residual Transfer Stations

The Department proposes to readopt N.J.A.C. 7:14A-20.10 regarding residual transfer stations without amendment. N.J.A.C. 7:14A-20.10 has no Federal counterpart.

Residual Quality Determinations

The Department proposes to readopt N.J.A.C. 7:14A-20.11 regarding the pollutant concentration of residual prior to its introduction into the treatment process without amendment. Federal rules do not address the pollutant concentration of residual prior to introduction into the treatment process. Therefore a Federal standards analysis is not required.

Residual Blending and Distribution

The Department proposes new N.J.A.C. 7:14A-20.12 to establish new application requirements and standards for residual blending and distribution operations. Federal rules do not address residual blending and distribution operations. Specifically, 40 CFR 503.10 provides exemptions for materials derived from sewage sludge (for example, composted sewage sludge

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blending actually occurs. Therefore, a Federal standards analysis is not required.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-20.1	Purpose	40 CFR Parts 122, 123, 124 and 503.
7:14A-20.2	Applicability	40 CFR Parts 122, 258 and 503, specifically 503.10.
7:14A-20.3	Relationship to other regulations	40 CFR Parts 258, 261, 503.4 and 761.
7:14A-20.4	Special definitions	40 CFR Parts 503.9, 503.11 and 503.21.
7:14A-20.5	Establishing limitations, standards and other permit conditions	40 CFR Parts 122.1(b)4, 122.44, 503.5.
7:14A-20.6	Environmental assessment	No comparable Federal requirement

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7:14A-20.7	Land application	40 CFR Part 122 (specifically, 122.21(d)3), 124 and 503. USEPA's Technical Support Document for Land Application of Sewage Sludge, November 1992, EPA 822/R-93-001a and 001b. USEPA's Control of Pathogens and Vector Attraction in Sewage Sludge, USEPA/625/R-92/013, Revised July 2003.
7:14A-20.8	Surface disposal of residual	40 CFR Part 503.
7:14A-20.9	Reed beds	No comparable Federal requirement
7:14A-20.10	Residual transfer stations	No comparable Federal requirement
7:14A-20.11	Generic residual quality determinations	No comparable Federal requirement
7:14A-20.12	Residual blending and distribution	No comparable Federal requirement

N.J.A.C. 7:14A-21 Requirements for Indirect Users

The Federal General Pretreatment Regulations at 40 CFR Part 403 include the requirements for indirect users and the role of the control authority to regulate such users.

N.J.A.C. 7:14A-21 incorporates the requirements from 40 CFR Part 403 relevant to indirect user control mechanisms for implementing the pretreatment program in the non-delegated areas of the State. With the exception of the amendment under N.J.A.C. 7:14A-21.10(a)3, all of the proposed amendments to N.J.A.C. 7:14A-21 update the subchapter consistent with the Federal

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Proposed amended N.J.A.C. 7:14A-21.10(a)3 incorporates an updated reference to the new USEPA local limits guidance document. As such, the existing requirements and proposed amendments in N.J.A.C. 7:14A-21 do not exceed requirements imposed by the Federal law or regulations.

N.J.A.C. 7:14A-21.12 establishes specific requirements for dental facilities that discharge to the sanitary sewer and generate amalgam waste through placement or removal of amalgam fillings. These requirements set forth specific mandates for dental amalgam waste collection and management. These requirements do not have any Federal counterpart. Accordingly, no further analysis is required.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-21.1	Purpose and scope	Incorporates 40 CFR 403.1, 403.2, 403.4, chapter I, and subchapter N.
7:14A-21.2	Minimum requirements for all indirect users	Incorporates 40 CFR 403.5(b), chapter I and subchapter N. Minor editorial changes in wording.

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7:14A-	Additional requirements for all	Incorporates 40 CFR 403.6 and 403.12.
21.3	significant indirect users	Minor editorial changes in wording.
7:14A-	Categorical standards, calculation of	Incorporates 40 CFR 403.6 and 403.15.
21.4	equivalent and/or mass limits	Minor editorial changes in wording.
7:14A-	Variance from categorical	Incorporates 40 CFR 403.13. Minor
21.5	pretreatment standards for	editorial changes in wording.
	fundamentally different factors	
7:14A-	Bypass	Incorporates 40 CFR 403.17. Minor
21.6		editorial changes in wording.
7:14A-	Additional requirements for facilities	Incorporates 40 CFR 403.8(f). Minor
21.7	which meet the SIU definition and	editorial changes in wording.
	discharge to a delegated local	
	agency's treatment works	
7:14A-	Additional requirements for facilities	Incorporates 40 CFR 403.10(e) and
21.8	which meet the SIU definition and	403.8(f). Minor editorial changes in
	discharge to a non-delegated local	wording.
	agency's treatment works	
7:14A-	Exemptions from the requirements	Pursuant to authority granted under
21.9	for an individual NJPDES- SIU	N.J.S.A. 58:10A-6(d)(1) and 40 CFR

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permit from the Department

403.3(v). Minor editorial changes in

wording.

7:14A- Establishing conditions and effluent Incorporates 40 CFR 403.

21.10 limitations for an individual
NJPDES-SIU permit issued by the
Department

7:14A- Violations; closing off of use of Incorporates State statutes under N.J.S.A.

21.11 sewerage connections 58:11-56.

7:14A- Requirements for dental facilities No comparable Federal requirement

21.12

N.J.A.C. 7:14A-22 Treatment Works Approvals, Sewer Bans, Sewer Ban Exemptions

N.J.A.C. 7:14A-22 provides the administrative requirements for submitting treatment works approval applications to the Department, and specifies the implementation of the sewer ban program, sewer ban exemption program and capacity assurance program. The purpose of this program is to protect the integrity of the waters of the State by preventing the entry of pollutants due to inadequately designed or operated wastewater collection, conveyance and treatment facilities. The authority for regulating the construction of treatment works through the treatment works approval program, regulating the amount of flow entering a treatment works through the sewer ban and capacity assurance programs and the authority for the regulation of minimum specifications, comes solely from State statutes (N.J.S.A. 58:10A-1 et seq. and 13:1D-1 et seq.) This subchapter has no Federal counterpart.

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N.J.A.C. 7:14A-23 Technical Requirements for Treatment Works Approval Applications

N.J.A.C. 7:14A-23 provides the minimum standards and specifications for the construction and operation of sewerage facilities. The authority for the rules regarding treatment works designs comes solely from the State statutes at N.J.S.A. 58:10A-1 et seq. and 13:1D-1 et seq. This subchapter has no Federal counterpart.

N.J.A.C. 7:14A-24 Additional Requirements for Certain Stormwater Discharges

N.J.A.C. 7:14A-24 sets forth additional requirements applicable to all stormwater discharges to surface water (DSW) and some stormwater discharges to groundwater (DGW). Many of the requirements applicable to DSW incorporate Federal requirements at 40 CFR 122. Some DGW subject to N.J.A.C. 7:14A-24 are through Class V injection wells subject to the Federal underground injection control (UIC) rules at 40 CFR 144 through 146.

For some provisions in N.J.A.C. 7:14A-24 there are no Federal counterparts. These provisions include requirements in N.J.A.C. 7:14A-24.4(a)3 (permit application deadlines for certain large or medium municipal separate storm sewer systems), 24.5 (requests for information about stormwater discharges associated with industrial activity), and 24.7(c) (identifying information required in individual permit applications for certain stormwater DSW that are not from industrial or commercial facilities or from small MS4s). All provisions in this subchapter for which there are no Federal counterparts do not exceed any standards or requirements imposed by Federal law.

N.J.A.C. 7:14A-24.9(a) does not incorporate 40 CFR 122.44(i)(4)(iv), which provides that permits for stormwater discharges associated with industrial activity from inactive mining

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operations may, where annual inspections are impracticable, require certification once every three years by a registered professional engineer that the facility is in compliance with the permit, or alternative requirements. There are no inactive mining operations in New Jersey that are so remote and hard to reach that annual inspections are impracticable.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-24.1	Scope	N/A
7:14A-24.2	Stormwater discharges for which a NJPDES permit is required under this subchapter; exemptions	Incorporates and clarifies 40 CFR 122.26(a) (except 122.26(a)(1)(v), (a)(5), and (a)(9)(iii)), and (for discharges from concentrated animal feeding operations) is consistent with the first sentence in 40 CFR 122.23(a) (except as noted in the discussion of Subchapter 2 above in regard to N.J.A.C. 7:14A-2.13). Also see the discussion of Subchapter 25 below in regard to small municipal separate storm sewer systems (small MS4s).

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7:14A-24.3	Petitions	Incorporates and clarifies 40 CFR 122.26(f), 122.32(a)(2) and (b), and 123.35(c), and interprets population criteria in 40 CFR 122.32(d) and 123.35(d)(1).
7:14A-24.4	Deadlines to apply for NJPDES permit for stormwater discharges	Incorporates and clarifies 40 CFR 122.21(c)(1) and (d)(2), 122.26(a)(9)(iii) and (e), and 122.33(b)(2)(ii) and (c). Also see the discussion of N.J.A.C. 7:14A-25 below in regard to small MS4s.
7:14A-24.5	Requests for information about stormwater discharges associated with industrial activity	No comparable Federal requirement.
7:14A-24.6	“Permanent No Exposure” of industrial activities and materials to stormwater	Incorporates and clarifies 40 CFR 122.26(g).

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7:14A-24.7 Permit application requirements for Incorporates and clarifies 40 CFR

stormwater discharges associated	122.21(a)(2)(i)(G), (f), and (g),
with industrial activity or small	122.26(a)(9)(ii) (as interpreted at 64 Fed.
construction activity, and for	Reg. 68782; December 8, 1999), and
certain other stormwater DSW	122.26(c), and USEPA Form 2F. For
	stormwater discharges associated with
	construction activity, also incorporates,
	clarifies, and implements 40 CFR
	122.44(s) and 122.34(b)(4), and is
	consistent with 40 CFR 122.44(i) and (in
	the Pinelands Area) Section 502 of the
	National Parks and Recreation Act of 1978,
	16 U.S.C. §471i. Also consistent with
	Sections 3.3.2 and 5.2 of USEPA's April
	1991 Guidance Manual for the Preparation
	of NPDES Permit Applications for Storm
	Water Discharges Associated With
	Industrial Activity (EPA-505/8-91-002),
	and Section 4.1.1 of USEPA's July 1992
	NPDES Storm Water Sampling Guidance
	Document (EPA 833-B-92-001).

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7:14A-24.8	Sample collection procedures for individual stormwater DSW permit applications	Incorporates and clarifies 40 CFR 122.21(g)(7)(ii) (except for the last two sentences, which N.J.A.C. 7:14A-4.4(b) incorporates). For volatile organics, is also consistent with requirements in 40 CFR 136 Appendix A, methods 601 and 624.
7:14A-24.9	Monitoring requirements for certain stormwater discharges	Incorporates and clarifies 40 CFR 122.34(g), 122.44(i)(4) (except (i)(4)(iv) and (i)(5), 122.41(j)(2), and 122.42(c). Also see the discussion of N.J.A.C. 7:14A-25 below in regard to small MS4s.
7:14A-24.10	Additional requirements for stormwater discharges associated with construction activity	Incorporates, clarifies, and implements 40 CFR 122.44(s), 122.44(a), 122.34(b)(4), and 122.35(b), and is consistent with (in the Pinelands Area) Section 502 of the National Parks and Recreation Act of 1978.

N.J.A.C. 7:14A-25 Municipal Stormwater Regulation Program

N.J.A.C. 7:14A-25 sets forth requirements applicable to the Municipal Stormwater Regulation Program, which regulates discharges to surface water (DSW) and discharges to groundwater (DGW) from municipal separate storm sewer systems (MS4s). Many of the requirements applicable to DSW incorporate Federal requirements at 40 CFR 122 and 123.35.

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N.J.A.C. 7:14A-25.8, Tier B Municipal Stormwater General Permit, has no Federal counterpart. The Tier B Municipal Stormwater General Permit (Tier B Permit) is not a NPDES permit under Section 402 of the Federal Clean Water Act or 40 CFR 122 or 123. However, the Tier B Permit is closely related to designation criteria and waivers under 40 CFR 123.35 and 122.32. By obtaining the Tier B Permit, Tier B municipalities avoid designation or receive waivers under these USEPA rules. All provisions in NJPDES rules for which there are no Federal counterparts do not exceed any standards or requirements imposed by Federal law.

N.J.A.C. 7:14A-25.9(d) provides in part that an operating entity that seeks to implement a stormwater program under N.J.A.C. 7:14A-25.6 may seek authorization to discharge under an individual NJPDES permit in certain cases only. This aspect of N.J.A.C. 7:14A-25.9(d) might be considered to exceed 40 CFR 122.33(b)(2)(i), which allows any operating entity that seeks to implement a stormwater program under 40 CFR 122.34 to apply for a individual permit. The Department is restricting individual permit applications because the conditions of the individual and general permit are likely to be similar, and the greater amount of Department staff time required for issuing an individual permit when an authorization under a general permit would achieve the equivalent stormwater control would be an inefficient use of resources for no additional environmental benefit.

For some DGW through Class V injection wells, N.J.A.C. 7:14A-25 requires a general or individual NJPDES DGW permit that differs from the authorization by rule that 40 CFR 144.24 and 144.84 provide for some Class V wells. This requirement is authorized by 40 CFR

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to protect underground sources of drinking water.

For additional background about the relationship of this subchapter to Federal laws or rules, see the Department's adoption of N.J.A.C. 7:14A-25, particularly the Department's Responses to Comments 88 through 100 (36 N.J.R. 813(a), 826 through 829).

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-25.1	Scope	N/A
7:14A-25.2 and 25.3	Identifying municipalities, public complexes, and highways or other thoroughfares regulated under the small MS4 program; Assignment of municipalities to Tier A or Tier B	Incorporates, clarifies, and implements 40 CFR 122.26(a)(9), (b)(16), and (f), 122.32, 122.33(a), and 123.35(b), (c), and (d)(1).
7:14A-25.4	Deadlines to apply for NJPDES permits for small MS4s	Incorporates, clarifies, and implements 40 CFR 122.21(c)(1) and (d)(2), 122.26(a)(9)(iii) and (e)(9), and 122.33 and (c), and deadline in 40 CFR 122.33(b)(2)(ii).

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7:14A-25.5	Applying for a NJPDES permit for a small MS4	Incorporates, clarifies, and implements 40 CFR 122.28(b), 122.33(b), and 122.34(d).
7:14A-25.6	Content of NJPDES permits for small MS4s	Incorporates, clarifies, and implements 40 CFR 122.34, 122.41(j)(2), and 123.35(b), (e), (f), and (g). Provisions pertaining to additional measures are consistent with 40 CFR 122.4, 122.34(e)(1), 122.44(d)(6), and 130.12(a), and Section 208(e) of the Federal Clean Water Act. Provisions requiring permittees to implement best management practices specified by the Department are consistent with USEPA guidance at 64 Fed. Reg. 68763 (December 8, 1999).
7:14A-25.7	Sharing of responsibility to implement control measures for a small MS4	Incorporates, clarifies, and implements 40 CFR 122.35, and is also consistent with 40 CFR 122.62(a)(14).

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7:14A-25.8	Tier B Municipal Stormwater General Permit	The Tier B Municipal Stormwater General Permit (Tier B Permit) is not a NPDES permit under Section 402 of the Federal Clean Water Act or 40 CFR 122 or 123. However, the Tier B Permit is closely related to designation criteria and waivers under 40 CFR 123.35 and 122.32.
7:14A-25.9	Individual NJPDES permit applications for small MS4s	Incorporates, clarifies, and implements 40 CFR 122.33(b)(2) and (b)(3) (except that N.J.A.C. 7:14A-25.4 incorporates and clarifies the deadline in 40 CFR 122.33(b)(2)(ii)). The Department's ability to require individual permits is consistent with 40 CFR 122.28(b)(3) and 124.52, and with USEPA guidance at 64 Fed. Reg. 68737 (December 8, 1999).
7:14A-25.10	Requirements for large and medium municipal separate storm sewer discharges	Incorporates and clarifies 40 CFR 122.26(b)(2), (b)(5), (b)(6), and (d), and 122.42(c).

Jobs Impact

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N.J.A.C. 7:1 Department Organization

The Department anticipates that the proposed amendments to N.J.A.C. 7:1-1.3 will have no impact on employment or jobs in the State.

N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

The Department anticipates that the proposed amendments to the definitions of “common plan of development or sale” and “property” in N.J.A.C. 7:9A-2.1 will have no impact on employment or jobs in the State.

N.J.A.C. 7:14 Water Pollution Control Act

The Department anticipates that the proposed amendments to N.J.A.C. 7:14-8.2 should have no impact on employment or jobs in the State. The proposed amendment is to the definition of “serious violation,” and serves to conform the definition in N.J.A.C. 7:14 to the proposed amended definition in the NJPDES rules at N.J.A.C. 7:14A. This change reflects the inclusion of whole effluent toxicity test terms already found in the NJPDES rules at N.J.A.C.7:14A-13.14. The proposed amendment does not change the monitoring parameter, but only provides for a better-defined statistical condition for testing.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

The NJPDES rules proposed for readoption with amendments, repeals and new rules will have a positive impact on the number and type of jobs available in New Jersey. The NJPDES program has been in effect in New Jersey in some form since 1981. Prior to 1981, USEPA administered the surface water permit program since its inception in 1972.

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Most of the programs covered by the NJPDES rules are required by Federal law and regulation. This includes the surface water permit, underground injection, pretreatment, and residuals management programs. Even without the NJPDES rules, these programs would be implemented in New Jersey pursuant to the Federal mandate. Accordingly, the associated jobs will remain, and this includes jobs with engineering consulting firms, testing laboratories, and other environmental professionals. They will, in part, continue to perform chemical and biological sampling, data collection and analysis, computer modeling, and engineering design of treatment works.

The rules proposed for readoption with amendments are intended to make the existing program more efficient and easier to implement for both the Department and the regulated community. The Department believes that the rules as proposed, which are easier to understand, will continue to be a positive factor that contributes to new industrial and commercial facilities deciding to locate in New Jersey and for existing facilities to remain and perhaps expand. In addition, the rules as proposed will have some direct impact on those who provide technical and legal consulting services to the regulated community.

The most extensive changes to the rules proposed for readoption with amendments, repeals and new rules pertain to the following:

1) Reclaimed Water for Beneficial Reuse: As discussed above, the rules as proposed would include new requirements concerning reclaimed water for beneficial reuse (RWBR). Potential sources of water to be reclaimed include domestic wastewater, process wastewater, and non-contact cooling water. The rules would provide for two sets of permit conditions for facilities producing or proposing to produce RWBR: one set for restricted access uses of RWBR, and one set for public access uses.

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The proposed new rules for beneficial reuse codify the basic aspects of the beneficial reuse program. These rules are expected to have no impact on jobs or employment in the state of New Jersey as this program has been in existence since 1999 and to date has shown no impact on jobs.

2) Revised Ground Water Fee Method: The proposed amendments update NJPDES fee calculation for discharges to ground water, to use a revised methodology based upon the principle of weighted risk. This change will allow the Department to assess the cost of administering the NJPDES program equitably to all permittees. These amendments will not affect the total revenue generated through the NJPDES assessment process. Accordingly, the Department expects the proposed amendments to have no effect on employment in the State, including the generation or loss of jobs.

3) Residuals: As described above, the rules proposed for readoption with amendment, repeals and new rules would include new or significantly amended conditions to the standards for the use or disposal of residuals. The amendments reflect both the Department's strong support for the beneficial use of residuals, and recognition that such use presents potential sources of nuisance and nutrient contamination when not managed well.

These rules as proposed would clarify the prohibition on the use of residual or marketable residual products as fill or as the structural body of berms; impose standards on all surface disposal sites; and prohibit the permitting of new surface disposal sites.

The rules would also establish new permit requirements for the blending and distribution of residual. Blending and distribution operations often store residual on the ground prior to off-site distribution, with a risk of nutrient loss and nuisance conditions. The Department has expended significant resources to address ongoing and uncontrolled storage when operators have

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failed to market the stored material. The rules establish clear permitting requirements for residual blending and distribution operations that store more than 100 cubic yards of exceptional quality residual or 2,500 cubic yards of exceptional quality residual and material derived from exceptional quality residual. Any existing residual blending and distribution site above these thresholds would be required to apply for a permit within six months or cease operation and remove the material within one year. Operations that conduct all phases of handling, storage and blending in an enclosed building would continue to be exempt.

The Department does not expect the proposed amendments to result in a loss of jobs in the State of New Jersey.

4) Pretreatment: As discussed above, the rules include new or amended conditions based on the streamlining changes to the Federal General Pretreatment regulations under 40 CFR Part 403, as well as changes initiated by the Department and reviewed by the Pretreatment Task Force. Provisions under N.J.A.C. 7:14A-19, Pretreatment Program Requirements for Local Agencies, and 21, Requirements for Indirect Users, were modified as follows:

The rules would require that delegated local agencies update their rules and regulations or sewer use ordinances to incorporate streamlining provisions relative to: granting of sampling waivers; development and utilization of best management practices, or BMPs; the use of equivalent concentration limits; the use of equivalent mass limits; and the ability to define and classify “non-significant categorical indirect users” or NSCIUs.

The rules will require that delegated local agencies evaluate significant indirect users for the need of slug control plans; clarify signatory requirements for DLA annual reports; clarify

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The Department expects the proposed amendments to have no effect on employment in the State, including the generation or loss of jobs.

5) Ninety-Day Construction Permits: The Department intends to remove the 90-day rule language from N.J.A.C. 7:1C, including, but not limited to, the section on TWA fees, and place it in the TWA rules in N.J.A.C.7:14A-22. The Department expects the proposed amendments to N.J.A.C. 7:14A-22 to have no effect on employment in the State, including the generation or loss of jobs.

Agriculture Industry Impact

Pursuant to P.L. 1998, c.48, the Department has evaluated this rulemaking to determine the nature and extent of the impact of the rules proposed for readoption with amendments, repeals and new rules on the agriculture industry. The rules proposed for readoption with amendments, repeals and new rules will have an impact on the agriculture industry in New Jersey.

N.J.A.C. 7:1 Department Organization

N.J.A.C. 7:1-1.3 discusses publication of the DEP Bulletin. The Department anticipates that the proposed amendments to N.J.A.C. 7:1-1.3 will have no impact on the agricultural industry in the State.

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N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

The proposed new definitions at N.J.A.C. 7:9A should have no agricultural impact, because these definitions are consistent with the Department's construction of existing N.J.A.C. 7:9A. See *SJC Builders, LLC v. State of N.J.*, 378 N.J. Super. 50 (App. Div. 2005).

N.J.A.C. 7:14 Water Pollution Control Act

The Department anticipates that the proposed amendments to N.J.A.C. 7:14-8.2 should have no impact on the agricultural industry in the State. The proposed amendment is to the definition of "serious violation," and serves to conform the definition in N.J.A.C. 7:14 to the proposed amended definition in the NJPDES rules at N.J.A.C. 7:14A. This change reflects the inclusion of whole effluent toxicity test terms already found in the NJPDES rules at N.J.A.C. 7:14A-13.14. The proposed amendment does not change the monitoring parameter, but only provides for a better-defined statistical condition for testing.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

Reclaimed Water for Beneficial Reuse

The rules proposed for readoption with amendments, repeals and new rules are expected to have a direct positive impact on the agricultural industry. Since it is likely that the amount of effluent available for reuse will increase as a result of these rules, it is also likely that more

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feasibility study is required (NJPDES DSW facilities discharging to a receiving waterbody classified as “SE” or “SC” waters or an individual DSW or DGW permit for a facility located in critical water supply areas).

Residuals Management Program

The rules proposed for readoption include amendments, a repeal and new rules in N.J.A.C. 7:14A-20. The Department has determined that the most significant impact on the agricultural industry of the rules proposed for readoption with amendments, repeal and new rules at N.J.A.C. 7:14A-20 is maintenance of the practice of land application. There are significant benefits, both environmental and economic, realized by this practice.

Sewage sludge and other residual applied to land provide low cost alternative agricultural fertilizers. Sewage sludge is well suited to agricultural use and has certain advantages over inorganic fertilizers. Sewage sludge provides organic matter, which decreases both soil compaction and nitrate leaching due to ammonium fixation, while increasing soil cation exchange capacity and plant available soil water. Organic matter also provides a substrate for soil microbes in sandy soils and increases substrate in other soil textural classes while enhancing soil structure thereby improving aeration. Sewage sludge provides slow release nitrogen, reducing the need to top- or side-dress because nutrients become available during the growing season through mineralization. Sewage sludge contributes primary nutrients (nitrogen, phosphorus and potassium) as well as primary and secondary micro-nutrients (iron, molybdenum, copper, zinc, calcium, and magnesium). Many of these benefits are also associated with other residuals. A secondary benefit of recycling residual is decreased

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dependence on chemical fertilizers and, in some cases, herbicides and pesticides. These factors benefit the environment and reduce costs for the agricultural community. Therefore, readoption of N.J.A.C. 7:14A-20 maintains a benefit to agricultural industry.

At the same time, the Department proposes amendments, a repeal and new rules at N.J.A.C. 7:14A-20 in order to strengthen non-point source runoff controls from agricultural land application of residual and to address potential nuisance issues. As compared to the existing rules, the proposed amendments, repeal and new rules at N.J.A.C. 7:14A-20 increase the number of buffered acres for some farmland. For any farmer using residual or contemplating using residual, costs to manage land buffered out by the proposal can be expected to be higher. For example, in "Biosolids Recycling: Beneficial Technology for a Better Environment" (EPA 832-R-94-009, June 1994), USEPA reported the benefits of residual applied to sandy, irrigated soils near Yuma, Arizona. Residual use resulted in decreased use of fertilizer, herbicide and pesticide, and a concomitant cost reduction of approximately \$170.00 per acre.

Pretreatment and SIU Programs

One of the primary objectives of the pretreatment program is to protect POTW sludge quality and improve opportunities for POTWs to beneficially re-use biosolids. Readopting N.J.A.C. 7:14A-19 and 21 with amendments will continue to provide both delegated local agencies and the Department with a tool whereby they can protect and/or improve the quality of biosolids generated as a result of wastewater treatment. Improving or protecting the quality of the biosolids allows for more opportunities of beneficial re-use of this material. As such, the agricultural industry can benefit from these rules because the rules will result in the availability of sludge whose quality has been improved and/or protected. The agriculture industry can utilize

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the biosolids to improve the productivity of the land using the soil conditioning properties and nutrient content of the biosolids. Additionally, utilization of biosolids in a beneficial manner reduces dependence on chemical fertilizers.

Stormwater Program

Under the rules proposed for readoption with amendments, “concentrated animal feeding operations” (CAFOs) as described in N.J.A.C. 7:14A-2.13 continue to be point sources that require a NJPDES permit if they discharge to surface water or ground water. Farms that operate such CAFOs will continue to incur the costs of applying for a NJPDES permit and complying with NJPDES permit conditions (such as those in the existing CAFO general permit, NJPDES Permit No. NJ0138631); the costs of NJPDES permit fees; and the risk of penalties or fines if the NJPDES permit is not applied for or violated. Most CAFOs are farms, but most farms do not have CAFOs. The cost of complying with NJPDES permit conditions for CAFOs is variable and depends on a number of factors, including number and type of animals confined, existing animal waste practices at the farm, and availability of cropland and pastureland for manure application. As under existing N.J.A.C. 7:14A-2.13(c), animal feeding operations (AFOs) that receive requests from the Department to provide information will incur the costs of providing that information.

The NJPDES rules have regulated CAFOs since the rules were first promulgated in 1981, and the Federal Clean Water Act has regulated CAFOs since the 1970s. NJPDES regulation of CAFOs is consistent with the Memorandum of Agreement entitled “Agricultural Point and Nonpoint Prevention and Abatement,” executed on June 30, 2000 by the Department, the New Jersey Department of Agriculture (NJDA), and the State Soil Conservation Committee.

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The Department proposes to readopt the CAFO and AFO rules without amendment. The Department believes that there are relatively few CAFOs in New Jersey. According to the 2002 Census of Agriculture, there are in New Jersey only 39 farms with 200 or more cattle or calves, only five farms with 500 or more hogs and pigs, only three farms with 10,000 or more poultry layers (20 weeks and older), and only seven farms that sold 2,000 or more broiler (meat-type) chickens. Not all of these 54 farms necessarily have CAFOs. Also according to that Census, there are no New Jersey farms that have 2,500 or more sheep and lambs or that sold 16,000 or more turkeys, and there are a total (on all New Jersey farms) of only 30,149 ducks and 26,896 horses and ponies.

In addition, there has been in recent years a multi-agency outreach effort to New Jersey farmers about CAFO regulation under the existing NJPDES rules. Despite this outreach, which included a June 18, 2003 letter from the Secretary of NJDA and Commissioner of Department to more than 4,400 livestock operations, only five farms (two swine facilities, a laying hen facility, and two cattle facilities) have applied to date for the CAFO general permit, NJPDES Permit No. NJ0138631.

Except as discussed below, N.J.A.C. 7:14A-2.5(a) exempts return flows from irrigated agriculture, and any introduction of pollutants from nonpoint source agricultural activities, including runoff from orchards, cultivated crops, pastures, and range lands, from the requirement to obtain a NJPDES permit. Under N.J.A.C. 7:14A-2.5(d), the Department may require a NJPDES permit for these flows and activities in order to impose appropriate management measures for sources of nonpoint pollution necessary to achieve and maintain applicable water quality standards. This ability to require a NJPDES permit is one means by which the Department implements its nonpoint pollution control program under Section 6217(g) of the

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508. N.J.A.C. 7:14A-2.5(d) was promulgated in 1997, and is proposed to be readopted without amendments.

The Department works closely with the NJDA, the United States Natural Resources Conservation Service, and the soil conservation districts to make sure that the agricultural community understands the importance of minimizing the impact of farming activities on water quality. These agencies sponsor voluntary programs that provide funding and guidance to farmers on preparing and implementing Resource Conservation and Management measures that are designed to reduce or eliminate impacts to water quality. In those cases where a farmer does not cooperate on a voluntary basis, the Department has the authority under N.J.A.C. 7:14A-2.5(d) to require a NJPDES permit for such sources. Farms that the Department regulates under this subsection will incur the costs of applying for a NJPDES permit and complying with NJPDES permit conditions; the costs of NJPDES permit fees; and the risk of penalties or fines if the NJPDES permit is not applied for or violated. The cost of complying with NJPDES permit conditions is variable and depends on a number of factors, including the size and type of farm, land characteristics, the management measures required, and existing agricultural practices.

Also under the rules proposed for readoption without amendments, fish farms and similar facilities continue to require a NJPDES discharge to ground water (DGW) permit under N.J.A.C. 7:14A-7 for surface impoundments or other units that handle process wastewater. If the unit is an injection well, the DGW permit is also an underground injection control (UIC) permit under N.J.A.C. 7:14A-8. The NJPDES rules for DGW and injection wells have regulated such facilities since those rules were first promulgated in 1981. Facilities that the Department regulate under N.J.A.C. 7:14A-7 (and N.J.A.C. 7:14A-8 where applicable) will continue to incur

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Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed new and amended rules, and the rules proposed for readoption with amendments would impose upon small businesses.

N.J.A.C. 7:1 Department Organization

The proposed amendments to N.J.A.C. 7:1-1.3(e) do not impose any reporting, recordkeeping, or other compliance requirements on small businesses.

N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

The proposed amended definition of “property” may reduce requirements and costs for some small business landowners or developers by making it clear that the combined area of two or more contiguous lots is not a single “property” if those lots are in residential developments where each individual realty improvement discharges to an individual subsurface sewage disposal system that serves that individual realty improvement only. Not considering the combined area to be a single “property” enables nearly all such systems to fall within the

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administrative authority (if the other applicable requirements of N.J.A.C. 7:9A are satisfied).

N.J.A.C. 7:14 Water Pollution Control Act

The proposed amendments to N.J.A.C. 7:14-8.2 should have no costs, and impose no additional reporting or recordkeeping requirements on small businesses. The proposed amendment is to the definition of “serious violation,” and serves to conform the definition in N.J.A.C. 7:14 to the proposed amended definition in the NJPDES rules at N.J.A.C. 7:14A. This amendment reflects the inclusion of whole effluent toxicity test terms already found in the NJPDES rules at N.J.A.C. 7:14A-13.14. The proposed amendment does not change the monitoring parameter, but only provides for a better-defined statistical condition for testing.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

The Department has determined that, except for the specific provisions noted below, these rules proposed for readoption do not impose any reporting, recordkeeping, or compliance requirements on small businesses.

The rules proposed for readoption with amendments apply to thousands of businesses that discharge wastewater or pollutants to surface water, ground water, treatment plants, injection wells, or land application sites. The Department estimates that there are approximately 5,000 permitted individuals or facilities, including a few thousand with general permits for stormwater, which are considered to be a “small business” as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16. In order to comply with these rules, the small businesses

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Professional services likely to be utilized by some small businesses to comply with N.J.A.C. 7:14A would include, but would not be limited to, licensed professional engineers, licensed surveyors, licensed architects, licensed attorneys, and laboratories certified to perform specific chemical analyses. The initial capital costs for small business compliance with these rules could vary from approximately \$200.00 to several thousand dollars, depending on the required professional services, facility modifications, permits, and water testing and sampling fees. The capital costs for small business compliance with any water quality based effluent limits that may eventually be required would vary from a minimal cost to many thousands of dollars, as described in the Economic Impact above. Annual costs for small business compliance with these rules range from a minimal amount to several thousand dollars, depending on the need for the preceding activities.

NJPDES: Administrative provisions

The administrative portions of the rules proposed for readoption with amendments impose compliance, reporting and recordkeeping requirements on small businesses as defined by the Regulatory Flexibility Act. Small businesses will continue to incur costs to apply for NJPDES permits or requests for authorization, including costs for annual permit fees, monitoring (when applicable) and other submission requirements. Small businesses may also incur additional costs to adjudicate a permit action when an adjudication of a permit action is requested by the small business.

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The proposed amendments benefit small businesses by allowing applicants, permittees and other interested persons to submit applications, reports, and other information electronically, with the Department's consent and in the manner prescribed by the Department, via the Department's web portal. Electronic submission provides many benefits to small businesses, such as timely access to the latest Department forms, cost efficiencies such as saving the cost of postage and envelopes, improved quality of submitted information, timely acknowledgement by the Department of information receipt, and efficiency of electronic file storage. Such benefits simplify recordkeeping, reporting, and compliance requirements for small businesses, and reduce costs to small businesses.

Amendments, such as amendments for consistency with Federal regulations and State acts, corrections of erroneous references and citations, are designed to make the NJPDES program more efficient. They do not impose compliance, recordkeeping, or reporting requirements.

Reclaimed Water for Beneficial Reuse

The proposed new rule on reclaimed water for beneficial reuse is expected to have little if any impact on small businesses, as the requirements are applicable only to facilities that discharge at least 100,000 gallons per day. Benefits may be realized by small business in areas where beneficial reuse is instituted, by providing access to non-potable water sources for uses that do not require potable water. This would provide a reliable source of water during times of drought and may cost less than the current potable water supplies.

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Ground Water Program

The NJPDES discharge to ground water (DGW) and underground injection control (UIC) requirements in N.J.A.C. 7:14A-7 through 10 impose reporting, recordkeeping, and compliance requirements on facilities operated by a wide variety of entities, including small businesses. The Department has not provided small businesses exemptions from these requirements because the requirements are necessary to protect water quality, and because the requirements in N.J.A.C. 7:14A-8 through 10 result from incorporation of USEPA regulations concerning UIC, sanitary landfills, and hazardous waste facilities.

Over 1,000 facilities in New Jersey have individual or general NJPDES DGW (including UIC) permits (other than a stormwater permit), and the Department believes that most of those facilities are small businesses as defined by the New Jersey Regulatory Flexibility Act. Examples of activities, pollution sources, or regulated units for which small businesses must obtain DGW permits include surface impoundments, spray irrigation, overland flow, infiltration/percolation lagoons, residuals surface impoundments, injection wells (discussed in more detail below), land disposal of dredged spoil, sanitary landfills, and hazardous waste facilities.

To apply for a NJPDES DGW permit, small businesses must comply with requirements that vary depending on the nature of the facility and the type of permit. Except for very simple documents that are required by certain industrial stormwater general permits and do not need professional services, the documents that applicants must submit range from a fairly simple NJPDES-1 Form, topographic map, and site plan sealed by a New Jersey licensed professional engineer, to a complex individual permit application that requires many more professional services and costs many thousands of dollars. Many small businesses already have a general

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6.13(a)9, so that new RFAs are not required when the general permits are renewed. The Department also expects that under proposed N.J.A.C. 7:14A-4.2(f), most small businesses that already have individual DGW permits will not have to submit new individual permit applications in order to have their DGW permits renewed.

The purpose of the DGW permit is to restore, enhance, and maintain the ground water quality of the State, in accordance with the New Jersey Water Pollution Control Act and the Ground Water Quality Standards in N.J.A.C. 7:9C. However, the reporting, recordkeeping, and compliance requirements imposed on small businesses by the DGW permit, including any Ground Water Protection Program included in the permit, will continue to vary depending on the nature of the facility and the type of permit. For example, some facilities must perform, report and maintain records of ground water and/or discharge monitoring, while other facilities must instead perform and maintain records of site inspections. Some facilities must comply with numeric effluent and/or ground water quality limitations stated in the permit, while other facilities must instead implement best management practices.

To comply with the permit, many small businesses will need the services of a professional engineer or other professional. For example, to comply with any permit that requires ground water and/or discharge monitoring, small businesses will need the services of a laboratory certified to perform specific analyses. In addition, small businesses will need the services of a New Jersey licensed well driller if wells (as defined at N.J.A.C. 7:9D-1.5) are installed, and all piezometer wells for determining ground water flow direction must be surveyed by a New Jersey licensed land surveyor.

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Small businesses that own or operate injection wells will continue to be subject to

N.J.A.C. 7:14A-8 UIC requirements. Injection wells at small businesses include but are not limited to air conditioning or cooling water return flow wells, certain groundwater heat pump components, drainage or recharge wells, septic systems or other subsurface sewage disposal systems, wells for injection of swimming pool filter or water softener backwash, and injection wells used during site remediation.

N.J.A.C. 7:14A-8 prohibits underground injection activities unless they are authorized by a UIC permit-by-rule or an individual or general UIC permit, or exempted by regulation. This subchapter also requires that injection wells shall not endanger underground sources of drinking water. N.J.A.C. 7:14A-8 prohibits certain types of underground injection, such as injection of hazardous or radioactive wastes (with limited exceptions), cesspools with design flow greater than 2,000 gallons per day, and new motor vehicle waste disposal wells. This subchapter also sets forth other requirements including application information requirements, monitoring and reporting requirements, operating criteria, construction standards, corrective or preventive action requirements, and requirements concerning well plugging or abandonment. Small businesses must comply with N.J.A.C. 7:14A-8 requirements that are applicable to injection wells in general, and with N.J.A.C. 7:14A-8 requirements specific to particular injection well classes or certain seepage pits.

Most of the many small businesses that have a UIC permit-by-rule for a Class V injection well are not required to submit inventory information about that injection well to the Department, unless the Department provides notification under N.J.A.C. 7:14A-8.5(c). Such submission may require professional services depending on the nature of the information requested and the nature and type of injection well and discharge. Small businesses qualifying

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certification from a New Jersey licensed professional engineer, as well as inventory information.

Small businesses that own or operate certain sanitary landfills will continue to be subject to the requirements in N.J.A.C. 7:14A-9 to obtain a DGW permit to conduct ground water monitoring and, where necessary, corrective action. N.J.A.C. 7:14A-9 provides permit application information requirements, minimum requirements for conducting a ground water monitoring program, standards for sampling and analysis of data, requirements to conduct an assessment monitoring program if the landfill is determined to be leaking, requirements to implement corrective measures if the leak is causing contravention of ground water protection standards, and associated requirements for recordkeeping and reporting. The permit application must include, among other information, a location map showing legal boundaries surveyed by a New Jersey licensed land surveyor, and should include site specific soils data determined by a soil scientist. For certain actions under N.J.A.C. 7:14A-9, the small business must obtain approval by the Department and/or certification by a “qualified ground water scientist” as described at N.J.A.C. 7:14A-9.2(f).

Small businesses that own or operate certain hazardous waste facilities will continue to be subject to the requirements in N.J.A.C. 7:14A-10 to obtain a DGW permit to conduct ground water monitoring and, where necessary, corrective action. N.J.A.C. 7:14A-10 provides permit application information requirements, minimum requirements for conducting a ground water monitoring program, standards for sampling and analysis of data, requirements to conduct a compliance monitoring program if a hazardous constituent is detected at an established compliance point, requirements to implement a corrective action program if any ground water concentration limits are exceeded, and associated requirements for recordkeeping and reporting.

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The Department estimates that the annual cost for individual NJPDES-DGW permittees to maintain and demonstrate compliance with the Ground Water Quality Standards is usually between \$6,000 and \$14,000. The cost to small business permittees would usually be in the lower part of this range. This cost consists of consultant fees, ground water monitoring well sampling costs, laboratory costs, and NJPDES-DGW permit fees. It does not include capital costs associated with repairs or upgrading of the facility to ensure compliance with the Ground Water Quality Standards, because these capital costs are variable and are dependent on the characteristics of existing treatment systems and particular characteristics of the waste stream. Capital costs could range from \$2,700 to \$270,000 per regulated unit. Capital costs for small business permittees would usually be in the lower part of this range.

The Department anticipates that the proposed amendments to the DGW and UIC rules will reduce costs to small businesses. By correcting regulatory references and clarifying existing requirements, many of the amendments make it easier for small businesses to understand and comply with the rules. For example, amendments to UIC rule provisions regarding injection well closure update and reduce the number of regulatory references, and clarify the location of well closure requirements in the UIC rules. Some amendments to the DGW rules make it clearer that not every Ground Water Protection Program has to include ground water sampling or monitoring wells. Other amendments reduce the DGW permit application burden on certain applicants by allowing the Department to determine that information otherwise required by N.J.A.C. 7:14A-7.10 through 7.13 is not necessary to develop permit conditions. In addition, the proposed expansion of the N.J.A.C. 7:14A-7.4(a)5ii DGW permit exemption and the N.J.A.C. 7:14A-8.5 UIC permit-by-rule to include stormwater discharges from certain industrial areas may reduce reporting, recordkeeping, and other compliance requirements imposed on small

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Surface Water Program

The Department estimates that there are approximately 467 permitted point source surface water discharge individuals or facilities that are small businesses. In order to comply with these rules, the small businesses will be required to obtain permits, keep records of monitoring information, and comply with permit limitations and compliance schedules.

The proposed amended rules will impose additional monitoring, reporting, record keeping and compliance requirements on small business pertaining to the additional toxic parameters that have adopted surface water quality criteria included in N.J.A.C. 7:14A-4 Appendix A.

Professional services likely to be utilized by some small businesses to comply with the requirements of the surface water program would include, but not be limited to, licensed professional engineers, surveyors, architects, attorneys and laboratories certified to perform specific chemical analyses. The initial capital cost for small business compliance with these rules could vary from approximately \$200.00 to several thousand dollars, depending on the required professional services, facility modification, permits, and water testing and sampling fees. The capital cost for small business compliance with any water quality based effluent limits that may eventually be required would vary from a minimal cost to may thousands of dollars as described in the Economic Impact. Annual costs for small business compliance with these rules

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The reporting and the record keeping requirements depending on the monitoring frequencies noted in N.J.A.C. 7:14-14 are primarily designed to protect and preserve human health and the environment with regard to the quantity and other characteristics of wastewater or water pollutants. They are not based upon the size of the facility or the status of the permittee as a small business. The requirements for water quality based effluent limits were already included in both the Federal requirements and the existing State requirements. The Department continues to balance the need to protect the environment against the economic impact upon small businesses with due consideration to the control of the type and the amount of pollution.

Residual Management Program

Most of the regulated community to which the rules proposed for readoption with amendments, repeal and new rules at N.J.A.C. 7:14A-20 apply are publicly owned, and do not meet the definition of “small business.” Except as described below, the Department does not anticipate that the rules proposed for readoption with amendments, repeal and new rules at N.J.A.C. 7:14A-20 will impact small businesses.

For the one, privately-owned, domestic, residual land application operation that is a small business in New Jersey, the cost of submitting an application for a Letter of Land Application Management Approval will rise marginally due to requirements for a more precise and detailed site description. For residual land application operations including a number of food processors that are small businesses, the proposed amended rules require analysis of new parameters during

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monitoring. The new analyses are not anticipated to exceed \$250.00 per sample.

The Department proposes amendments to N.J.A.C. 7:14A-20 that establish a new permitting program for residual blending and distribution sites. These amendments may apply to some small businesses engaged in earth moving, topsoil and landscaping markets; however, the rules will only directly regulate large-scale activity. The Department anticipates that few small businesses will engage in activity that will trigger regulation. A small business can govern the size of the residual blending component of its operation to maintain exemption from specific regulation. For large-scale operations (whether small businesses or not), the Department has determined that the potential to negatively impact the environment warrants the cost of regulation. Large-scale operations will incur costs related to applying for a permit and complying with permit conditions, the costs of permit fees, and the risk of penalties or fines if the permit is not applied for or is violated.

The largest population of small businesses regulated under proposed, readopted N.J.A.C. 7:14A-20 are 16 food processing plants that land apply food processing by-products, and six small liquid residual transfer stations. Annual fees for these two general permits are \$750.00 and \$450.00, respectively. Monitoring, recordkeeping and reporting costs are minimal. In addition to data already required by the Sludge Quality Assurance Regulations (SQAR, N.J.A.C. 7:14C), food processing general permittees must collect nutrient data (costing several hundred dollars per year) during months in which land application occurs. Food processors must also maintain certain records on the land to which food processing by-products are applied. The processors must keep records, but they do not need to provide the records (other than SQAR data) to the

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Monitoring, recordkeeping and reporting costs are lower for residual transfer station general permittees, since they must only keep a record of the source and quantity of each residual transferred and report the information to the Department, annually.

Pretreatment and SIU Programs

The pretreatment program requirements under N.J.A.C. 7:14A-19 proposed for readoption with amendments affect only publicly owned treatment works, which do not meet the definition of a small business. As such, these rules do not have a direct affect on small businesses.

The Department has determined that N.J.A.C. 7:14A-21 will have an affect on small businesses. The regulated community affected by N.J.A.C. 7:14A-21 are industrial or non-domestic facilities that discharge process wastewater into the sanitary sewer. A majority of these facilities meet the definition of “small business.” Facilities that do not meet the significant indirect user (SIU) definition under N.J.A.C. 7:14A-1.2 are exempt from the monitoring, reporting and record keeping requirements. The reporting, recordkeeping, and compliance requirements imposed on these facilities are consistent with those established in the Federal General Pretreatment Regulations in 40 CFR Part 403 and the New Jersey statutes in N.J.S.A. 58:10A-1 et seq. The requirements imposed under this subchapter will result in the use of necessary professional services, including analytical service laboratories, legal services, and environmental consultants.

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Approximately 1,000 facilities in New Jersey have an SIU permit issued by either the Department or a delegated local agency. The minimum annual permit fee for a Department issued permit is \$5,750. Delegated local agencies have permit fees that range from \$50.00 to \$11,000 per year. Additional costs related to sampling, and analytical costs vary for each facility, and are dependent upon the manufacturing operations, wastewater volume and pollutants discharged. Capital costs associated with purchase, installation, and operation of pretreatment equipment to ensure compliance with the pretreatment standards are not included. These costs are variable and dependent upon the volume, characteristics, and complexity of the wastewater generated and discharged by the indirect user. In general, these systems could comprise off-the-shelf treatment units for a few thousand dollars, or systems specifically engineered for a particular wastestream and costing hundreds of thousands of dollars. N.J.A.C. 7:14A-19.7 mandates that local agencies develop local limits (if necessary) in order to protect the receiving treatment plant, their workers' health and safety, and the local receiving water body. In developing local limits that apply to SIUs, the local agencies have flexibility to identify the most convenient way to apply or allocate the local limits to non-domestic users regardless of size, and can apply such limits either uniformly or on a case-by-case basis. The local limits allocation is specific to each local agency and such allocation may be used to address the impacts on small businesses.

Treatment Works

The Department has determined that the rules proposed for readoption with amendments at N.J.A.C. 7:14A-22 and 23 will have an effect on small businesses. The Department

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The sewer ban program rules affect primarily publicly owned treatment works, which do not meet the definition of a small business. The sewer ban program also affects small developers and builders who do fall into the definition of small business. They would not be able to construct homes or buildings requiring sewer connections until the sewer ban is lifted.

The sewer ban exemption program will impact small businesses, but only to the extent that the affected small business is located in an area of the State subject to a sewer ban. There are no application fees or annual fees associated with the sewer ban exemption programs, and professional consultants are not required to complete the application. The only other requirement would be to obtain local government agency concurrence. With the exception of the application submittal, there are no other monitoring, reporting or recordkeeping requirements.

The TWA program will impact small businesses that submit TWA applications. The costs of the application preparation and submittal would still be borne by small business; however, since a TWA is considered a construction approval, once the construction activity has been completed and verification has been submitted to the Department, the permit becomes inactive and is not subject to the annual permit fees or periodic monitoring requirements that are typically seen with NJPDES permits.

The cost for a TWA application is determined using a fee calculation formula in N.J.A.C. 7:14A-22, and is, at a minimum, \$850.00. The TWA application fee is based upon the construction cost of the treatment works, with more expensive projects subject to larger application fees. For most small businesses, the application fee would not be excessive since typically the project scope and the associated construction cost will be minor in scale.

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In addition, the cost associated with the major administrative requirements of a TWA application, such as preparation of design plans, an engineer's report, and construction specifications, would be spent regardless of whether a TWA is required, as they are necessary in order to obtain the approval of the local municipal and sewerage entity. As such, the Department does not expect that small businesses will be subjected to additional requirements by the TWA rules proposed for readoption with amendments.

Stormwater Program

The NJPDES stormwater requirements in N.J.A.C. 7:14A-24 and concentrated animal feeding operation (CAFO) requirements in N.J.A.C. 7:14A-2.13 and 4.8(a) impose reporting, recordkeeping, and compliance requirements on facilities operated by a wide variety of entities, including many small businesses. The Department has not provided small businesses exemptions from these requirements because most of these requirements result from incorporation of USEPA stormwater and CAFO regulations, and because the requirements are appropriate to protect water quality.

Industrial Facilities

Members of the industrial community responsible for a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.2 must continue to comply with reporting, recordkeeping, and compliance requirements associated with the NJPDES permit required for such discharges under N.J.A.C. 7:14A-24.2, 24.4, and 24.7. Over 2,700 industrial facilities in New Jersey (other than construction activities) currently have NJPDES permits for stormwater discharges. The Department believes that most such facilities are small businesses as

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The reporting, recordkeeping, and compliance requirements for industrial facilities include preparing individual permit applications or requests for authorization (RFAs) for general permits, and paying NJPDES permit fees. These requirements also include preparing and implementing the stormwater pollution prevention plan (SPPP), performing facility inspections and/or stormwater sampling, maintaining reports of such inspections and/or sampling, reporting incidents of noncompliance to the Department, and complying with other permit conditions (which for some small businesses may include submitting SPPPs or reports to the Department, or complying with numeric effluent limitations). Affected small businesses are also subject to the risk of penalties or fines if the permit is violated.

The reporting, recordkeeping, and compliance requirements imposed on small businesses will continue to vary depending on the nature of the facility and the type of permit. For example, the Department's "basic industrial" stormwater general permit requires applicants to submit a short, simple RFA form, requires permittees to prepare and implement a particular kind of SPPP, does not include numeric effluent limitations, does not require permittees to sample stormwater or submit SPPPs to the Department, and has a NJPDES permit fee lower than that of most other NJPDES permits. For other general or individual NJPDES permits, requirements are different. For example, some permits require a more complex RFA or permit application form, different SPPP requirements and/or numeric effluent limitations, requirements for stormwater sampling and/or submission of SPPPs to the Department, or a higher NJPDES permit fee.

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Costs of obtaining a general or individual permit (including costs of preparing RFAs or individual permit applications, preparing and implementing SPPPs, and permit fees) are discussed in the Economic Impact above, and that discussion is applicable to small businesses as well as other businesses. When the Water Environment Federation performed a national survey of industrial facilities with NPDES general stormwater permits (Water Environment Federation, 1996), most facilities reported using external consultant assistance for preparing SPPPs. For facilities that identified themselves as small businesses (not necessarily using the New Jersey Regulatory Flexibility Act definition), the average cost of preparing SPPPs was about \$5,400 (2005 dollars). If major physical modifications to the particular small business would be required to comply with the permit, such physical modifications may in some cases require the services of a professional engineer, architect, or land surveyor.

If the small business submits an individual permit application, the small business might need the services of a professional engineer or other professional to prepare the application. The RFA forms for hot mix asphalt producers and mining and quarrying facilities may also require professional services in some instances. Also, for individual permit applications or for those permits that require stormwater sampling, small businesses would require the services of laboratories certified to perform specific analyses.

The NJPDES permits for industrial stormwater discharge to groundwater (DGW) will not impose any reporting, recordkeeping, and compliance requirements on small businesses because these stormwater DGW are included under existing NJPDES rule provisions such as N.J.A.C. 7:14A-2.1(d) and 7.2(b). In general, the SPPP requirements established by the Department in recent years for industrial stormwater discharges to surface water and groundwater are similar, and are contained in a NJPDES permit that is both a DSW permit and a DGW permit.

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Any small businesses that receive requests for information from the Department about industrial stormwater discharges under N.J.A.C. 7:14A-24.5 must respond (at a cost of about \$50.00 to \$100.00) by reporting either their intent to apply for a NJPDES permit for those discharges, or some reasonable explanation as to why they do not need to obtain such a permit. Small businesses should usually not require any professional services to respond to such requests. Small businesses that do not comply with N.J.A.C. 7:14A-24.5 risk the assessment of penalties or fines. Also, the Department expects that, as a result of N.J.A.C. 7:14A-24.5, some affected small businesses may obtain NJPDES permits for stormwater discharges sooner than otherwise would be the case, which would result in increased permit-related costs. Conversely, however, obtaining the NJPDES permit earlier may also reduce the penalties or fines that such small businesses could be charged for discharging industrial stormwater without a NJPDES permit.

Members of the industrial community that qualify for exclusion under N.J.A.C. 7:14A-24.6, “Permanent No Exposure” of industrial activities and materials to stormwater, will continue to be directly affected by that section. The Department believes that most such facilities are small businesses. To qualify for such exclusion, small businesses must continue to satisfy certain reporting and other compliance requirements. These requirements include having “Permanent No Exposure” (as described in that section) of industrial materials and activities to stormwater, submitting a “Permanent No Exposure Certification” to the Department (at a cost of about \$50.00) every five years, and allowing the Department to inspect the facility and to make inspection reports available to the public upon request. However, these small businesses will also save the higher administrative costs for a NJPDES stormwater permit. Small businesses that discharge through a municipal separate storm sewer system (MS4) must also, at the request of

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Small businesses should usually not require any professional services to qualify for exclusion under N.J.A.C. 7:14A-24.6. However, if major physical modifications to the particular small business would be required to achieve "Permanent No Exposure," such physical modifications may in some cases require the services of a professional engineer, architect, or land surveyor.

Construction Activity

N.J.A.C. 7:14A-24.10 and other NJPDES rule provisions concerning stormwater discharges associated with construction activity will continue to impose reporting, recordkeeping, and compliance requirements on small businesses that operate stormwater discharges subject to those provisions. The number of new projects per year with these discharges varies with building activity, but is expected to average around 3,200. Most of these projects are undertaken by small businesses.

The small businesses that operate these discharges have to prepare RFAs for a general permit (or individual permit applications, if appropriate); comply with the NJPDES permit (including its reporting and recordkeeping requirements); pay NJPDES permit fees; and incur the risk of penalties or fines if the NJPDES permit is not applied for or is violated. In 2004, the Department modified its "construction activity" stormwater general permit (NJPDES Permit No. NJ0088323) to authorize and control these discharges and meet all applicable requirements in N.J.A.C. 7:14A-24.10. The pollutant control requirements of this permit and the costs of obtaining and complying with it are discussed in the Economic Impact above, and that discussion

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The NJPDES rules regarding stormwater discharges associated with construction activity should generally not require any professional services beyond those, if any, which small businesses otherwise need to comply with the Soil Erosion and Sediment Control Act and N.J.A.C. 2:90-1.4(c)4. If the small business submits an individual permit application rather than an RFA, the small business will probably need the services of a professional engineer or other professional to prepare the application. Also, for certain individual permit applications or for any individual NJPDES permits that require stormwater sampling, small businesses would require the services of laboratories certified to perform specific analyses.

Concentrated Animal Feeding Operations

Under the rules proposed for readoption with amendments, repeals and new rules, “concentrated animal feeding operations” (CAFOs) as described in N.J.A.C. 7:14A-2.13 continue to be point sources that require a NJPDES permit if they discharge to surface water or groundwater. As discussed in the Agriculture Industry Impact above, the Department believes that there are relatively few CAFOs in New Jersey. The Department also believes that most such CAFOs are small businesses.

Small businesses that operate CAFOs have to prepare RFAs for a general permit (or individual permit applications, if appropriate); comply with the NJPDES permit (including its

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reporting and recordkeeping requirements); pay NJPDES permit fees; and incur the risk of penalties or fines if the NJPDES permit is not applied for or is violated. In 2003, the Department issued its CAFO general permit, NJPDES Permit No. NJ0138631. This general permit prohibits discharge to surface and ground waters except when chronic or catastrophic storm events cause an overflow from a facility designed, constructed and operated to hold wastewater plus stormwater runoff from a 25-year, 24-hour storm event. To prevent prohibited discharges and implement conservation practices and management measures for nutrient and waste handling (including application of manure to cropland and pastureland where applicable), CAFOs are required to prepare, submit, and implement a Comprehensive Waste Management Plan, including an Operation and Maintenance Manual, in accordance with USDA-NRCS standards. Options to prevent prohibited discharges include but are not limited to a lined waste retention structure constructed in accordance with specifications contained in the general permit, which also contains special conditions for swine/hog livestock operations. The general permit also includes requirements for small businesses and other CAFO permittees to perform annual inspections, to prepare and submit annual reports and certifications of such inspections, and to retain records of monitoring information including annual manure tests, soil tests, maintenance, and fertilizer and manure application.

The cost of complying with NJPDES permit conditions for CAFOs is variable and depends on a number of factors, including number and type of animals confined, existing animal waste practices at the CAFO, and availability of cropland and pastureland for manure application. As under existing N.J.A.C. 7:14A-2.13(c), AFOs that receive requests from the Department to provide information must report that information to the Department. Small businesses should not require any professional services to respond to such requests or to prepare

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permit application, the small business might need the services of an agricultural engineer or other professional to prepare the application. In addition, small businesses might need the services of an agricultural engineer, a person certified in nutrient management, or other professional to prepare plans required by the general or individual permit, and laboratory services for tests such as manure and soil tests.

Municipal Stormwater Regulation Program

In accordance with the New Jersey Regulatory Flexibility Act, the Department has determined that the rules proposed for readoption concerning the Municipal Stormwater Regulation Program will not impose reporting, recordkeeping, or other compliance requirements on small businesses because municipalities are not considered small businesses.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedures Act (N.J.S.A. 52:14B-4(a)), to describe the impact of the proposed rules on the achievement of Smart Growth and implementation of New Jersey State Development and Redevelopment Plan (State Plan).

N.J.A.C. 7:1 Department Organization

The Department anticipates that the proposed amendments to N.J.A.C. 7:1-1.3 will have no impact on the achievement of Smart Growth and implementation of the State Plan.

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N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems

The proposed new definitions at N.J.A.C. 7:9A do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

N.J.A.C. 7:14 Water Pollution Control Act

The Department anticipates that the proposed amendments to N.J.A.C. 7:14-8.2 should have no impact on the achievement of Smart Growth and implementation of the State Plan. The proposed amendment is to the definition of "serious violation," and serves to conform the definition in N.J.A.C. 7:14 to the proposed amended definition in the NJPDES rules at N.J.A.C. 7:14A. This change reflects the inclusion of whole effluent toxicity test terms already found in the NJPDES rules at N.J.A.C. 7:14A-13.14. The proposed amendment does not change the monitoring parameter, but only provides for a better-defined statistical condition for testing.

N.J.A.C. 7:14A New Jersey Pollutant Discharge Elimination System

The rules proposed for readoption with amendments, repeals and new rules do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

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Because the rules proposed for readoption with amendments, repeals and new rules will further the Department's efforts to protect water quality, the rules support the conservation and environmental protection goals and policies underlying the State Plan.

References

Water Environment Federation (1996). Effectiveness of Industrial Storm Water General Permitting Program. Alexandria, Virginia: Water Environment Federation.

Pitt, R. (1996). *Groundwater Contamination from Stormwater Infiltration*. Chelsea, Michigan: Ann Arbor Press, Inc.

U.S. Environmental Protection Agency (1999). Report To Congress On The Phase II Storm Water Regulations. EPA 833-R-99. U.S. Environmental Protection Agency, Office of Water.

U.S. Environmental Protection Agency (2000). Report To Congress On The Phase I Storm Water Regulations. EPA 833-R-00-001. U.S. Environmental Protection Agency, Office of Water.

Reese, A. J. et al. (2000). Stormwater Costs: Take 2. Estimating costs for the Phase II stormwater management program. *Water Environment & Technology*, 12, 33.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:14A

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code

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Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 1

DEPARTMENT ORGANIZATION

7:1-1.3 Communicating with the Department

(a) – (d) (No change.)

(e) The Department publishes the DEP Bulletin, which is a semi-monthly publication listing the construction permit applications recently filed or acted upon by the Department. Using the DEP Bulletin, interested persons can determine the status of Coastal Area Facility Review Act (CAFRA) permits, Federal consistency activity permits, freshwater wetlands individual and general permits, open water fill permits, NJPDES permits, solid waste facility permits, flood hazard area control (stream encroachment) permits, tidal wetlands permits, treatment works approvals, and waterfront development permits. The DEP Bulletin also includes a calendar of events of interest, a schedule of public hearings (which, however, does not constitute an official notice of a hearing), and a list of Environmental Impact Statements acted upon.

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1. The DEP Bulletin is available [at municipal clerks' offices and county planning board offices and] on the Department's website at www.nj.gov/dep/bulletin. [Annual subscriptions (24 issues) are available to individuals for a \$ 50.00 fee. Persons interested in subscribing to the DEP Bulletin should mail their request with a check made payable to "Treasurer, State of New Jersey" to:

Department of Environmental Protection

Bureau of Revenue

PO Box 417

Trenton, NJ 08625-0417]

2. Publication in the DEP Bulletin constitutes constructive notice to all interested persons of Department actions on construction permits.

(f) (No change.)

CHAPTER 9A

STANDARDS FOR INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEMS

SUBCHAPTER 2. DEFINITIONS

7:9A-2.1 Definitions

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unless the context clearly indicates otherwise:

...

“Common plan of development or sale” means a contiguous area where multiple separate and distinct development activities have occurred, are occurring, or are proposed to occur under one plan. The “plan” in a common plan of development is broadly defined as any announcement or piece of documentation (including, but not limited to, a sign, public notice or hearing, advertisement, drawing, permit application, zoning request) or physical demarcation (including, but not limited to, boundary signs, lot stakes, surveyor markings).

...

“Property” means:

- 1. A single lot as defined by municipal lot and block or right of way (unless paragraph 2 below applies); or**
- 2. The combined area contained within the legal boundaries of two or more contiguous lots where, for any part of each of those lots, there is a shared pecuniary, possessory or other substantial common interest by one or more persons (such as common ownership and/or operation or a common plan of development or sale).**

...

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CHAPTER 14

WATER POLLUTION CONTROL ACT

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.2, have the following meanings unless the context clearly indicates otherwise.

...

“Serious violation” means an exceedance, at a discharge point source, of an effluent limitation, except color, set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1. (No change.)
2. For effluent limitations for whole effluent toxicity as follows:
 - i. For any violation of an LC_{50} , **NOAEC**, **IC₂₅** or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

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<u>Whole Effluent Toxicity Limit (% Effluent)</u>	<u>Difference (% Effluent)</u>
greater than or equal to 80 and less than or equal to 100	Greater than or equal to 20
greater than or equal to 50 and less than 80	Greater than or equal to 15
greater than 10 and less than 50	Greater than or equal to 10
less than or equal to 10	Greater than or equal to 9

ii. (No change.)

3. - 4. (No change.)

...

CHAPTER 14A

NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER 1. ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

7:14A-1.1 Abbreviations and acronyms

(a) As used in this chapter, the following abbreviations and acronyms shall have the following meaning:

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...

“DSAM” means Department sanctioned analytical method.

...

“EDI” means electronic data interchange.

...

“GWQS” means the Ground Water Quality Standards as defined in N.J.A.C. [7:9-6] **7:9C**.

...

“MRSF” means Monitoring Report Submittal Form.

...

“NSCIU” means non-significant categorical indirect user.

...

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“RTR” means Residuals Transfer Report.

“RWBR” means reclaimed water for beneficial reuse.

...

“WCR” means Waste Characterization Report.

...

7:14A-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings, **unless the context clearly indicates otherwise:**

...

“Common plan of development or sale” means a contiguous area where multiple separate and distinct development activities have occurred, are occurring, or are proposed to occur under one plan. The “plan” in a common plan of development is broadly defined as any announcement or piece of documentation (including, but not limited to, a sign, public

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...

“Construction cost” means the project cost, not including financing or insurance charges, of that portion of a project that is subject to review for a treatment works approval.

...

“Department sanctioned analytical method” or “DSAM” means a method that laboratories may be certified to perform if they qualify under the requirements of the Regulations Governing the Certification of Laboratories and Environmental Measurements rules at N.J.A.C. 7:18. Mandatory methods, published or referenced in the Code of Federal Regulations, become DSAMs on their stated effective date. DSAMs that are needed for analysis of Department program regulatory samples, are designated as DSAMs by procedures described at N.J.A.C. 7:18-2.21.

...

“Disposal” means, for the purposes of management of residuals including sewage sludge and of solid and hazardous waste, the storage, treatment, utilization, processing, resource recovery of, or the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or

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hazardous waste into or on any land or water so that the solid or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

...

“Domestic treatment works” or “DTW” means all publicly owned treatment works as well as any [privately owned] **other** treatment works processing primarily domestic [wastewater] **sewage** and pollutants together with any ground water, surface water, [storm water] **stormwater** or process wastewater that may be present.

...

“Exceptional quality” means, for a residual generated under a NJPDES permit, that the ceiling concentrations in 40 CFR 503.13(b)1, incorporated by reference, the pollutant concentrations in 40 CFR 503.13(b)3, incorporated by reference, the Class A pathogen requirements in 40 CFR 503.32(a), incorporated by reference, and one of the vector attraction reduction requirements in 40 CFR 503.33(b)1 through 8, incorporated by reference, are met.

...

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sewage into the ground, which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and discharge the liquid effluent to a disposal field.

...

“Monitoring report form” means the standard Department forms (for example, Discharge Monitoring Report, Residuals Transfer Report, or Waste Characterization Report), including any subsequent additions, revisions or modifications, for the reporting of self - monitoring results by permittees.

“Monitoring Report Submittal Form” means the certification page of a monitoring report form.

...

“Non-significant categorical indirect user” means an indirect user subject to categorical pretreatment standards under 40 CFR Part 403.6 and 40 CFR chapter I, subchapter N that, as determined by the control authority, never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and meets the following conditions:

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1. The indirect user has consistently complied with all applicable categorical

pretreatment standards and requirements;

2. The indirect user annually submits the certification statement required in

N.J.A.C. 7:14A-21.3(k) together with any additional information necessary to

support the certification statement; and

3. The indirect user never discharges any untreated concentrated wastewater.

...

“Oil and grease” includes the nonpetroleum-based pollutants of animal and vegetable origin, and petroleum-based pollutants, which are analyzed by [an EPA and/or] a New Jersey State Certified Laboratory using a USEPA approved method for oil and grease referenced in 40 CFR Part 136, as amended, [including subsequent amendments, and the petroleum-based pollutants analyzed by an EPA and/or New Jersey State Certified Laboratory approved method for petroleum hydrocarbons cited in Methods for Chemical Analysis of Water and Wastes, USEPA, as amended.] or a Department sanctioned analytical method as defined in the Regulations Governing the Certification of Laboratories and Environmental Measurements rules at N.J.A.C. 7:18-1.7.

...

“Petroleum hydrocarbons” or “petroleum-based oil and grease” includes the petroleum-based pollutants analyzed by [an EPA and/or]a New Jersey State Certified Laboratory [approved

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Wastes, USEPA, as amended.] **using a Department sanctioned analytical method as defined in the Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18-1.7.**

...

“Pretreatment program significant noncompliance” or “PPSNC” means non-compliance by [a source of indirect discharge which requires notification pursuant to] **an indirect user that meets one or more of the criteria at** 40 CFR 403.8(f)(2)[(vii)]**(viii).**

...

“Property” means, for the purposes of N.J.A.C. 7:14A-8.1(b)1iv[, all the contiguous block(s) and lots(s), including vacant land owned or otherwise under the control of the owner or operator of the regulated facility, upon which a discharge is conducted or controlled as a result of the operation of a facility];

1. A single lot as defined by municipal lot and block or right of way (unless paragraph 2 below applies); or

2. The combined area contained within the legal boundaries of two or more contiguous lots where, for any part of each of those lots, there is a shared pecuniary, possessory or other substantial common interest by one or more persons (such as common ownership and/or operation or a common plan of development or sale).

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...

“Reclaimed water for beneficial reuse” means water that meets restricted access or public access reuse requirements specified in a NJPDES permit that authorizes that water to be directly reused for non-potable applications in place of potable water, diverted surface water, or diverted groundwater.

...

“Residual additives” means bulking agents, alkaline materials, dust suppressants or other substances added to a residual by the preparer before or during the residual stabilization process including substances added to improve the marketability of a marketable residual product.

“Residual blending and distribution” means handling, storing or blending bulk exceptional quality residual and storing material derived from exceptional quality residual for subsequent off-site distribution.

...

“Residuals Transfer Report” means the Department’s form used to track quantities of residual volumes transferred inter- and intra- facility.

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...

“Reuse feasibility study” means an evaluation of the environmental, technical and economic aspects of implementing RWBR, conducted in accordance with the Department’s “Technical Manual for Reclaimed Water for Beneficial Reuse,” which is available from the Department’s Division of Water Quality at PO Box 029, Trenton, New Jersey 08625 or from the Division’s website at <http://www.nj.gov/dep/dwq>.

...

“Serious violation” means an exceedance, **at a discharge point source, of an effluent limitation, except color,**[as] set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1. (No change.)
2. For effluent limitations for whole effluent toxicity as follows:
 - i. For any violation of an LC₅₀, **NOAEC, IC₂₅** or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

<u>Whole Effluent Toxicity Limit (% Effluent)</u>	<u>Difference (% Effluent)</u>
---	--------------------------------

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greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

ii. (No change.)

3. – 4. (No change.)

...

“Significant indirect user” or “SIU” means, solely for the purposes of this chapter:

1. Any user in the State including, but not limited to, any significant industrial user as defined in 40 CFR 403.3[(t)](v) but excluding municipal collection systems, who discharges wastewater into a local agency where:

i. - vi. (No change.)

vii. The user is designated as an SIU by the control authority on the basis that the user has been in violation of any Federal, State, or local pretreatment standard or

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requirement, including, but not limited to, significant noncompliance as defined in 40

CFR 403.8(f)(2)[(vii)]**(viii)**; or

viii. (No change.)

2. - 3. (No change.)

...

“Slug discharge” means any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge **that has a reasonable potential to cause interference or pass through, or in any other way violate the POTW’s regulations, local limits or permit conditions.**

...

“Solid waste” means a solid waste as defined in [N.J.A.C. 7:26-1.6.] **either N.J.S.A. 13:1E-3, incorporated by reference, or Section 1004 of RCRA (42 USC §6903), incorporated by reference, as supplemented or amended.**

...

“Stormwater discharge (or stormwater DSW) associated with industrial activity” means:

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1. A discharge to surface water, from a point source or a nonpoint source, of stormwater that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NJPDES program under N.J.A.C. 7:14A-2.5. For the categories of industries identified in this paragraph, the term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for treatment, storage, or disposal of by-product or waste product; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. The term also excludes discharges that qualify for "Permanent No Exposure" exclusion under N.J.A.C. 7:14A-24.6. Industrial facilities include industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in subparagraphs 1i through 1xi below. **For purposes of subparagraphs 1ii, 1iii, 1vi, 1viii, and 1xi below, a**

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its primary or other activity, provides any of the products or services that describe that

Standard Industrial Classification. The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this paragraph:

i. - xi. (No change.)

2. (No change.)

...

“Surface disposal site” means an area of land where [sewage sludge] **residual** is placed or was left in place for final disposal. For the purposes of this chapter, “place [sewage sludge] **residual**” or “[sewage sludge] **residual** placed” shall refer to the surface disposal of [sewage sludge] **residual**. This definition does not include an area of land used for the land application of residual.

...

“Waste Characterization Report” means the Department’s form used primarily for the reporting of surface water sampling data for nonlimited parameters, such as periodic priority pollutant scans; groundwater monitoring well results; and residual monitoring information.

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...

SUBCHAPTER 2. GENERAL PROGRAM REQUIREMENTS

7:14A-2.11 Duty to provide information

(a) (No change.)

(b) [(Reserved)] **An application for a permit or treatment works approval, a request for authorization, a report required by a permit (including, but not limited to a monitoring report form), and other information requested by the Department may be submitted electronically via the Department's web portal at www.nj.gov/dep/online.**

1. Prior to submitting an application for a permit or treatment works approval, a request for authorization, a report required by a permit (excluding a monitoring report form), or other information, the applicant must comply with the Department's web portal instructions, which require:

i. Obtaining a valid Department online business portal account; and

ii. Receiving from the Department, an online business portal authorization code.

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2. Prior to submitting a monitoring report electronically, the permittee must execute and submit to the Department the NJPDES EDI Agreement, which requires:

i. Contact information for the facility and the facility administrator;

ii. The signature of the responsible official, certified in accordance with N.J.A.C. 7:14A-4.9; and

iii. The permittee's agreement to comply with the NJPDES rules, including timely submission of a paper monitoring report form if submission electronically is not possible.

3. The Department may require an applicant or a permittee to submit an application for a permit, treatment works approval, request for authorization, or a report required by a permit, and other information on paper, rather than electronically, if the Department determines:

i. The data that the permittee or applicant submits to the Department electronically are not correct, as a result of input or transmission errors, or otherwise; or

ii. The data submitted electronically have compromised, or have the potential to compromise Department's database system (for example, a virus is transmitted).

(c) – (g) (No change.)

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7:14A-2.12 [Ambient water quality studies]Studies

(a) (No change.)

(b) Ambient studies consist of water quality and/or biological studies and shall be used to supplement the Department's ongoing sampling programs. Where the data necessary to make a determination of effluent limitations have already been collected and analyzed by the Department, or are anticipated to be collected and analyzed prior to the determination of effluent limitations, duplicative studies shall not be required. Where the data do not exist and/or are incomplete, the Department may require the permittee or the applicant to undertake any and all studies that it determines necessary to determine permit limits and conditions. Such studies may include, but are not limited to, dilution analysis/mixing zone studies (including stream design flows), dissolved oxygen studies, effluent characterizations, studies to demonstrate compliance with the ocean discharge criteria, antidegradation analysis, in-stream water quality studies to develop water quality based effluent limitations, and biological, nutrient, and toxics impact analysis[, along with related quality assurance/quality control project plan requirements in accordance with 40 C.F.R. 30.503].

(c) All studies conducted for the purposes of implementing the requirements of this chapter shall be performed in accordance with a Department approved Work/Quality Assurance Project Plan. At a minimum, the Work/Quality Assurance Project Plan shall define the data quality objectives and specify the field sampling protocols, field survey, and

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Work/Quality Assurance Project Plan shall be consistent with guidance from the following documents:

1. The Department's Field Sampling Procedures Manual, dated August 2005, as supplemented or amended (available at <http://www.nj.gov/dep/srp/>), incorporated by reference; and

2. USEPA Region II "Guidance for the Development of Quality Assurance Project Plans for Environmental Monitoring Projects," dated April 2004, as supplemented or amended (available at <http://www.epa.gov/region02>) incorporated by reference, or the USEPA "Guidance for Preparation of Combined Work/Quality Assurance Project Plans For Environmental Monitoring" (OWRS QA-1), Office of Water Regulations and Standards, Washington, D.C., dated May 1984, as supplemented or amended and incorporated by reference.

7:14A-2.15 Reclaimed water for beneficial reuse

(a) Any person producing or proposing to produce RWBR shall refer to the guidance for restricted access RWBR or public access RWBR specified in the Department's "Technical Manual for Reclaimed Water for Beneficial Reuse," and shall comply with all RWBR limitations and conditions in the applicable NJPDES permit. The Technical Manual for Reclaimed Water for Beneficial Reuse is available from the Department's Division of

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(<http://www.nj.gov/dep/dwg>).

1. Restricted access RWBR is the classification of reclaimed water for which the possibility of exposure of the general population to the water is minimal and/or exposure of workers to the water is controlled. Restricted access RWBR shall require at least secondary treatment and/or compliance with effluent limitations established in a NJPDES permit.

2. Public access RWBR is the classification of reclaimed water for which there is a high possibility that the general population will be exposed to the water, thereby requiring better than secondary treatment effluent requirements listed in N.J.A.C. 7:14A-12.2.

(b) Except as provided in (d) below, each application for an individual renewal NJPDES DSW permit for a facility discharging to a receiving waterbody classified in the Surface Water Quality Standards at N.J.A.C. 7:9B as SE or SC waters, or for an individual renewal NJPDES DSW or DGW permit for a facility located in a critical water supply area delineated by the Department under the Areas of Critical Water Supply Concerns rules at N.J.A.C. 7:19-8, shall include a reuse feasibility study. A reuse feasibility study shall be submitted with the water quality management plan amendment request, in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15, for a new or expanding discharge regulated under (c) below.

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(c) Each reuse feasibility study submitted to the Department under (b) above shall be conducted in accordance with the Department's Technical Manual for Reclaimed Water for Beneficial Reuse, and shall be signed and sealed by a professional engineer licensed in the State of New Jersey.

(d) The following are exempt from the requirements of (b) above to perform a reuse feasibility study:

- 1. A facility that discharges to an individual subsurface sewage disposal system;**
- 2. A facility with a monthly average flow of less than 0.1 MGD;**
- 3. A facility for which 75 percent or more of the monthly average flow is directly reused;**
- 4. A facility that discharges to surface waters where the removal of any wastewater flows to the receiving water will result in unsatisfactory passing flows;**
- 5. A facility that discharges only stormwater or is a separate storm sewer;**

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6. A concentrated animal feeding operation (CAFO); and

7. An agricultural facility with irrigation return flows.

(e) Each applicant that produces or proposes to produce RWBR shall include the following in the NJPDES permit application or request for authorization under the general RWBR permit (NJ0142581), as applicable:

1. A list of users currently receiving RWBR including amounts reused;

2. A list of proposed users to receive RWBR during the next permit cycle, as well as potential amounts of RWBR for each type of reuse;

3. Identification of whether RWBR will be taken from the main wastewater treatment plant or a satellite plant in the sewer service area;

4. A description of all public education and outreach efforts for any new or expanded public access RWBR activities;

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5. An engineering report, operating protocol and reuse supplier agreement or any other additional information that the Department may require in accordance with N.J.A.C.

7:14A-4.3(e) and the guidance provided in the Department's Technical Manual for Reclaimed Water for Beneficial Reuse; and

6. The method of disposal (for example, DSW) of RWBR water if not all RWBR treatment requirements as specified in the NJPDES permit are met.

SUBCHAPTER 3. DETERMINATION OF PERMIT FEES

7:14A-3.1 Fee schedule for NJPDES permittees and applicants

(a) Except as provided in (j) and (l) below, the general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1 - 6. (No change.)

7. The Department, in calculating Environmental Impact, shall use information reported by the permittee on [Discharge Monitoring Reports (DMRs) and/or Monitoring Report Forms (JMRFs[])] for the 12-month period for which data is available on the Department's computer. The selected 12-month monitoring period will be documented in the Annual NJPDES Fee Schedule Report. Where this information is not available, the Department shall use permit limitations, information submitted in permit applications, technical reports prepared by the

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8 - 11. (No change.)

(b) The Department shall prepare an Annual NJPDES Fee Schedule Report and provide for a public hearing on the Report.

1. (No change.)

2. The Department shall provide for a hearing on the Annual NJPDES Fee Schedule Report.

The Department shall provide public notice of the hearing at least 30 days prior to the date of the hearing:

i. (No change.)

ii. By mailing a [copy] notice of availability of the Fee Report to each NJPDES applicant/permittee the Department identifies as subject to a NJPDES annual fee. **The complete Fee Report will be posted on the Department's website at <http://www.nj.gov/dep/dwq/njpdesfees.html>. The Department will provide, free of charge, a paper copy of the complete Fee Report to each applicant/permittee, or any other interested person, upon request.**

3. (No change.)

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(c) (No change.)

(d) Except as provided by (k) below, the annual fee for discharges to groundwater, except for residuals [and landfills] covered in (e) [and (f)] below, is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Groundwater regulated by an individual NJPDES permit is derived by applying the formula:

[Environmental Impact = (Risk x Quantity x Groundwater Rating Factor) where:

i. Risk is the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each type of waste stored, treated or discharged. The rating numbers are assigned as follows:

Rating Risk

- 1 Non-contact cooling water, treated groundwater filter backwash, sanitary wastewater with at least secondary treatment
- 2 Other treated and untreated sanitary wastewater, food processing waste, stormwater runoff including runoff from non-hazardous waste storage areas, sanitary sludge, discharge from quarry operations including sand and gravel operations

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5 Non-hazardous industrial process waste

15 Metal plating waste, hazardous industrial process waste, landfill

leachate, or groundwater, wastewater, stormwater runoff or sludge

containing hazardous constituents

ii. Quantity is the average daily volume in millions of gallons discharged by the permittee for the monitoring period selected by the Department in (a)7 above. Where quantity is unavailable or is unknown, the Department shall assign a default quantity of 0.002 million gallons per day for discharges from domestic treatment works and a default quantity of 0.001 million gallons per day for other discharges.

iii. Groundwater Rating Factor is one tenth of the sum of the Groundwater Monitoring Status Factor, the Aquifer Factor, Groundwater Use Factor and Permeability Rating where:

(1) Ground Water Monitoring Status Factor is the rating number, assigned to the facility based on the level of monitoring and/or remediation required at the facility, as set forth in the NJPDES permit, administrative order, administrative consent order or directive letter as follows:

Rating

Status

- | | |
|---|--|
| 1 | Permittee is not required to conduct ground water monitoring under the NJPDES permit |
| 2 | Permittee is conducting post-closure or post remediation monitoring |

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- 2 Permittee is required to conduct detection monitoring
- 5 Ground water remediation and/or hydraulic source control is being performed at the site.
- 5 Alternative concentration limits have been established
- 10 Compliance monitoring is required as ground water contamination has been identified in detection monitoring phase and/or ground water remediation is required

(2) Aquifer Factor is the rating number, based on ground water yield potential, assigned to each formation listed in Table II below. Where a facility is located on an unlisted formation, the Department shall determine the aquifer factor. Where the facility is located on more than one formation the highest rating number will be assigned.

(3) Ground water use is the rating number assigned to the municipality where the permitted facility is located based on the percentage of the municipality that relies on public or private wells for drinking water and the volume of ground water withdrawn in million gallons per day (MGD). The Department, in the Annual NJPDES Fee Schedule Report, prepared pursuant to (b) above, shall set forth the individual ratings assigned to each municipality. Where a municipality's percent use and volume result in different ratings, the highest Ground Water Use rating number derived below shall apply. Ground Water Use rating numbers are assigned as follows:

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	Ground		Volume in
<u>Rating</u>	<u>Water Use</u>	<u>PercentUse</u>	<u>MGD</u>
5	A	>50%	>3
3	B	10%-50%	1-3
1	C	<10%	1

(4) Permeability Rating is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation immediately beneath the regulated unit or if present, the facility liner material for facilities in detection monitoring. For all other facilities, the permeability rating is based on the hydraulic conductivity of the geological material contaminated. Facilities assigned a Groundwater Monitoring Status factor of 10, that have demonstrated control of the plume of groundwater contamination shall be assigned a permeability rating of 10. Where permeability is unavailable or is unknown, the Department shall assume a permeability rating of 20. The rating numbers are assigned as follows:

Rating Permeability

10	$<10^{-7}$
11	10^{-6}
12	10^{-5}
14	10^{-4}
18	10^{-3}
20	10^{-2}

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22 $>10^{-2}$]

Environmental Impact = (Pollution Potential Factor) x (Discharge Control Factor) where:

i. For landfills and facilities discharging only sanitary sewage wastewater, the Pollution Potential Factor is the sum of the applicable Pollution Rating Factor set forth at (d)1iii below and the applicable Pollution Loading Factor set forth at (d)1iv below.

ii. For facilities other than those identified in (d)1i above, the Pollution Potential Factors are set forth at (d)1v below.

iii. The Pollution Rating Factor is a value that is a measure of the relative risk associated with the pollutant sources listed below. The Pollution Rating Factor is assigned as follows:

<u>Pollutant Source Description</u>	<u>Pollution Rating Factor</u>
<u>Sanitary sewage wastewater</u>	<u>1</u>
<u>Sanitary landfills</u>	<u>20</u>
<u>Hazardous waste facilities including hazardous waste landfills</u>	<u>50</u>

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iv. The Pollution Loading Factor is a value based on flow (Q) for a sanitary discharge, where Q is the NJPDES permitted flow limit or the facility design flow in the absence of a NJPDES permitted flow limit, or by the mass of solid waste annually deposited at a landfill. The Pollution Loading Factor is assigned as follows:

<u>Pollutant Source Description</u>	<u>Pollution Loading Factor</u>
<u>Landfill Solid Waste</u>	<u>Annual Mass + 1 (where</u> <u>Annual Mass = Mass of solid waste</u> <u>annually deposited (in tons) / 400), with</u> <u>the result rounded to the nearest whole</u> <u>integer</u>
<u>Sanitary Waste Discharge</u> <u>where Q < 1.0 MGD</u>	<u>Q in MGD x 2000, with the result</u> <u>rounded to the nearest whole integer</u>
<u>Sanitary Waste Discharge</u> <u>where Q = > 1.0 MGD but <</u> <u>3.0 MGD</u>	<u>2000</u>
<u>Sanitary Waste Discharge</u> <u>where Q = > 3.0 MGD but <</u> <u>5.0 MGD</u>	<u>3000</u>
<u>Sanitary Waste Discharge</u> <u>where Q = > 5.0 MGD</u>	<u>4000</u>

v. The Pollution Potential Factor for facilities other than those identified in (d)1i above, is

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<u>Pollutant Source Description</u>	<u>Pollution Potential</u>
	<u>Factor</u>
<u>Stormwater runoff</u>	<u>100</u>
<u>Non-contact cooling water</u>	<u>200</u>
<u>Potable water plant filter backwash</u>	<u>200</u>
<u>Food processing wastewater</u>	<u>250</u>
<u>Discharge from quarry operations including,</u>	<u>250</u>
<u>sand and gravel operations</u>	
<u>Industrial process wastewater (not otherwise</u>	<u>300</u>
<u>specified)</u>	

vi. The Discharge Control Factor is a measure of the potential of a discharge to affect groundwater and is based on whether a pollutant source passes through to a DSW or POTW, is designed to be discharged to the ground, or is a landfill. The Discharge Control Factor is assigned as follows:

<u>Discharge Control Scenario for Pollutant Source</u>	<u>Discharge</u>
	<u>Control Factor</u>
<u>Permitted, but not being discharged (does not apply to landfills)</u>	<u>0</u>

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<u>Pass-through wastewater to DSW or POTW, lined (surface</u>	<u>1</u>
<u>impoundment with a liner having hydraulic conductivity of at least $<10^{-7}$</u>	
<u>cm/sec)</u>	
<u>Pass-through wastewater to DSW or POTW, unlined and/or partially</u>	<u>10</u>
<u>lined (surface impoundment or infiltration/percolation lagoon that is</u>	
<u>unlined or partially lined)</u>	
<u>Designed for discharge to the ground (sanitary wastewater with at least</u>	<u>20</u>
<u>secondary treatment)</u>	
<u>Designed for discharge to the ground (all other wastewater other</u>	<u>25</u>
<u>sanitary wastewater with at least secondary treatment)</u>	
<u>Landfills, completely lined ($<10^{-7}$ cm/sec)</u>	<u>30</u>
<u>Landfills, unlined and/or partially lined</u>	<u>40</u>

2. (No change.)

(e) (No change.)

[(f) Except as provided by (k) below, the annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the

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1. The Environmental Impact of a Discharge to Ground Water from sanitary landfills and sites containing wrecked or discarded equipment is derived by applying the formula:

$$\text{Environmental Impact} = (W1 + W2) \times (\text{Closure Status Factor} + \text{Ground Water Rating Factor})$$

where:

i. W1 is the total number of acres filled as of January 1, 1985 multiplied by the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each waste type (as set forth in N.J.A.C. 7:26-2.13) permitted for disposal before January 1, 1985. The rating numbers are assigned as follows:

<u>Rating</u>	<u>Waste Type</u>
1	Types 13, 23
2	Types 10, 12, 27, 72, 73, 74
4	Types 18, 25
8	Types 26, 70 and wrecked or discarded equipment
16	Types 17, 28, 76, 77

ii. W2 is the total cumulative amount of each waste type received (in cubic yards) since January 1, 1985 divided by 4,840 (the square yards in an acre) and multiplied by the rating

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iii. Closure Status Factor is the rating number, based on the operating status of the landfill, assigned by the Department to each facility. The rating numbers are assigned as follows:

<u>Rating</u>	<u>Closure Status</u>
1.0	Operating landfill and sites containing wrecked or discarded equipment
0.5	Landfill terminated after January 1, 1982 without a Department approved closure plan
0.2	Landfill terminated prior to January 1, 1982
0.1	Landfill terminated and properly closed in accordance with a Department approved closure plan

iv. Ground Water Rating Factor is the number derived under (d)1iii above.]

(f) (Reserved)

(g) - (i) (No change.)

(j) For NJPDES Permit No. NJ0088323 (referred to as the category 5G3 "construction activity" stormwater general permit), there is no annual or minimum fee. [Instead, a fee of \$300.00] **The fee for projects that distrurb less than 5.0 acres is \$450.00. The fee for projects that disturb**

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"Treasurer, State of New Jersey," and submitted to the applicable soil conservation district along with each request for authorization submitted under that permit, except as provided in (j)1 **or 2** below. The soil conservation district shall forward all such checks and money orders to the State Soil Conservation Committee in the Department of Agriculture, which shall cause such checks and money orders to be deposited to the credit of the State. The soil conservation district shall not certify any request for authorization that is not accompanied by this fee.

1. For a project that the New Jersey Department of Transportation (NJDOT) is constructing or proposes to construct for which a stormwater discharge is regulated under this general permit, the fee of [\$300.00] **\$450.00 or \$600.00, as applicable,** shall be paid to the Department.

2. For a project that a Federal governmental entity is constructing or proposes to construct for which a stormwater discharge is regulated under this general permit, a fee in the amount set forth in the Soil Erosion and Sediment Control Act (N.J.S.A 4:24-39 et seq.) fee schedule for the appropriate County Soil Conservation District shall be made payable to the "Treasurer, State of New Jersey." The fee will be allocated to address the Department's administrative and enforcement responsibilities, the Department of Agriculture's administrative costs, and the appropriate Soil Conservation District's review and inspection activities.

(k) – (m) (No change.)

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Table I

(No change.)

[Table II

FORMATION RATINGS

<u>System</u>	<u>Formation</u>	<u>Potential</u>	<u>Points</u>
Quaternary			
Pleistocene	Glacial drift		
	Mercer, Middlesex	Poor	2
	Other Counties	Mod to Very Good	10
	Cape May	Moderate to Good	8
	Pennsauken	Moderate to Minor	6
	Bridgeton	Moderate to Minor	6
Tertiary			
Pleistocene	Beacon Hill	Poor	2
Pleistocene	Cohansey	Very Good	10
Miocene	Kirkwood	Good to Moderate	8
Eocene	Piney Point	Minor	4
	Shark River	None	1
	Manasquan	Poor	2
Paleocene	Vincentown	Poor to Good	8
	Hornerstown	None to Poor	2
Cretaceous			
	Tinton	None to Poor	2
	Red Bank	None to Minor	4
	Navesink	None to Poor	2
	Mount Laurel	Moderate	6

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	Wenonah	Minor	4
	Marshalltown	None to Poor	2
	Englishtown	Good to Moderate	8
	Woodbury	None	1
	Merchantville	None	1
	Raritan-Magothy	Very Good	10
Triassic			
	Watchung	Minor	4
	Diabase	Minor	4
	Brunswick	Minor to Good	8
	Lockatong	Poor	2
	Stockton	Moderate to Good	8
	Border Conglomerates	Minor	4
Devonian			
	Skunnemunk	Poor	2
	Bellvale	Poor to Minor	4
	Cornwall/Pequanac	Poor	2
	Kanouse	Poor	2
	Marcellus	Poor	2
	Onondaga	Moderate	6
	Schoharie	Minor	4
	Esopus	Poor	2
	Oriskany (includes Glenerie and Port Ewen	Poor	4
	Becraft (Minisink)	Poor	2
	New Scotland	Minor	4
	Kalkberg (Stormville)	Minor	4
	Coeymans	Minor	4
Silurian			
	Manlius	Minor	4

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	Rondout	Minor	4
	Decker	Minor	4
	Bossardville	Minor	4
	Poxono Island	Minor	4
	High Falls	Minor	4
	Longwood	Minor	4
	Shawangunk and Green Pond	Poor	2
Ordovician			
	Jacksonberg	Minor	4
	Ontelaunee	Minor	4
	Epier	Minor	4
	Rickenback	Moderate	6
Cambrian			
	Allentown Upper	Minor	4
	Allentown Lower	Moderate to Very Good	10
	Leithsville	Very Good	10
	Hardystown	Poor	2
Precambrian			
	Franklin	Minor to Moderate	6
	Crystalline Rocks	Minor to Moderate	6]

TABLE II

(Reserved)

Table III

(No change.)

SUBCHAPTER 4. PERMIT APPLICATION REQUIREMENTS

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7:14A-4.2 Application requirements

(a) Any person who is engaged in an activity or proposes to commence an activity that requires an individual NJPDES permit pursuant to N.J.A.C. 7:14A-2 shall submit a complete application to the Department in accordance with this subchapter. Any person wishing to be authorized under a general permit shall comply with the application requirements in the applicable general permit. **The application forms can be obtained by writing to the address cited in (b) below, or from the Department's web site, <http://www.state.nj.us/dep/dwq/>.**

(b) - (d) (No change.)

(e) The schedule for submission of applications (or requests for authorization under a general permit) is as follows:

1. - 4. (No change.)

[5. Any existing facility or activity which is required to obtain an individual NJPDES-SIU permit pursuant to N.J.A.C. 7:14A-2.4(b)2 and does not have an individual NJPDES-SIU permit shall apply within 180 days of the effective date of this chapter, or of a determination of the Department, that the discharge requires an individual NJPDES-SIU permit.] **5. If the Department revokes the industrial pretreatment program of a delegated local agency, the Department will notify each affected facility or activity that discharges under that**

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6. (No change.)

(f) (No change.)

7:14A-4.3 Application information requirements

(a) All applicants for an individual NJPDES permit shall provide the following information to the Department using the application form(s) provided by the Department (except as specified in N.J.A.C. 7:14A-24.7, 25.9 and 25.10 for stormwater discharges):

1. - 24. (No change.)

25. All DTWs with an approved industrial pretreatment program shall complete a written technical evaluation of the need to revise local limits developed under 40 CFR 403.5(c)(1). This technical evaluation shall meet the criteria specified in N.J.A.C. 7:14A-19.7(e);[and]

26. The RWBR information in accordance with N.J.A.C. 7:14A-2.15; and

[26]**27.** (No change in text.)

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(b) - (e) (No change.)

7:14A-4.4 Additional application requirements for discharges to surface water

(a) (No change.)

(b) All applicants for an individual NJPDES permit shall provide as part of their application, information on the discharge of pollutants in accordance with this subsection (except information on stormwater discharges, which is to be provided as specified in N.J.A.C. 7:14A-24.7, 24.8, 25.9 and 25.10).

1. - 2. (No change.)

3. An effluent characterization shall be submitted as follows:

i. (No change.)

ii. Every applicant for an individual NJPDES permit shall collect and submit the quantitative data for the analyses listed in (b)3ii(1) and (2) below for every outfall, unless the Department determines that the submission is not necessary to evaluate the effluent characteristics.

(1) (No change.)

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(2) Results from a minimum of at least one analysis of the [toxic] pollutants listed in

[Appendix A] Table II **and Table III of N.J.A.C. 7:14A-4 Appendix A**, except for applicants with processes in one or more primary industrial category that are required to obtain quantitative data under (b) below.

iii. - v. (No change.)

vi. For all sampling data required under this section, all levels must be reported or estimated as concentration and as total mass, except for flow, pH, acute and chronic whole effluent toxicity, and temperature. The applicant must complete and submit the influent and effluent characteristics [found as Item IV of USEPA Form 2E or Items V and VI of USEPA Form 2C (forms provided by the Department)] by providing quantitative data [on the appropriate USEPA form only for the pollutants listed that the applicant knows or has reason to believe are present no later than two years after commencement of discharge. However, the applicant need not complete those portions of Item IV of Form 2E or Item V of Form 2C requiring tests which the applicant has already performed and reported under the discharge monitoring requirements of an existing NJPDES permit] **using NJPDES Form C**. For POTWs (and DTWs), the applicant shall complete and submit the influent and effluent characteristics required under this section using [USEPA Standard] **NJPDES** Form A [(Section II, items 14, 15 and 17)].

4. - 7. (No change.)

7:14A-4.9 Signatory requirements for permit applications and reports

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(a) All permit applications, requests for authorization, reports required by permits other than [DMRs] **MRFs**, and other information requested by the Department, shall be signed by a person described in (a)1 through 4 below. [DMRs] **MRFs** shall be signed in accordance with the [DMR] reporting requirements of N.J.A.C. 7:14A-6.9.

1. For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

i. (No change.)

ii. The manager of one or more manufacturing, production, or operating facilities [employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures], **provided:**

(1) The manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of recommending major capital investment, initiating and directing comprehensive measures to assure long term compliance with environmental laws and regulations, and ensuring that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; or

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(2) The authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. - 4. (No change.)

(b) - (d) (No change.)

APPENDIX A

PERMIT APPLICATION TESTING REQUIREMENTS/POLLUTANT LISTINGS

Table I

Testing Requirements for Organic Toxic Pollutants by Industrial Category

Industrial Category	GC/MS Fraction			
	<u>Volatile</u>	<u>Acid</u>	<u>Base/Neutral</u>	<u>Pesticide</u>

...

1. The pollutants in each fraction are listed in Item V-C of the USEPA Form [*]C **and in Table 2 of the Instructions to NJPDES Form C and Form L.**

* Testing required

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3. (No change.)

Table II

Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas
Chromatography/Mass Spectroscopy (GC/MS)

Volatiles

...

Chlorodibromomethane **(Dibromochloromethane)**

...

[Acid] **Acid** *Compounds*

...

Phenol

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2,4,5-Trichlorophenol

2,4,6-Trichlorophenol

Base/Neutral

...

Butyl Benzyl Phthalate

Chloride

2-Chloronaphthalene

...

Nitrobenzene

N-Nitrosodiethylamine

N-Nitrosodimethylamine

N-Nitrosodi-N-butylamine

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N-Nitrosodi-N-Propylamine **(Di-N-Propyl nitrosamine)**

N-Nitrosodiphenylamine

N-Nitrosopyrrolidine

Pentachlorobenzene

Phenanthrene

Pyrene

1,2,4,5-Tetrachlorobenzene

1,2,4-Trichlorobenzene

*Pesticides **and Dioxin***

...

Chlordane

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Chlorpyrifos

4,4'-DDT

4,4'-DDE

4,4'-DDD

Demeton

Dieldrin

Alpha-Endosulfan

Beta-Endosulfan

Endosulfan Sulfate

Endosulfans, Total (alpha and beta)

Endrin

Endrin Aldehyde

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Guthion

Heptachlor

Heptachlor Epoxide

Malathion

Methoxychlor

Mirex

Parathion

PCB-1242

...

Toxaphene

Polychlorinated biphenyls (PCBs)

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2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)

Table III

Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

...

Chromium, Total

Chromium ⁺³, Total (Trivalent)

Chromium ⁺⁶, Total (Hexavalent)

Copper, Total

...

Zinc, Total

Cyanide, Free

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Cyanide, Total

...

Table IV

Conventional and Nonconventional Pollutants Required to be Tested if Expected
to be Present

...

Color

E. Coli

Enterococci

Fecal Coliform

...

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Table V

Toxic Pollutants and Hazardous Substances Required to be Identified by Existing

Dischargers if Expected to be present

...

Hazardous [Substances] *Substances*

...

[Chlorpyrifos]

...

[Guthion]

...

[Malathion]

...

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[Methoxychlor]

...

[Parathion]

...

SUBCHAPTER 5 **(Reserved)**

SUBCHAPTER 6. CONDITIONS APPLICABLE TO ALL NJPDES PERMITS

7:14A-6.4 Schedules of compliance

(a) - (d) (No change.)

(e) The permittee shall meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance. Reports of compliance or noncompliance with, or any progress reports on, the interim and final requirements contained in any compliance schedule of a permit shall be submitted no later than 14 days following each scheduled date, and may be submitted with the [DMRs] **MRFs** in accordance with N.J.A.C.

7:14A-6.8(a).

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7:14A-6.5 Monitoring

(a) (No change.)

(b) All permittees shall:

1. (No change.)

2. Properly monitor the discharge in accordance with the monitoring type, interval, and frequency as specified in the permit;

i. (No change.)

ii. Bacterial monitoring shall not be required for facilities which do not receive wastewater containing pathogenic organisms, including fecal coliform, **E. coli** or enterococci organisms, unless otherwise required by the Department[. Discharge permits shall contain a monitoring-only requirement for enterococci organisms, unless the Department determines that it is appropriate to require enterococci effluent limitations and publishes a public notice in the New Jersey Register with supporting reasons to this effect];

3. - 4. (No change.)

(c) (No change.)

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(d) Requirements for automatically adjusting effluent monitoring frequency are as follows:

1. - 2. (No change.)

3. Any permittee required to adjust its monitoring and reporting pursuant to (d)1 above shall continue this monthly schedule until the permittee has submitted six consecutive monthly [Discharge Monitoring Reports which] **DMRs that** show compliance with the particular serious violation parameter at the particular discharge point, at which time the permittee may resume the original schedule in its permit.

7:14A-6.8 Reporting monitoring results

(a) The permittee shall report monitoring results **in accordance with Department instructions and/or guidance documents,** on the [Discharge Monitoring Reports (DMR)] **MRFs provided by the Department** and/or the Baseline Reports (BR) [or other monitoring report forms] required by the permit or the Department **for the specific monitoring period** at the intervals specified in the permit. **The results submitted for the specific monitoring period shall be for samples taken during the specific monitoring period.**

(b) - (c) (No change.)

(d) [Upon written notice from the Department, monitoring] **Monitoring** results may be

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1. The permittee executes and submits to the Department the NJPDES EDI Agreement, which requires:

i. Contact information for the facility and the facility administrator;

ii. The signature of the responsible official, certified in accordance with N.J.A.C. 7:14A-4.9; and

iii. The permittee's agreement to comply with the NJPDES rules, including timely submission of a paper monitoring report form if submission electronically is not possible.

2. The Department notifies the permittee that it is approved for participation in the NJPDES EDI program.

3. The permittee agrees to submit a monitoring report reform or paper, rather than electronically, if the Department determines:

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i. The permittee is not in compliance with the terms of the EDI Agreement;

ii. The data that the permittee submits to the Department electronically are not correct, as a result of input or transmission errors, or otherwise; or

iii. The data submitted electronically have compromised, or have the potential to compromise Department's database system (for example, a virus is transmitted).

(e) - (g) (No change.)

(h) The permittee shall report all instances of noncompliance not reported under N.J.A.C.

7:14A-6.10 at the time [DMRs] **MRFs** are submitted. The reports shall contain the information required in the written submission listed in N.J.A.C. 7:14A-6.10(e) if not already submitted to the Department.

(i) All SIUs, DSW major industrial facilities, DGWs, and DSW local agencies, other than those discharging only stormwater or non-contact cooling water, required to submit [DMRs] **MRFs** to the Department shall submit the required reporting forms to the Department on a monthly basis when sampling is required on a monthly basis for one or more parameters. [Reporting is required on a monthly basis for all those parameters that are required to be monitored during that particular month.]

7:14A-6.9 Signatory requirements for [DMR] **MRSE** and BR

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(a) [All DMRs] **The MRSF** and the BRs shall be signed by the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility[, whose responsibilities usually include authorizing capital expenditures and/or hiring personnel.]**as explained below:**

1. (No change.)

2. For [public entities it will usually be a plant manager or plant operator, an executive director of a public authority, or a ranking elected official.] **local agencies (such as a sewerage entity, school board, or State agency), the highest ranking licensed operator having day-to-day managerial and operational responsibilities, including the responsibility to authorize capital expenditures and hire personnel for the discharging facility, shall sign the MRSF.**

i If the highest ranking licensed operator having day-to-day managerial and operational responsibilities for the discharging facility does not have the responsibility to authorize capital expenditures and hire personnel, he or she may sign the form. However, the person having those responsibilities shall also certify that he or she has received and reviewed the MRF by signing the MRSF.

3. In those instances where a local agency has contracted with another entity to operate the treatment works, the highest ranking official who signs the MRSF shall be an employee of the contract operator and not of the local agency.

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i. If the highest ranking official of the contracted entity does not have the responsibility to authorize capital expenditures and hire personnel, he or she may sign the form. However, the person having those responsibilities at the local agency shall also certify that he or she has received and reviewed the MRF by signing the MRSF.

(b) (No change.)

(c) The above described official may authorize another responsible high ranking official to sign the [DMR] **MRSF** in his or her absence. Authorizations for other individuals to sign in accordance with this subsection shall be made in accordance with N.J.A.C. 7:14A-4.9(b).

(d) (No change.)

7:14A-6.10 Noncompliance reporting

(a) All permittees shall report to the Department (and receiving DTW, if applicable) any noncompliance including, but not limited to:

1. - 2. (No change.)

3. Any upset or an unanticipated bypass not otherwise covered in (a)1 or 2 above; [or]

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4. Any anticipated bypass[.]; **or**

5. Any noncompliance with a standard for residual use or disposal, whether or not a discharge has occurred.

(b) – (c) (No change.)

(d) For the situations listed in (a)1 v, [and] 3 **and 5** above, the permittee shall communicate the following information by telephone to the DEP Hotline at 1-877-927-6337 or 1-877-WARN-DEP within 24 hours after the commencement of the discharge or of the permittee's becoming aware of the discharge:

1. - 8. (No change.)

(e) For the situations identified in (a)1 through 3 **and 5** above, a written submission containing the information listed in (d) above shall be submitted to the Department, if the permittee had not previously submitted the information. The written information shall be sent to the person identified in (h) below.

1. - 2. (No change.)

(f) - (i) (No change.)

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(j) The permittee shall report all instances of noncompliance not reported under this section at the time [DMRs] MRFs are regularly submitted. The reports shall contain the information required pursuant to (d) above.

SUBCHAPTER 7. REQUIREMENTS FOR DISCHARGES TO GROUNDWATER (DGW)

7:14A-7.7 Ground water sampling procedures and statistical analysis requirements

(a) – (d) (No change.)

(e) When conducting an attenuation monitoring program, the permittee shall determine whether the discharge complies with the ground water constituent standards for the classification area established pursuant to N.J.A.C. [7:9-6] 7:9C.

1. – 2. (No change.)

SUBCHAPTER 8. ADDITIONAL REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL (UIC) PROGRAM

7:14A-8.4 Prohibition of movement of fluid into underground sources of drinking water

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(a) No UIC permit or approval under a permit-by-rule shall be issued or provided under this subchapter in the following circumstances:

1. – 2. (No change.)

3. Where a Class V well is:

i. A large-capacity cesspool (design flow greater than 2000 gallons per day). All large-capacity cesspools authorized by this subchapter shall be closed by April 5, 2005. Large-capacity cesspools shall be closed in accordance with N.J.A.C. 7:14A-8.16(d)[2]. The owner or operator shall notify the Department of intent to close at least 30 days prior to closure; or

ii. Except as provided at (a)3ii(1) below, a motor vehicle waste disposal well. A motor vehicle waste disposal well is an injection well that receives or has received fluids from motor vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, car dealership, specialty repair shop (for example, transmission and/or muffler repair shop), or any facility that does any motor vehicle repair work.

(1) Motor vehicle waste disposal wells constructed prior to April 5, 2000 shall be authorized under a permit in accordance with N.J.A.C. 7:14A-8.8, closed in accordance with N.J.A.C. 7:14A-8.16(d)[2], or converted to another type of Class V well in accordance with N.J.A.C. 7:14A-8.16(g).

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(2) (No change.)

(b) - (e) (No change.)

7:14A-8.5 Authorization of injection into Class V wells by permit-by-rule

(a) (No change.)

(b) An owner or operator of any of the Class V injection wells described in (b)1 through 11 below is deemed to have a permit-by-rule under this subsection if the owner or operator complies with the applicable requirements specified in this subsection.

1. - 3. (No change.)

4. Air conditioning or **non-contact** cooling water return flow injection wells that [are]:

i. Are constructed in accordance with all applicable well construction requirements of N.J.A.C. 7:9D [that discharge], **or all applicable seepage pit construction requirements of N.J.A.C. 7:14A-8.18; and**

ii. Discharge water into the same aquifer from which the water was drawn and with a quality that is the same as the ambient ground water, except for heat content.

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5. - 11. (No change.)

(c) - (i) (No change.)

7:14A-8.12 General operating criteria and construction standards

(a) - (c) (No change.)

(d) Requirements for plugging and abandoning Class I, II, III, **and** IV [and V] wells are as follows **(for requirements applicable to Class V wells, see N.J.A.C. 7:14A-8.16(d))**:

1. Prior to abandoning any Class I, II, III, **and** IV [and V] well, the well shall be plugged with cement or with other [EPA] **USEPA**-approved material in a manner [which] **that** will not allow the movement of fluids either into or between underground sources of drinking water. The abandoned well is to be, at a minimum, filled and sealed in conformance with the requirements of [N.J.S.A. 58:4A-4.1 et seq., and] N.J.A.C. 7:9D, [or in conformance with the requirements of N.J.A.C. 7:9A-12.8, if applicable,] or in conformance with the requirements established in a NJPDES permit. **The abandoned well shall be closed in a manner that prevents fluid movement that may cause a violation of the State primary drinking water rules under N.J.A.C. 7:10 or the Ground Water Quality Standards under N.J.A.C. 7:9C, or may adversely affect public health or safety.**

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2. - 5. (No change.)

7:14A-8.16 Specific operating criteria and construction standards applicable to Class
V injection wells

(a) (No change.)

(b) Class V wells shall, at a minimum, be constructed in accordance with the **following**
requirements [and specifications set forth in N.J.A.C. 7:9 or 7:9A.];

1. Well drilling permit requirements:

i. Where applicable, any owner or operator of a new Class V well shall obtain a well drilling permit before the commencement of any construction, in accordance with the [Subsurface and Percolating Waters Act, particularly N.J.S.A. 58:4A-4.1]**Well Construction and Maintenance; Sealing of Abandoned Wells rules (N.J.A.C. 7:9D)**. Information and applications for a well permit may be obtained from:

NJDEP

Water Supply Administration

Bureau of Water Allocation

PO Box 426

Trenton, New Jersey 08625-0426

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2. Where applicable, [individual] subsurface sewage disposal systems[, septic systems, or disposal beds] shall be constructed in accordance with N.J.A.C. 7:9A, **unless different requirements or specifications are set forth in a treatment works approval or NJPDES permit.**

[3. The following information shall be submitted to the Department with the application for an individual UIC permit for a Class V well:

i. Detailed plans for construction of the injection well, including materials used and geologic or soil characteristics;

ii. Detailed description and analyses of fluids to be injected; and

iii. Description of the method of injection.]

(c) (No change.)

(d) Plugging and abandonment requirements for Class V wells are as follows:

1. Class V wells shall be plugged and abandoned in accordance with the requirements of N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:9D, where applicable. Cessation of injection operations constitutes abandonment in accordance with the requirements of N.J.S.A. 58:4A-4.1.

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N.J.S.A. 58:4A-4.1. [The plugging and abandonment of injection wells constructed or operated in accordance with N.J.A.C. 7:9A are, at a minimum, to be abandoned in accordance with

N.J.A.C. 7:9A-12.8.] **Class V wells shall be closed in a manner that prevents fluid movement that may cause a violation of the State primary drinking water rules under N.J.A.C. 7:10 or the Ground Water Quality Standards under N.J.A.C. 7:9C, or that may adversely affect public health or safety. Additional requirements are as follows:**

i. When it is necessary to abandon injection wells constructed or operated in accordance with N.J.A.C. 7:9A, such wells are, at a minimum, to be abandoned in accordance with N.J.A.C. 7:9A-12.8.

[2. Large] **ii. At a minimum, large**-capacity cesspools as identified in N.J.A.C. 7:14A-8.4(a)3i and motor vehicle waste disposal wells as identified in N.J.A.C. 7:14A-8.4(a)3ii shall be closed [in a manner that does not cause a violation of the State primary drinking water regulations under N.J.A.C. 7:10, or any Ground Water Quality Standards under N.J.A.C. 7:9-6. At a minimum] **in accordance with the following:**

[i.] **(1)** Large-capacity cesspools and motor vehicle waste disposal wells shall be emptied of wastes. Any soil, gravel, or other loose material within two feet from the bottom and sides [which] **that** were exposed to waste shall be removed (except for large-capacity cesspools that have not received industrial wastes). **Additional material within or surrounding such cesspools and wells shall be removed where necessary to prevent fluid movement that may**

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[ii.] **(2)** (No change in text.)

[iii.] **(3)** All wastes or other materials emptied or removed under (d)2i**(1)** above shall be managed in accordance with this chapter and the State Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and its implementing rules at N.J.A.C. 7:26, 7:26A and 7:26G.

[3.] **iii.** Other Class V wells, **not otherwise included in (a)1 or 2 above,** shall be plugged and abandoned in accordance with the terms of a UIC permit[. These permit conditions shall include] **that includes** the following conditions **as applicable:**

[i.] **(1)** All septic systems, seepage pits, dry wells and cesspools shall be emptied of wastes and removed or filled with **clean** gravel, stones, or soil material[, in a manner which is acceptable to the administrative authority as defined in N.J.A.C. 7:9A-1];

[ii.] **(2)** (No change in text.)

[iii.] **(3)** When components or residuals (for example, gravel filter material, fill material, soil) from an abandoned individual subsurface sewage disposal system are removed from the ground, such components or residuals shall be managed [as follows:

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(1) Any off site disposal of components and residuals from an abandoned system shall be managed] in accordance with **this chapter**, the State Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) and its implementing rules at N.J.A.C. 7:26, 7:26A and 7:26G[; and

(2) Onsite management of components and residuals from abandoned systems shall be in a manner which is acceptable to the administrative authority as defined in N.J.A.C. 7:9A-1].

(e) - (g) (No change.)

SUBCHAPTER 11. PROCEDURES AND CONDITIONS APPLICABLE TO NJPDES-DSW PERMITS

7:14A-11.13 NJPDES/DSW PCB pollutant minimization plans for major facilities discharging to PCB-impaired waterbodies

(a) – (b) (No change.)

(c) Monitoring requirements shall be in accordance with N.J.A.C. 7:14A-14.4 and include the following:

1. (No change.)

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2. Sanitary wastewater treatment plants and publicly owned treatment works shall perform three dry weather and three wet weather samples on the facility's main outfall by 24 months after the effective date of the modification or renewal of the facilities' permits under (e) below. Industrial facilities with discharges consisting of process wastewater, as defined at N.J.A.C. 7:14A-1.2, shall perform three dry weather samples by 24 months after the effective date of the modification or renewal of the facilities' permits under (e) below. Industrial facilities with commingled process wastewater and stormwater discharges shall perform three dry weather and three wet weather samples by 24 months after the effective date of the modification or renewal of the facilities' permits under (e) below.

i. (No change.)

[ii. Wet weather sampling shall be performed within 72 hours after the onset of a precipitation event in which at least 0.1 inches of rainfall has occurred.] **ii. Wet weather conditions are defined as following the onset of a precipitation event of 0.1 inches or greater and an increase in wastewater flow, provided that no rainfall (defined as less than 0.1 inches) has occurred within the previous 72 hours. Sampling should start no sooner than two hours prior to the start of the rising hydrograph or no later than 30 minutes after the start of the rising hydrograph for the discharge.**

iii. Samples collected from continuous discharges during dry and wet weather flows will be taken as 24 hour time-weighted composite samples at a frequency not greater than one

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3. – 6. (No change)

(d) After submission of the PCB monitoring required under (c) above and under the facility's permit, the Department will determine whether each permittee must complete a PCB Pollutant Minimization Plan (PMP), and will notify each permittee of this decision in writing.

1. - 3. (No change.)

4. If the Department determines that the permittee is required to perform a PMP, the permittee shall submit an annual report every 12 months from the implementation of the PMP. The annual report shall contain:

i. Any revisions to the PMP as a result of ongoing work shall be reported in the Annual Report; and

ii. At a minimum, a detailed discussion of the specific progress and actions take by the permittee during the previous twelve month period that addresses reducing PCB loadings and implementation of the PMP.

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(e) (No change.)

SUBCHAPTER 12. EFFLUENT STANDARDS APPLICABLE TO DIRECT DISCHARGES TO SURFACE WATER AND INDIRECT DISCHARGES TO DOMESTIC TREATMENT WORKS

7:14A-12.7 Phosphorus effluent standard[s (Reserved)]

The effluent standard for phosphorus discharged to a freshwater lake, pond or reservoir, or tributaries to these waterbodies is that, at a minimum, no effluent shall contain more than 1.0 mg/l total phosphorus (as P), as a monthly average, unless the discharger(s) to such a waterbody can demonstrate that a less stringent requirement will not result in a violation of the Surface Water Quality Standards (N.J.A.C. 7:9B) or that the control of point sources alone, in the absence of effective nonpoint source controls, will not result in a significant reduction of phosphorus loadings to the waterbody.

SUBCHAPTER 13. EFFLUENT LIMITATIONS FOR DSW PERMITS

7:14A-13.2 Types of effluent limitations

(a) Each DSW permit shall include conditions meeting the following requirements, as applicable:

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1. - 3. (No change.)

4. Limitations based on State effluent standards in accordance with N.J.A.C. 7:14A-12 [and N.J.A.C. 7:14A-5.3]. Applicability criteria are at N.J.A.C. 7:14A-13.3(c); and

5. (No change.)

7:14A-13.3 Applicability of effluent limitations

(a) – (b) (No change.)

(c) DSW permits shall include State effluent standards at N.J.A.C. 7:14A-12 [and N.J.A.C. 7:14A-5.3] as follows:

1. Secondary treatment standards at N.J.A.C. 7:14A-12.2 are the minimum treatment standards applicable to DTWs for BOD₅, total suspended solids, and pH;

2. State effluent standards at N.J.A.C. 7:14A-12.5 for disinfection, N.J.A.C. 7:14A-12.6 for foam, N.J.A.C. 12.8 for oil and grease, and N.J.A.C. 7:14A-[5.3]12.7 [for whole effluent toxicity and] phosphorus are the minimum treatment standards.

3. – 5. (No change.)

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(d) – (e) (No change.)

7:14A-13.6 Calculation of water quality based limitations

(a) (No change.)

(b) Water quality based effluent limitations for CPOs may be adjusted to address chlorine demand when the Department determines that such an adjustment is appropriate after review of additional information submitted in accordance with N.J.A.C. 7:14A-4.3(e). The adjustment for chlorine demand shall be applied only within the approved regulatory mixing zone as defined in the Surface Water Quality Standards at N.J.A.C. 7:9B.

7:14A-13.16 Point of compliance for effluent limitations

(a) The point of compliance for each outfall shall be established as follows:

1. – 5. (No change.)

6. For whole effluent toxicity, an alternate point of compliance may be established prior to chlorination if [either of the following applies:

i. The whole effluent toxicity limitation is based on N.J.A.C. 7:14A-5.3; or

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ii. The] **the** permit includes water quality based limitations for chlorine produced oxidants and the following conditions are met:

Recodify existing (1) through (5) as **i. through v.** (No change in text.)

7. (No change.)

8. For CPOs, an applicant or permittee may request a CPO decay factor for use within an approved regulatory mixing zone to adjust the measured effluent CPO concentration value in situations where the effluent has a significant period of travel time (more than 15 minutes during critical design conditions) between the location where the effluent CPO sample is taken and the point of discharge into the receiving waterbody.

7:14A-13.18 Inclusion of action levels for water quality based effluent limitations

(a) – (e) (No change.)

(f) The following concern whole effluent toxicity (WET) action levels

1. Action levels for acute WET shall be established as follows:

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i. When the Department determines that an acute WET WQBEL is the appropriate limit in accordance with N.J.A.C. 7:14A-13.5 and 13.6, and is less stringent than an existing and effective WET effluent limitation of an $LC_{50} \geq 50$ percent, the Department shall include the WQBEL in the renewal permit, but retain the $LC_{50} \geq 50$ percent as an action level.

ii. When the Department determines that the discharge from a facility does not cause or have the reasonable potential to cause an excursion above the Surface Water Quality Standard for WET, as determined by N.J.A.C. 7:14A-13.5, and the permit contains an existing and effective WET effluent limitation of an $LC_{50} \geq 50$ percent, the Department shall retain this value as an action level in the renewal permit.

iii. When the Department determines that a chronic WET WQBEL is the appropriate limit in accordance with N.J.A.C. 7:14A-13.5 and 13.6 and the permit contains an existing and effective WET effluent limitation of an $LC_{50} \geq 50$ percent, the Department shall not include a WET action level in the renewal permit.

iv. An action level for WET established in a permit may be carried forward into a renewal permit as a permit condition, unless a more stringent WQBEL is included in the permit.

2. If two out of six consecutive acute WET tests demonstrate that the effluent exceeds the acute WET action level, the permittee shall initiate a toxicity reduction evaluation in accordance with N.J.A.C. 7:14A-13.17.

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7:14A-13.21 Implementation of water quality based effluent limitations

(a) (No change.)

(b) Whole effluent toxicity shall be incorporated in discharge permits where a water quality based whole effluent toxicity limitation is required in accordance with N.J.A.C. 7:14A-13.5, water quality based whole effluent toxicity limitations shall be determined and incorporated into the discharge permit in accordance with N.J.A.C. 7:14A-13.6. The permit may include a schedule to achieve compliance with the water quality based limit.

1. Where a water quality based whole effluent toxicity limitation is not required, the discharge permit [shall include an acute whole effluent toxicity limitation in accordance with N.J.A.C.

7:14A-5.3] **may still include a whole effluent toxicity action level in accordance with N.J.A.C. 7:14A-13.18(f).**

(c) Limitations for new sources, new discharges, or expanded direct discharges shall be established as follows:

1. – 3. (No change.)

4. Where a water quality based whole effluent toxicity limitation is not required, the discharge permit [shall include an acute whole effluent toxicity limitation in accordance with N.J.A.C.

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N.J.A.C. 7:14A-13.18(f).

(d) – (e) (No change.)

SUBCHAPTER 15. PROCEDURES FOR DECISION MAKING-NJPDES PERMIT PROCESSING REQUIREMENTS

7:14A-15.17 Administrative record for the final permit

(a) - (b) (No change.)

(c) A person may arrange to review the administrative record by telephoning the Department's [Bureau of Central Services and Property Management at (609) 292-0400] **Office of the Records Custodian at (609) 341-3121.**

SUBCHAPTER 19. PRETREATMENT PROGRAM REQUIREMENTS FOR LOCAL AGENCIES

7:14A-19.3 Industrial pretreatment program requirements for all local agencies

(a) (No change.)

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(b) All local agencies, including those not required by N.J.A.C. 7:14A-19.2(a) and (b) to

establish an IPP, shall comply with the following IPP requirements:

1. All local agencies shall, **pursuant to their permit or upon written request from the Department or whenever the local sewer use ordinance or rules and regulations are modified,** submit a copy of the local sewer use ordinance or rules and regulations, including any amendments, to the Bureau of Pretreatment and Residuals in the Department at 401 East State Street, PO Box 029, Trenton, N.J. 08625-0029;

2. All local agencies shall identify and locate indirect users as specified below:

i. (No change.)

ii. Non-delegated local agencies shall submit an annual report, [which] **on forms provided by the Department, that** consists of a listing of all indirect users [which] **that** meet the significant indirect user definition in N.J.A.C. 7:14A-1.2, **and a statement whether the local agency accepts hauled wastes and, if so, the types of waste;**

3. – 5. (No change.)

(c) All delegated local agencies (DLAs) shall comply with the following IPP requirements:

1. – 6. (No change.)

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7. All DLAs shall sample their treatment works and sludges as specified below:

i. Perform, at least once per year, an analysis for those priority pollutants listed in N.J.A.C.

7:14A-4, Appendix A, Tables II and III, **and molybdenum (Mo), ammonia (NH₃), and phosphorus (P),** of the discharge from, and inflow to, the municipal treatment works;[and]

(1). The requirement to monitor for the pollutants molybdenum (Mo), ammonia (NH₃), and phosphorus (P), at (c)7i above takes effect (one year after the effective date of these amendments); and

ii. (No change.)

8. – 12. (No change.)

(d) (No change.)

(e) All delegated local agencies shall include within their local sewer use ordinance or rules and regulations, their authority to:

1. Grant sampling waivers to categorical indirect users, consistent with 40 CFR 403.12(e)(2);

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2. Develop and utilize best management practices in lieu of numeric local limits, consistent with 40 CFR 403.5(c)(4) and 403.8(f)(1)(B)(3);

3. Use equivalent concentration limits, consistent with 40 CFR 403.6(c)(6);

4. Use equivalent mass limits, consistent with 40 CFR 403.6(c)(5); and

5. Define and classify non-significant categorical indirect users including the criteria, reporting, and oversight conditions consistent with 40 CFR 403.3, 403.8, and 403.12, respectively.

(f) Each delegated local agency shall, no later than (180 days from the effective date of these amendments), submit to the Department for review the delegated local agency's draft local sewer use ordinance or rules and regulations that include the provisions specified in (e) above.

7:14A-19.4 Enforcement response plan

(a) – (e) (No change.)

[(f) All delegated local agencies shall submit to the Department an ERP in accordance with (a) above no later than March 20, 1999.

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(g) Notwithstanding the time frame provided by (f) above for submissions, this subchapter as

amended effective January 19, 1999 shall apply to any violation occurring on or after January 19, 1999.]

7:14A-19.5 Enforcement requirements in an industrial pretreatment program

(a) – (b) (No change.)

[(c) All delegated local agencies shall, by March 20, 1999, submit to the Department a sewer use ordinance or rules and regulations which include those provisions specified in (a) and (b) above, as well as the provisions of the enforcement response plan required by N.J.A.C. 7:14A-19.4(a) through (e).

(d) Notwithstanding the time frame provided by (c) above for submissions, this subchapter as amended effective January 19, 1999 shall apply to any violation occurring on or after January 19, 1999.]

7:14A-19.6 Additional requirements for delegated local agencies

(a) Each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. The Department may also inspect a facility required to be inspected by a delegated local agency. Exemption of stormwater facilities from the provisions of this subsection shall not apply to any permitted facility discharging or

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receiving stormwater runoff having come into contact with a hazardous discharge site on the Federal National Priorities List adopted by the EPA pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or any other hazardous discharge site included by the Department on the master list for hazardous discharge site cleanups adopted pursuant to N.J.S.A. 58:10-23.16. An inspection required under this subsection shall be conducted within six months following a permittee's submission of an application for a permit, permit renewal or issuance of a permit for a new facility, except that if for any reason, a scheduled inspection cannot be made, the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or in the case of a temporary shutdown, of resumed operation. Inspections shall include:

1. – 6. (No change.)

7. [An evaluation, at least once every two years, of each significant indirect user (as defined by the delegated local agency) in order to determine the need for a plan to control slug discharges. For purposes of this paragraph, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. If the delegated local agency decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements] **An evaluation of whether the significant indirect user needs a plan or other action to control slug discharges. Each significant indirect user shall be evaluated within one year of being designated a significant indirect user. For purposes of this paragraph, a slug discharge is any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or a non-customary batch discharge, which**

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violate the delegated local agency's regulations, local limits or permit conditions. The results of such evaluations shall be available to the Department upon request. Significant indirect users are required to notify the delegated local agency immediately of any changes at its facility affecting potential for a slug discharge. If the delegated local agency decides that a slug control plan is needed, the plan shall contain, at a minimum, the following:

i. – iv. (No change.)

(b) – (e) (No change.)

(f) All delegated local agencies shall submit to the Department a "40 CFR Part 403" annual report which describes their pretreatment program activities. This report must contain, at a minimum, the information required under 40 CFR 403.12(i), including all supplements and amendments thereto. This report shall be submitted by the date specified in the delegated local agency's NJPDES permit. This report shall be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee shall be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization shall be made in writing by the principal executive officer or ranking elected official, and submitted to the Department prior to or together with the report being submitted.

(g) – (i) (No change.)

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(j) If a delegated local agency determines to establish equivalent mass limits pursuant to N.J.A.C. 7:14A-21.4(b), the delegated local agency:

1. Shall calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the indirect user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

2. Shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility upon notification of a revised production rate; and

3. May retain the same equivalent mass limit in the modified or renewed industrial pretreatment program permit, if:

i. The indirect user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies;

ii. The actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to (d) above; and

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iii. The indirect user is in compliance with N.J.A.C. 7:14A-21.6 (regarding the prohibition of bypass).

(k) A delegated local agency shall not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants that cannot appropriately be expressed as mass.

7:14A-19.7 Development of local limits by local agencies

(a) [All] **Except as provided in (b) and (c) below, all** local agencies shall perform a headworks analysis in order to develop local limits or demonstrate that local limits are not necessary. The headworks analysis and, if necessary, development of local limits shall:

1. Be conducted in accordance with the [Guidance Manual on the Development and Implementation of Local Discharge Limitations under the Pretreatment Program (December 1987, USEPA Office of Water Enforcement)] **Local Limits Development Guidance (July, 2004, USEPA, Office of Wastewater Management), incorporated by reference,** including all supplements and amendments thereto; and

2. (No change.)

(b) In lieu of conducting a complete headworks analysis, a local agency that operates a treatment works, where the treatment works receives only domestic pollutants and the

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NJDPEs discharge permit for the treatment works does not include a water quality based

effluent limit for a heavy metal, shall sample the treatment works as follows:

1. Analyze the treatment works influent and effluent at least once per permit term for those pollutants listed in N.J.A.C. 7:14A-4, Appendix A Tables II and III, and molybdenum (Mo), ammonia (NH₃), and phosphorus (P); and

2. Perform, at least once per permit term, a pollutant scan on the sludge produced at the treatment works. This analysis shall be completed on those parameters found in Appendix A, Tables I through VI in the Sludge Quality Assurance Regulations, N.J.A.C. 7:14C, and any additional pollutants regulated under the local agency's chosen sludge management method. The sludge samples shall be collected to coincide with the influent and effluent monitoring required in (b)1 above.

(c) A school or correctional facility, that operates a treatment works, is exempt from conducting a headworks analysis pursuant to (a) above, provided:

1. The treatment works receives only domestic pollutants;

2. The treatment works receives only wastewater generated by the operator; and

3. The NJPDES permit for the treatment works does not include a water quality based effluent limit for a heavy metal.

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Recodify existing (b) and (c) as **(d) and (e)**. (No change in text.)

[(d)]**(f)** All delegated local agencies shall submit a written technical evaluation of the need to revise local limits when:

1. (No change.)

2. The local agency's NJPDES permit [renewal application is due] **has been renewed. This written technical evaluation shall be submitted to the Department within six months after the effective date of the renewed permit.**

[(e)]**(g)** The written technical evaluation required **to be submitted by delegated local agencies** under [(d)] **(f)** above shall include the following:

1. – 3. (No change.)

4. A description of the local agency's compliance history over the previous five years, with respect to compliance with effluent limitations, sludge quality, plant inhibition or upset, and worker health and safety; [and]

5. A listing of all parameters for which limits are established in the local agency's renewed NJPDES permit; and

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[5.] **6.** A statement from the local agency as to whether or not local limits need to be revised based on the information gathered under (e)1 through [4] **5** above.

[(f)] **(h)** The Department shall review the written technical evaluation submitted **by a delegated local agency** under [(d)] **(f)** above and, if necessary, require the **delegated** local agency to revise the local limits in accordance with (a) above.

7:14A-19.8 Requirements for issuance of IPP permits by delegated local agencies

(a) (No change.)

(b) The delegated local agency shall include the following requirements in all IPP permits:

1. (No change.)

2. All permit requirements for IPP/SIU permits established in 40 CFR 403.8(f)(1)[(iii)(A) through (E)]**(B)(1) through (6)**.

(c) (No change.)

(d) All delegated local agencies shall include in their sewer use ordinance or rules and regulations the following permit issuance requirements:

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1. (No change.)

[2. Procedural requirements for the issuance, renewal, modification, suspension, revocation of IPP permits or indirect user authorizations. The procedures must include notice, opportunity to comment, and opportunity to request a public hearing on all draft IPP permits. The DLA shall issue a response-to-comments document at the time that a final permit is issued. The response-to-comments document shall:

- i. State the action the DLA has taken on the final permit;
- ii. Specify which provisions, if any, of the draft permit have been changed in the final permit, and the reasons for any such change; and
- iii. Briefly describe and respond to all relevant comments on the draft permit raised during the public comment period, or during the public hearing, if any;]

2. Procedural requirements for the issuance of IPP permits. These requirements shall include, at a minimum, the following:

i. Public notice and comment criteria consistent with N.J.A.C. 7:14A-15.10;

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ii. Public comment and request for public hearing criteria consistent with N.J.A.C.

7:14A-15.11;

iii. Public hearing criteria consistent with N.J.A.C. 7:14A-15.12;

iv. Criteria regarding the obligation to raise issues during the public comment period, consistent with N.J.A.C. 7:14A-15.13;

v. Public comment period re-opening criteria, consistent with N.J.A.C. 7:14A-15.14;

vi. Final permit decision and issuance criteria, consistent with N.J.A.C. 7:14A-15.15; and

vii. Response to comments criteria, consistent with N.J.A.C. 7:14A-15.16.

3. Procedural requirements for modification, revocation and reissuance, renewal, suspension, or revocation of IPP permits consistent with N.J.A.C. 7:14A-16.3 through 16.6.

[3.]**4.** The requirement that no IPP permit shall be issued, renewed, or modified by a delegated local agency so as to relax any effluent limitation unless the IPP permittee or applicant has complied with the requirements of N.J.S.A. 58:10A-6k[.]; **and**

5. Procedural requirements for permit appeals consistent with N.J.A.C. 7:14A-17.

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(e) A delegated local agency shall submit modifications to its local sewer use ordinance or

rules and regulations that incorporate the requirements set forth in (d) above within 90 days after notification by the Department. All changes to a delegated local agency's local sewer use ordinance or rules and regulations shall be made in accordance with N.J.A.C. 7:14A-19.9.

7:14A-19.10 Public notice **and public hearing** requirements for delegated local agencies

(a) (No change.)

(b) All delegated local agencies shall provide public notice identifying those indirect users which met the significant noncompliance criteria under 40 CFR 403.8(f)(2)[(vii)]**(viii)** at any time during the period covered by the delegated local agency's 40 CFR Part 403 Annual Report submitted to the Department pursuant to N.J.A.C. 7:14A-19.6(f). This public notice shall be published in [the official daily] **a** newspaper [designated by the local agency] **of general circulation that provides meaningful public notice within the jurisdiction served by the delegated local agency** no later than 60 days after the 40 CFR 403 Annual Report due date.

(c) – (e) (No change.)

(f) Any public hearing held for a proposed permit action under (e) above shall be conducted consistent with N.J.A.C. 7:14A-15.12.

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APPENDIX A

ENFORCEMENT RESPONSE PLAN

Unauthorized Discharges

<u>Noncompliance</u>	<u>Nature of the Violation</u>	<u>Enforcement Responses</u>	<u>Time Frame</u>	<u>Personnel</u>	Type of viol. & grace period (if <u>any</u>)
1. Discharge without a permit (Permit required)	No harm to POTW environment	NOV with application form, if needed	60 days		NM
	Harm to POTW/environment (IU meets SNC criteria under 40 CFR Part 403.8(f)(2)[(vii)] viii)	Take action to halt activity; <u>Public notice</u>	<u>Action-2 days;</u> <u>public notice-</u> <u>annually, but no</u> <u>later than 60</u> <u>days after 403</u> <u>annual report</u> <u>submitted to</u> <u>NJDEP</u>		NM
	Noncompliance with order to submit application	Seek penalty	6 months		NM

2. – 3. (No change.)

Discharge Limit Violation

1. Exceedance of local or Federal standard (permit limit)	Individual or monthly non-serious violation	NOV; compliance response/corrective action plan, if needed	60 days from receipt		NM
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	Serious violation (individual or monthly)	<u>NOV;</u> Seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.16	<u>NOV-6 months;</u> <u>penalty within 6</u> <u>months</u>	NM
2. Exceedance of local or Federal standard (permit limit) (continued)	Significant Noncompliance (IU meets SNC criteria under 40 CFR Part 403)	Public notice	Annually, but no later than 60 days after 403 annual report submitted to NJDEP.	NM
	Significant noncompliance (IU meets SNC criteria in NJWPCA, under N.J.S.A. 58:10A- 3.w.)	<u>NOV;</u> Seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.16	<u>NOV-60 days;</u> <u>penalty within 6</u> months	NM

Monitoring and Reporting Violations

1. Reporting violation	Late, 5 or more days after due date (but complete)	NOV[.]; seek penalty, including at least mandatory minimum penalty for overdue effluent parameter information, if any, in accordance with N.J.A.C. 7:14- 8.9 (note: Penalty waived if complete report is received within 10 days of receipt of the NOV)	<u>NOV-60 days;</u> <u>penalty within 6</u> months	NM
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Late 31 days or more after due date (but complete)	Public notice, NOV, and seek penalty, including at least mandatory minimum penalty for overdue effluent parameter information, if any, in accordance with N.J.A.C. 7:14-8.9 (note: Penalty waived if complete report is received within 10 days of receipt of the NOV)	Public notice in accordance with approved program Penalty within 6 months	NM
Incomplete for effluent parameter omission	Seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.9	<u>Penalty within 6 months</u>	NM
Incomplete for data omission (IU meets SNC criteria under 40 CFR Part 403)	Public notice	Annually	NM

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	Incomplete for effluent parameter omission (IU meets SNC criteria under NJWPCA)	Public notice and seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.9 and N.J.A.C. 7:14-8.16(a)	Public notice in accordance with approved program Penalty within 6 months	NM
	Incomplete for other omissions (IU meets SNC criteria under NJWPCA)	Public notice and seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.16	Public notice in accordance with approved program Penalty within 6 months	NM
	Incomplete for other omissions	NOV	60 days	M – 10 days
	Falsification	Seek penalty or refer to county prosecutor	60 days	NM
2. Failure to adhere to compliance schedules (in control document, permit, AO/ACO, letter of agreement)	Missed milestone by less than 30 days	NOV[.]; seek penalty (note: penalty may be waived if final compliance is met by due date)	<u>NOV-60 days; penalty within</u> 6 months	NM
	Missed milestone by more than 30 days (IU meets SNC criteria under 40 CFR Part 403)	NOV[.]; seek penalty, public notice (note: penalty may be waived if final compliance is met by due date)	<u>NOV-60 days; penalty within</u> 6 months	NM

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	Failure to meet final compliance date	NOV[,]; seek penalty	<u>NOV-60 days; penalty within</u> 6 months	NM
3. Failure to notify	Failure to report spill or changed discharge	NOV; seek penalty where necessary	NOV [w/in] <u>within</u> 60 days of discovery; penalty no later than 6 months of discovery	NM

4. – 5. (No change.)

Other Permit Violations

1. Wastestreams are diluted to achieve discharge limits	Dilution	NOV[,]; seek penalty	NOV-60 days; penalty- <u>within</u> 6 months	NM
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2. – 5. (No change.)

SUBCHAPTER 20. STANDARDS FOR THE USE OR DISPOSAL OF RESIDUAL

7:14A-20.1 Purpose

(a) This subchapter establishes:

1. (No change.)

2. Permit application requirements, [and] standards, **prohibitions, and requirements** for

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3. Permit application requirements and standards for residual reed beds;

4. Permit application requirements and standards for residual blending and distribution;

Recodify existing 3. and 4. as **5. and 6.** (No change in text.)

7:14A-20.2 Applicability

(a) This subchapter applies to:

1. (No change.)

[2. The closure of sewage sludge surface disposal sites; and] **2. The operating entity of a surface disposal site, residual placed on a surface disposal site, and the surface disposal site;**

3. The operating entity of residual reed beds, residual placed on reed beds, and the residual reed beds;

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4. The operating entity of a residual blending and distribution operation, residual placed at a residual blending and distribution operation, and the residual blending and distribution operation; and

[3.]**5.** (No change in text.)

(b) The requirements in N.J.A.C. 7:14A-20.7 do not apply when:

1. Bulk material derived from **exceptional quality** sewage sludge is applied to the land [if the sewage sludge from which the bulk material is derived is generated under a NJPDES permit and meets the pollutant concentrations in 40 CFR 503.13(b)3, the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)1 through 8]; or

2. A material derived from **exceptional quality** sewage sludge is sold or given away in a bag or other container to be applied to the land [if the sewage sludge from which the material is derived is generated under a NJPDES permit and meets the pollutant concentrations in 40 CFR 503.13(b)3, the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)1 through 8].

(c) The general requirements in N.J.A.C. 7:14A-20.7(b)1 and the management practices in N.J.A.C. 7:14A-20.7(b)2 do not apply when:

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1. Bulk **exceptional quality** residual is applied to the land[, if the bulk residual meets the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8)]. However, the Department may apply any or all of the general requirements in N.J.A.C. 7:14A-20.7(b)1 and the management practices in N.J.A.C. 7:14A-20.7(b) 2 to the bulk residual on a case-by-case basis as described at N.J.A.C. 7:14A-20.5(a)3;

2. Bulk material derived from residual is applied to the land if the derived bulk material meets [the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8)] **exceptional quality**. However, the Department may apply any or all of the general requirements in N.J.A.C. 7:14A-20.7(b)1 and the management practices in N.J.A.C. 7:14A-20.7(b)2 to the bulk material on a case-by-case basis as described at N.J.A.C. 7:14A-20.5(a)3;

3. Residual is sold or given away in a bag or other container for application to the land if the residual sold or given away in a bag or other container for application to the land meets [the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8)] **exceptional quality; and**

4. A material derived from residual is sold or given away in a bag or other container for application to the land if the derived material meets [the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector

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(d) - (e) (No change.)

7:14A-20.5 Establishing limitations, standards and other permit conditions

(a) The Department shall establish conditions in each NJPDES permit for the use or disposal of residual, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the Federal and State Acts and the regulations promulgated thereunder, as follows:

1. - 2. (No change.)

3. On a case-by-case basis, the Department may impose requirements for the use or disposal of residual in addition to or more stringent than the requirements in the subchapter when necessary to protect public health or the environment from any adverse effect of the pollutant in the residual. This authority shall include, but not be limited to, the following:

i. (No change.)

ii. For bulk **exceptional quality** residual [applied in accordance with N.J.A.C. 7:14A-20.7(h)1], the authority to require compliance with any or all of the general requirements in N.J.A.C. 7:14A-20.7(b)1 and the management practices in N.J.A.C. 7:14A-20.7(b)2 upon the

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iii. For **all** residual applied in accordance with N.J.A.C. 7:14A-20.7(h), the authority to establish additional steps in the treatment, **delivery, storage, and land application** of residual to control the release of air contaminants (including, but not limited to, ammonia) consistent with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. [This] **These** additional steps shall include, but not be limited to, the requirement to increase the maturity of marketable residual products by achieving additional temperature reduction and moisture reduction; and

iv. For sites where bulk residual is applied under N.J.A.C. 7:14A-20.7(h), the authority to require a permit or a Letter of Land Application Management Approval to be obtained upon the Department's determination that a permit or Letter of Land Application Management Approval is needed to protect public health and the environment, **to prevent the discharge of excess nutrients to the waters of the State, or to address the release of air contaminants consistent with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.**

(b) The Department shall set forth the basis for permit conditions imposed under (a) above in a fact sheet issued pursuant to N.J.A.C. 7:14A-[20.9]**15.8**, or, if the requirements are based on site-specific factors, a Letter of Land Application Management Approval issued pursuant to N.J.A.C. 7:14A-20.7(h) for the residual land application site.

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(c) - (d) (No change.)

7:14A-20.6 Environmental assessment

(a) In addition to the information required by N.J.A.C. 7:14A-4, an applicant for a NJPDES permit for residual use or disposal shall submit an environmental assessment for the location where a residual will be prepared to be applied to the land, the location where a residual was placed on a surface disposal site, or the location of any other treatment works treating domestic sewage (TWTDS) or residual-only facility required to obtain a permit pursuant to this subchapter. The magnitude and detail of the environmental assessment shall be determined by the Department and shall be relative to the nature, scale and location of the proposed TWTDS or residual-only facility. [Where the permitted activity shall not require the construction of additional infrastructure the Department shall waive this requirement.] At a minimum, the environmental assessment shall conform to the environmental assessment requirements of the Department's applicable NJPDES Permit Technical Manual in effect at the time of submission of the assessment and shall include:

1. – 4. (No change.)

(b) An environmental assessment is not required for the following:

1. The land to which residual is applied or will be applied;

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2. An existing treatment works where the construction of additional infrastructure is not required to conduct the proposed activity; and

3. A residual use or disposal practice that qualifies for authorization under a general permit in accordance with N.J.A.C. 7:14A-6.13.

7:14A-20.7 Land application

(a) In addition to the information required in N.J.A.C. 7:14A-4 and 20.6, an applicant for a NJPDES permit to prepare residual for land application shall submit the following:

1. Information on the characteristics of the residual proposed to be applied, **and information on the characteristics of all residual additives**, to the extent known at the time that the permit application is submitted, including, but not limited to:

- i. The origin and volume of the residual **and residual additives**;
- ii. A dated analysis of the residual **and residual additives** on a mg/kg dry weight basis (or other unit as specified) for the following constituents:

...

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Phosphorus

Water extractable phosphorus (WEP)

Arsenic

...

Zinc

Radium 226 (pCi/g)

Radium 228 (pCi/g)

iii. A [copy] **summary** of all [reports required to be submitted under] **data generated** **pursuant to** the Sludge Quality Assurance Regulations (SQAR), N.J.A.C. 7:14C, for the previous 12-month period;

iv. Additional quality analyses (including characteristics pursuant to N.J.A.C. 7:26G) as may be deemed necessary by the Department through evaluation of past SQAR reports or other relevant information, such as information **on the characteristics of all residual additives or** on industrial discharges [which] **that** might contribute constituents not normally evaluated under the

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Document for Land Application of Sewage Sludge, EPA 822/R-93-001a and 001b, November 1992.

2. (No change.)

3. For bulk residual [which does] **that is not of exceptional quality**[satisfy the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), or one of the vector attraction reduction options in 40 CFR 503.33(b)(1) through (8)], requests for approval to land apply residual shall be submitted in accordance with the following:

i. For each residual land application site identified at the time of permit application, the applicant shall **include in the permit application an application for a Letter of Land Application Management Approval (LLAMA) and**, in accordance with the applicable NJPDES Permit Technical Manual, supply information necessary to determine if the site is appropriate for land application and a description of how the site is or will be managed, including, but not limited to, the following:

(1) A residual land application site evaluation that includes, at a minimum, a description of easements, distances to surface water, distances to drinking water wells, distances to occupied dwellings, **local transportation patterns**, depth to ground water, depth to bedrock, slope, soil drainage class, pH, flooding, site soil texture and parent geologic material, **the design and location of any existing or proposed residual storage installations, fields where residual is**

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(2) - (3) (No change.)

(4) An original or clear copy of a 1:24,000 scale (7.5 minute Quadrangle) United States Geological Survey Topographic Map showing the [exact] location of the residual land application site and indicating the sheet name from which the map portion was taken; [and]

(5) An original or clear copy of the [county] **municipal** tax map showing the location of the residual land application site and [the location of any residual storage installations and] indicating the sheet name from which the map portion was taken;

(6) A clear copy of an aerial photograph showing the location of the residual land application site; and

(7) A conservation plan approved and on file with the County Soil Conservation District; a written determination from the Natural Resources Conservation Service that no conservation plan is required for the site; or an equivalent conservation plan that is developed by a person trained in nutrient management and conservation/erosion control planning and that is approved by the Department.

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ii. Where proposed residual land application sites are not identified at the time of permit

application, the applicant shall submit a notification plan for the Department's approval [which]

that at a minimum:

(1) (No change.)

(2) Describes the form of advance public notice [which] **that**, at a minimum, will be supplied to all landowners and occupants adjacent to or abutting a proposed residual land application site. This requirement may be satisfied through public notice in a newspaper of local circulation. Notice shall include, at a minimum, the name and address of the permittee, the name and address of the proposed residual land application site, a description of the activities that are proposed to occur at the residual land application site, and the name and address of the Bureau within the Department to which the permittee must submit an application for a [Letter of Land Application Management Approval] **LLAMA**; [and]

iii. Following issuance of a permit, when a new land application site is proposed, a permittee shall submit an application to the Department for a Letter of Land Application Management Approval, where required pursuant to (h) below. An additional copy of the complete application for a LLAMA shall be simultaneously submitted to the municipal clerk of the municipality(ies) where the residual land application site is located. The application for a LLAMA shall include information necessary to determine if the proposed residual land application site is appropriate for land application and a description of how the site is or will be managed, including, but not limited to, the following:

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(1) (No change.)

(2) Information necessary for the Department to determine if the request is in conformance with a notification plan approved by the Department pursuant to (a)3ii above[.]; **and**

iv. A LLAMA renewal application, including all information required pursuant to (a)3 above, is due at the time of the renewal application for the permit under which the LLAMA is issued. A LLAMA expires or is revoked concurrently with the permit under which the LLAMA is issued. If the permit under which the LLAMA is issued is administratively continued under N.J.A.C. 7:14A-2.8, then the LLAMA issued under that permit is also administratively continued. Nothing in this section shall prevent the Department from revoking a LLAMA for due cause, independent of the permit under which the LLAMA is issued.

4. In order for the Department to approve a permit application for the land application of **a** residual[s] other than sewage sludge, **or for any new residual stabilization process or technology not previously permitted in the State,** the applicant shall demonstrate, in addition to the requirements of (a)1 through 3 above, the following:

i. (No change.)

ii. An understanding of the impacts of the residual on soil fertility, soil physical properties and

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plant growth; [and]

iii. That the land application of a particular residual has a scientific basis and has been successfully tested or demonstrated in a field application or pilot program[.];

iv. That the new residual stabilization process or technology has been successfully tested or demonstrated in a pilot program to achieve the standards applicable to the intended use of residual processed; and

v. Control of the stabilization process, and of product maintenance and handling, in a manner that prevents air contamination (including, but not limited to, particulates or odors) subsequent to achievement of a marketable residual product; and

5. A sampling plan that details all measurement, sampling and analytical procedures. The plan shall:

i. Identify each sampling point, established at a location that ensures sample homogeneity and best represents the physical and chemical quality of all pre-process and in-process materials, and all marketable residual product that is removed for use or disposal, as necessary to demonstrate compliance with applicable standards;

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ii. Identify the equipment to be utilized for sampling. The equipment shall be constructed of materials that will not contaminate or react with the marketable residual product (for example, galvanized or zinc coated items shall not be used); and

iii. Demonstrate quality assurance and quality control requirements and procedures for sampling and analysis, including preservation and decontamination procedures, consistent with the Department's Field Sampling Procedures Manual.

(b) For the land application of residual, the following general requirements and management practices shall apply, unless otherwise specifically stated:

1. In lieu of the general requirements in 40 CFR 503.12:

i. -v. (No change.)

vi. [When a] **The** person who prepares bulk residual **shall notify and** provide[s the bulk residual to a person who applies the bulk residual to the land, the person who prepares the bulk residual shall provide the person who applies the bulk residual notice and necessary] information **necessary** to comply with the requirements of this subchapter **to the person who applies bulk residual to the land.**

vii. [When a person who prepares residual provides the residual to another person who prepares the residual, the] **The** person who [provides the] **prepares** residual shall **notify and**

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comply with the requirements of this subchapter **to any person who further prepares the residual for application to the land.**

viii. (No change.)

ix. Any person who prepares bulk residual in New Jersey that is applied to land in a State other than New Jersey shall **submit to the Department written proof of compliance with or satisfaction of all applicable statutes, regulations, and guidelines of the state in which land application will occur.** [provide written notice to the permitting authority for the State in which the bulk residual is proposed to be applied prior to the initial application of bulk residual to the residual land application site by the applier. Any person who prepares bulk residual out-of-State that is to be applied to land in New Jersey shall provide written notice to the Department prior to the initial application of bulk residual to the residual land application site by the applier. The notice shall include:

(1) The location, by either street address or latitude and longitude, of each residual land application site;

(2) The approximate time period during which bulk residual will be applied to each residual land application site;

(3) The name, address, telephone number, and New Jersey or National Pollutant Discharge

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(4) The name, address, telephone number, and New Jersey or National Pollutant Discharge Elimination System permit number (if applicable) for the person who will apply the bulk residual; and]

[(5)]x. Out-of-State generators [which] **that** transport residual into the State [of New Jersey] to be applied to the land shall [also] comply with the requirements of (l) below.

[x. Any person who prepares bulk residual in New Jersey and applies bulk residual subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the land outside of the State of New Jersey shall provide written notice to the permitting authority for the State in which the bulk residual will be applied prior to the initial application of bulk residual to a residual land application site by the applier. Any person who applies bulk residual subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)2 to the land in New Jersey shall provide written notice to the Department prior to the initial application of bulk residual to a residual land application site by the applier. The permitting authority or Department shall retain and provide the public with access to the notice. The notice shall include:

(1) The location, by either street address or latitude and longitude, of the land application site; and

(2) The name, address, telephone number, and New Jersey or National Pollutant Discharge

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2. In lieu of the management practices in 40 CFR 503.14:

i. (No change.)

ii. Unless otherwise specified by the Department in a permit or a LLAMA, bulk residual shall not be:

[ii. Bulk residual shall not be applied] **(1) Applied** to [agricultural] land [, forest, a public contact site, or a reclamation site] that is flooded, frozen, or snow-covered so that the bulk residual enters a wetland or other waters of the State[, as defined in N.J.A.C. 7:14A-1.2, except as otherwise provided in a permit issued pursuant to Section 402 or 404 of the CWA,];

(2) Applied during or after precipitation on ground where water is ponded, soils are saturated with water to within two feet of the ground surface, soil depth is less than two feet over bedrock formations, or land experiences seasonal flooding;

[iii. Bulk residual shall not be applied] **(3) Applied** to agricultural land, forest, or a reclamation site that is [10 meters] **200 feet** or less from **surface** waters of the State, as defined in N.J.A.C. 7:14A-1.2[, unless otherwise specified by the Department in a permit.];

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[iv. Bulk residual shall be applied to agricultural land, forest, a public contact site, or a reclamation site] **(4) Applied to the land, except** in accordance with (g) below[.]; **or**

[v. Either a label shall be affixed to the bag or other container in which residual that is sold or given away for application to the land, or an information sheet shall be provided to the person who receives residual sold or given away in an other container for application to the land. The label or information sheet shall contain the following information:

(1) The name and address of the person who prepared the residual that is sold or given away in a bag or other container for application to the land;

(2) A statement that application of the residual to the land is prohibited except in accordance with the instructions on the label or information sheet;

(3) The annual whole residual application rate for the residual that does not cause any of the annual pollutant loading rates in Table 4 of 40 CFR 503.13 to be exceeded; and

(4) Additional information as required under (h)4vii below.]

(5) Applied to land that is within 1,500 feet of a public community water supply well, or within 300 feet of a public non-community or non-public water supply well.

(c) - (g) (No change.)

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(h) Residual applied to the land shall conform to one of the following programs based on the level of quality, pathogen reduction and vector attraction reduction achieved:

1. [Residual which meets the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8)] **Exceptional quality residual** shall be applied only in accordance with the following requirements:

i. -ii. (No change.)

iii. Residual [which] **that** is sold, offered for sale, or intended for sale as a fertilizer, soil conditioner or agricultural liming material shall be licensed by the New Jersey Department of Agriculture pursuant to the New Jersey Commercial Fertilizer and Soil Conditioner Act, N.J.S.A. 4:9-15.1 et seq., or the New Jersey Agricultural Liming Materials Act, N.J.S.A. 4:9-21.1 et seq., unless permit conditions for distribution are otherwise established by the Department in accordance with N.J.A.C. 7:14A-20.5; and

iv. Residual shall be labeled or accompanied by **the appropriate** instructional literature **based on the mode of marketing and** conforming to **the Department's applicable NJPDES Permit Technical Manual and** the labeling requirements established by the New Jersey Department of Agriculture pursuant to the New Jersey Commercial Fertilizer and Soil Conditioner Act, N.J.S.A. 4:9-15.1 et seq., the New Jersey Agricultural Liming Materials Act, N.J.S.A. 4:9-21.1 et seq., or

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2. Residual [which] **that is not exceptional quality shall be applied only if it** meets [the pollutant concentrations in 40 CFR 503.13(b)(3) and the Class A pathogen requirements in 40 CFR 503.32(a), and which will meet one of the vector attraction reduction requirements in 40 CFR 503.33(b)(9) or (b)(10)] **the ceiling concentrations in 40 CFR 503.13(b)(1); meets the Class B pathogen requirements in 40 CFR 503.32(b); and meets one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8) or will meet one of the vector attraction reduction requirements in 40 CFR 503.33(b)(9) or (b)(10). Such residual** shall be applied only in accordance with the following requirements:

i. -iii. (No change.)

iv. If the residual does not meet the Class A pathogen requirements in 40 CFR 503.32(a) then the site restrictions at 40 CFR 503.32(b)(5) shall apply;

v. If the residual does not meet the pollutant concentrations in 40 CFR 503.13(b)(3) then the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) shall not be exceeded and shall be tracked, recorded and reported in accordance with (i), (j) and (k) below;

[iv]**vi.** A [Conservation Plan]**conservation plan pursuant to (a)3i(7) above** [developed by the USDA-NRCS and approved by the Soil Conservation District or a SESCO (as applicable)] shall be obtained and implemented for all residual land application sites (unless such planning is

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[v]vii. A LLAMA shall be obtained for all residual land application sites pursuant to (a)3[iii] above prior to the initial application of residual to the residual land application site. The **recipient of the LLAMA shall ensure that the person who applies residual to a land application site complies with the** conditions of a LLAMA [shall be met by the person who applies residual to a residual land application site].

[3. Residual which meets the pollutant concentrations in 40 CFR 503.13(b)(3) and the Class B pathogen requirements in 40 CFR 503.32(b), and which meets one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8) or which will meet one of the vector attraction reduction requirements in 40 CFR 503.33(b)(9) or (b)(10), shall be applied only in accordance with the following requirements:

- i. The residual shall be monitored, records kept and information reported in accordance with (i), (j) and (k) below;
- ii. The residual shall be applied in bulk only and shall not be applied to a lawn or home garden;
- iii. The general requirements at (b)1 above, the management practices at (b)2 above and the site restrictions at 40 CFR 503.32(b)(5) apply;
- iv. A Conservation Plan developed by the USDA-NRCS and approved by the Soil

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residual land application sites (unless such planning is determined inapplicable to the site by an agency with concurrent jurisdiction); and

v. A LLAMA shall be obtained for all residual land application sites pursuant to (a)3iii above prior to the initial application of residual to a residual land application site. The conditions of a LLAMA shall be met by the person who applies residual to a residual land application site.

4. Residual which meets the pollutant concentrations in 40 CFR 503.13(b)(1), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8) shall be applied only in accordance with the following requirements:

i. The residual must be monitored, records kept and information reported in accordance with (i), (j) and (k) below;

ii. The residual may be applied in bulk, or sold or given away in a bag or other container;

iii. The residual shall not be applied in bulk to a lawn or home garden;

iv. The general requirements at (b)1 above and the management practices at (b)2 above apply;

v. Residual which is sold, offered for sale, or intended for sale as a fertilizer, soil conditioner or

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agricultural liming material must be licensed by the New Jersey Department of Agriculture pursuant to the New Jersey Commercial Fertilizer and Soil Conditioner Act, N.J.S.A. 4:9-15.1 et seq., or the New Jersey Agricultural Liming Materials Act, N.J.S.A. 4:9-21.1 et seq., unless permit conditions for distribution are otherwise established by the Department in accordance with N.J.A.C. 7:14A-20.5;

vi. Residual sold or given away in a bag or other container shall be labeled or the other container shall be accompanied by instructional literature, conforming to the labeling requirements established by the New Jersey Department of Agriculture pursuant to the New Jersey Commercial Fertilizer and Soil Conditioner Act, N.J.S.A. 4:9-15.1 et seq., the New Jersey Agricultural Liming Materials Act, N.J.S.A. 4:9-21.1 et seq., the labeling or literature requirements of (b)2v above, or other distribution requirements specified by the Department in a permit;

vii. For residual applied in bulk, the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) shall not be exceeded and shall be tracked, recorded and reported in accordance with (i), (j) and (k) below;

viii. Where residual is applied in bulk, a Conservation Plan developed by the USDA-NRCS and approved by the Soil Conservation District or a SESCO (as applicable) shall be obtained and implemented for the residual land application site (unless such planning is determined inapplicable to the site by an agency with concurrent jurisdiction); and

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ix. Where residual is applied in bulk, a LLAMA shall be obtained for all residual land

application sites pursuant to (a)3iii above prior to the initial application of residual to the residual land application site. The conditions of a LLAMA shall be met by the person who applies residual to a residual land application site.

5. Residual which meets the pollutant concentrations in 40 CFR 503.13(b)(1) and the Class A pathogen requirements in 40 CFR 503.32(a), and which will meet one of the vector attraction reduction requirements in 40 CFR 503.33(b)(9) or (b)(10) shall be applied only in accordance with the following requirements:

- i. The residual shall be monitored, records kept and information reported in accordance with (i), (j) and (k) below;
- ii. The residual shall be applied in bulk only and shall not be applied to a lawn or home garden;
- iii. The general requirements at (b)1 above and the management practices at (b)2 above apply;
- iv. The cumulative pollutant loading rates in 40 CFR 503.13(b)(2) shall not be exceeded and shall be tracked, recorded and reported in accordance with (i), (j) and (k) below;
- v. A Conservation Plan developed by the USDA-NRCS and approved by the Soil Conservation District or a SESCO (as applicable) shall be obtained and implemented for all residual land application sites (unless such planning is determined inapplicable to the site by an agency with

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vi. A LLAMA shall be obtained for all residual land application sites pursuant to (a)3iii above prior to the initial application of residual to the residual land application site. The conditions of a LLAMA shall be met by the person who applies residual to a residual land application site.

6. Residual which meets the pollutant concentrations in 40 CFR 503.13(b)(1) and the Class B pathogen requirements in 40 CFR 503.32(b), and which meets one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8) or which will meet one of the vector attraction reduction requirements in 40 CFR 503.33(b)(9) or (b)(10) shall be applied only in accordance with the following requirements:

- i. The residual shall be monitored, records kept and information reported in accordance with (i), (j) and (k) below;
- ii. The residual shall be applied in bulk only and shall not be applied to a lawn or home garden;
- iii. The general requirements at (b)1 above, the management practices at (b)2 above and the site restrictions at 40 CFR 503.32(b)(5) apply;
- iv. The cumulative pollutant loading rates in 40 CFR 503.13(b)(2) shall not be exceeded and shall be tracked, recorded and reported in accordance with (i), (j) and (k) below;

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v. A Conservation Plan developed by the USDA-NRCS and approved by the Soil Conservation District or a SESCO (as applicable) shall be obtained and implemented for all residual land application sites (unless such planning is determined inapplicable to the site by an agency with concurrent jurisdiction); and

vi. A LLAMA shall be obtained for all residual land application sites pursuant to (a)3iii above prior to the initial application of residual to the residual land application site. The conditions of a LLAMA shall be met by the person who applies residual to a residual land application site.]

(i) For residual [which] **that** is to be applied to the land, the frequency of monitoring for the pollutants listed in Table 1, Table 2[,] **and** Table 3 [and Table 4] of 40 CFR 503.13, for the pathogen density requirements in 40 CFR 503.32(a) and 40 CFR 503.32(b)(2) through (b)(4), when applicable, and for the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), when applicable, shall be the frequency specified in Table 1 of 40 CFR 503.16(a) unless otherwise specified below:

1. - 3. (No change.)

4. Process parameter monitoring necessary to demonstrate whether any of the pathogen reduction requirements in 40 CFR 503.32(a)(3), (a)(4), (a)(5), (a)(7), (a)(8) and/or 40 CFR 503.32(b)(3) or (b)(4) are met (for example, temperature, time, percent total solids and pH) must be performed each day that the process(es) intended to meet any of the requirements is operated and as often each day as necessary; [and]

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5. Process parameter monitoring necessary to demonstrate whether vector attraction reduction requirements in 40 CFR 503.33(b)(1), (b)(5), (b)(6), (b)(7) and (b)(8) are met (for example, volatile solids, time, temperature, pH and percent total solids) must be performed each day that the process(es) intended to meet any of the requirements is operated and as often each day as necessary[.]; **and**

6. For residual additives, the frequency of monitoring for the pollutants listed in Table 1, Table 2 and Table 3 of 40 CFR 503.13, or for other pollutants identified pursuant to (a)1 above, shall be, at a minimum, once every calendar year, and within 30 days of any source change.

(j) For residual [which] **that** is to be applied to the land, recordkeeping shall conform to the requirements of 40 CFR 503.17(a) and the following additional information shall be retained for five years (unless otherwise required by 40 CFR Part 503):

1. (No change.)

2. If bulk residual [does not satisfy the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), or one of the vector attraction reduction options in 40 CFR 503.33(b)(1) through (8)] **is not exceptional quality**, the person who prepares the residual shall keep daily records of the destination of the residual, including, but not limited to, the location, by either street address, lot and block number or latitude and longitude of each

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3. For bulk exceptional quality residual, the person who prepares the residual shall keep daily records of the bulk distribution outlets and the quantity of residual delivered to each outlet;

Recodify existing 3. through 5. as **4. through 6.** (No change in text.)

(k) For the land application of residual, [the following reporting requirements shall apply] in lieu of the reporting requirements of 40 CFR 503.18[:], **the frequency of reporting to the Department of the records kept under (j) above shall be in accordance with N.J.A.C. 7:14A-6.8.**

[1. The frequency of reporting to the Department of the records kept in accordance with (j) above shall be quarterly; and

2. The frequency of reporting may be reduced by the Department after two years of reporting pursuant to (k)1 above, but in no case shall the frequency of reporting be less than once per year.]

(l) Out-of-State generators [which] **that** transport residual into the State of New Jersey to be applied to the land shall, at a minimum, comply with all applicable requirements for the land

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application of residual pursuant to this subchapter and the following additional notice

requirements:

1. (No change.)

[2. In order for the Department to determine the applicable requirements under this subchapter, any person who currently prepares residual out-of-State which is land applied in New Jersey and plans to continue such activities after May 5, 1997 shall provide notice to the Department by August 3, 1997. This notice shall, at a minimum, include:

i. Information on each residual land application site as required to be submitted pursuant to (a)3 and (b)1ix above, as applicable;

ii. Copies of those permits and approvals issued by the permitting authority for the state in which the residual is prepared;

iii. The name, address and phone number of a contact for the permitting authority for the state in which the residual is prepared; and

iv. A listing of any brand names under which a marketable residual product has been or will be distributed.]

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[3.]**2.** Upon receipt of [the] notification[s] pursuant to (l)1[and 2] above, the Department shall notify the person who prepares residual of the applicable requirements of this subchapter.

[4.]**3.** (No change in text.)

(m) (No change.)

7:14A-20.8 Surface disposal of [sewage sludge] **residual**

(a) The storage of [sewage sludge] **residual or material derived from residual** for more than six months constitutes surface disposal and is prohibited under this subchapter. [However, this prohibition does not apply to sewage sludge that remains on the land for longer than six months when the person who prepares the sewage sludge demonstrates that the land on which the sewage sludge remains is not a surface disposal site. The demonstration shall explain why sewage sludge must remain on the land for longer than six months prior to final use or disposal, discuss the approximate time period during which the sewage sludge shall be used or disposed and provide documentation of ultimate management arrangements. Said demonstration shall be in writing, kept on file by the person who prepares sewage sludge and submitted to the Department upon request.]

[(b) The owner and/or operator of a sewage sludge surface disposal site that has not implemented a Department approved closure plan prior to May 5, 1997 shall submit a surface disposal site closure plan in accordance with the requirements of (d) below by May 5, 1998.] **(b)**

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(c) The prohibitions in (a) and (b) above do not apply if:

1. The person who prepares the residual demonstrates that the land on which the residual remains is not a surface disposal site. The demonstration shall explain why residual must remain on the land for longer than six months prior to final use or disposal, discuss the approximate time period during which the residual shall be used or disposed, and provide documentation of ultimate management arrangements. The demonstration shall be submitted to the Department in writing and retained by the person who prepares residual for the period that the residual remains on the land. If the Department determines that a demonstration is not in conformance with this subchapter, then the Department will notify the person who prepares the residual that the prohibitions in (a) and (b) above apply;

2. The site where the residual is placed is permitted and meets the requirements as a sanitary landfill under the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

3. The residual is approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g); or

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4. The surface disposal site existed prior to (the effective date of these amendments), was in conformance with all relevant laws and regulations when the discharge commenced and is the subject of and is in compliance with a valid NJPDES discharge to groundwater permit issued pursuant to N.J.A.C. 7:14A-7.

(d) The operating entity of a surface disposal site that does not qualify for an exemption in accordance with (c) above shall submit a closure and post closure plan to the Department for approval in accordance with the requirements of (f) below within (six months of the effective date of the amendments) and cease discharge within (one year of the effective date of the amendments) or at such earlier date established by the Department to protect public health or the environment consistent with N.J.A.C. 7:14A-20.5.

[(c) The operating entity for a] **(e) For in-situ,** closed surface disposal sites, [shall comply with] the following management practices **shall apply**:

1. – 2. (No change.)

3. The [sewage sludge] leachate collection system for a closed surface disposal site that has a liner and [sewage sludge] leachate collection system shall be operated and maintained for a minimum of five years after the Department approves closure of the surface disposal site.

Leachate from a closed surface disposal site that has a liner and [sewage sludge] leachate collection system shall be collected and shall be disposed in accordance with applicable requirements for a minimum of five years after the Department approves closure of the surface

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disposal site;

4. (No change.)

5. The owner of a **closed** surface disposal site shall provide written notification to the subsequent owner of the site that [sewage sludge] **residual** was placed on the land. As part of closure of the surface disposal site, a detailed description of the surface disposal site shall be recorded, along with the deed, with the appropriate county recording office. The description shall include the quantity and quality of [sewage sludge] **residual** disposed, a map indicating the location and depth of [sewage sludge] **residual** on the site, the depth and type of cover material (if applicable), the dates the surface disposal site was in use and all such other information as may be of interest to potential landowners, and shall remain in the legal record of the property in perpetuity;

6. A food crop, a feed crop, or a fiber crop shall not be grown on a closed surface disposal site, unless the owner/operator of the surface disposal site demonstrates to the Department that through management practices public health and the environment will be protected from any adverse effects of pollutants in [sewage sludge] **residual** when crops are grown;

7. Animals shall not be grazed on a closed surface disposal site, unless the owner/operator of the surface disposal site demonstrates to the Department that through management practices public health and the environment will be protected from any adverse effects of pollutants in [sewage sludge] **residual** when animals are grazed;

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8. The operating entity must implement **and maintain** a ground water monitoring program in compliance with N.J.A.C. 7:9C **for a minimum of five years after the Department approves closure of the surface disposal site**; and

9. (No change.)

[(d)]**(f)** In addition to the requirements of N.J.A.C. 7:14A-4 and 20.6, a surface disposal site closure plan shall include the following minimum information:

1. The approximate date discharge to the surface disposal site ceased **or will cease**;

2. (No change.)

3. A discussion of the characteristics of the [sewage sludge] **residual** present in the surface disposal site, including:

i. The origin and volume of the [sewage sludge] **residual**;

ii. Dated quality analyses of the [sewage sludge] **residual** on a mg/kg dry weight basis including analyses of all constituents required to be analyzed in accordance with the Sludge Quality Assurance Regulations (SQAR), N.J.A.C. 7:14C. The number of samples required to be analyzed shall be based on a statistical method as described in the Department's Field Sampling

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iii. Additional quality analyses may be required if deemed necessary by the Department through evaluation of past SQAR reports or other relevant information, such as information on industrial discharges [which] **that** might contribute constituents not normally evaluated under the SQAR program [for domestic treatment works]; and

iv. (No change.)

4. A description of the proposed method of closure, including plans for the removal and/or in-situ closure of [sewage sludge] **residual** remaining at the surface disposal site, and an implementation schedule for each component of the closure plan;

5. For in-situ closure proposals, the following information:

[i. If the surface disposal site has a liner and sewage sludge leachate collection system, a discussion of how the sewage sludge leachate collection system will be operated and maintained for a minimum of five years;

ii. A description of the system used to monitor for methane gas in the air in any structures within the surface disposal site and in the air at the property line of the surface disposal site for a minimum of five years, where applicable;

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iii. A discussion of how public access to the surface disposal site will be restricted for a minimum of five years; and]

[iv]i. A calculation of the surface run-off across the surface disposal site shall be prepared using a 24-hour, 25-year storm event with estimates of the effect of such run-off on treatment capacity, storage capacity, erosion, flooding, impacts on surface water quality and related details; and

ii. Information to document compliance with the management practices set forth at (e) above;

6. (No change.)

7. Any other information required by N.J.A.C. 7:14A-7.14 for residual surface [impoundment's] impoundments [or residual infiltration-percolation lagoons].

7:14A-20.9

Reed beds

(a) In addition to the information required in N.J.A.C. 7:14A-4 and 20.6, an applicant for a NJPDES permit to discharge residual to a reed bed shall submit:

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1. Information on the characteristics of the residual proposed to be discharged, to the extent known at the time that the permit application is submitted, including, but not limited to;

i. The origin and volume of the residual;

ii. A dated analysis of the residual to be discharged for total solids (percent by weight), volatile solids (weight as a percent of total solids), and pH (standard units);

iii. A summary of all data generated pursuant to the Sludge Quality Assurance Regulations (SQAR), N.J.A.C. 7:14C, for the previous 12-month period;

iv. Additional analyses of the quality of the residual (including characteristics pursuant to N.J.A.C. 7:26G) as the Department determines necessary based upon an evaluation of past SQAR reports or other relevant information, such as information on industrial discharges that might contribute constituents not normally evaluated under the Sludge Quality Assurance Regulations (SQAR), N.J.A.C. 7:14C;

2. The proposed loading rate for the discharge of residual to the reed bed, based on the type of residual to be discharged and the total solids content of the residual to be discharged; and

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3. An operation and maintenance manual that describes, at a minimum, how the management practices in (b) below will be followed.

(b) For a residual reed bed, the following management practices shall apply:

1. There shall be no standing water in a reed bed 48 hours following loading, except during periods of severe inclement weather.

2. Plants shall be harvested during winter dormancy, as weather permits, after the plants have turned brown. Approximately 10 inches of stubble shall be left standing after harvesting.

3. Once the reed bed is mature, debris, weeds and vegetative waste shall be removed during the annual reed harvest in a manner that will not disturb the reed plants. During the first year of operation, in order to protect the reed plants, unwanted weed growth shall be removed as necessary, whether or not during the annual reed harvest. Methods of weed removal that do not require workers to enter a bed are preferred, and should be attempted first.

4. A reed bed shall be evacuated when the depth of residual in the bed reaches six inches from the top of the freeboard.

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(c) Residual shall be loaded onto a reed bed no more than once every 14 days after plants reach maturity. Less frequent loading rates will be set forth in the permit during the time that plants are maturing or as required due to unfavorable loading conditions (for example, in the presence of standing water).

(d) The permittee shall take composite samples representative of the residual discharged to a reed bed and analyze them in accordance with the reporting requirements of, and frequency required in, the Sludge Quality Assurance Regulations, N.J.A.C. 7:14C.

(e) The permittee shall take one sample per calendar year that is representative of the residual discharged to a reed bed, and analyze it for pH and volatile solids.

(f) The permittee shall take an annual composite sample that is representative of the residual removed from a reed bed, and analyze it for the parameters at (d) and (e) above, if residual is removed from a reed bed for ultimate use or disposal during the calendar year.

(g) The permittee shall, no later than 180 days prior to the anticipated date of evacuation of a reed bed, submit to the Department for approval a plan for removal and management of all accumulated residual. The plan shall include and identify all residual removal and management activities that will be conducted prior to, during, and after a reed bed is taken out of service and residual removed. This plan shall include, at a minimum, the procedure for removing the residual from the reed bed, a description and analysis of the residual,

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(h) Phragmites rhizomes shall be removed from the residual prior to the transportation of residual to an operation that will process it for land application.

7:14A-20.12 Residual blending and distribution

(a) Only exceptional quality residual generated and distributed in accordance with this subchapter shall be used for residual blending and distribution.

(b) The storage of bulk exceptional quality residual in excess of 100 cubic yards, or the storage of material derived from exceptional quality residual in excess of 2,500 cubic yards, is prohibited except in accordance with a NJPDES permit.

(c) On or before (six months after the operative date of these amendments), the operating entity of an existing residual blending and distribution site that is required to obtain a NJPDES permit pursuant to (b) above shall submit a complete permit application, or cease operation and remove all residual and material derived from residual.

(d) An applicant for a residual blending and distribution permit shall submit the information required at N.J.A.C. 7:14A-4 and, in accordance with the applicable NJPDES Permit Technical Manual, shall demonstrate that the site is appropriate for residual

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The demonstration shall include, at a minimum:

1. A plot plan showing all marketable residual product blending and storage areas, including the dimensions of all storage areas indicated in feet, showing maximum storage pile height, length and width;

2. A copy of a NJPDES stormwater permit, if applicable, or a written determination from the Department that a stormwater permit is not required;

3. A copy of a Soil Erosion and Sediment Control Plan, certified by the local Soil Conservation District, or an equivalent Department-approved erosion control plan, developed by a person trained in soil erosion and sediment control planning, for the site or part of the site affected; and

4. The maximum daily volume of exceptional quality residual proposed to be accepted, as well as the proposed maximum volume of exceptional quality residual and material derived from exceptional quality residual proposed to be stored at any one time.

(e) In addition to the information required in (d) above, an applicant for a permit to store material derived from exceptional quality residual in excess of 10,000 cubic yards shall submit:

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- 1. An environmental assessment in accordance with N.J.A.C. 7:14A-20.6; and**
- 2. A proposed groundwater monitoring program in compliance with N.J.A.C. 7:9C and 7:14A-7. This requirement shall be waived if the applicant submits and the Department approves a plan to implement site institutional controls, such as impervious surfaces with runoff collection and management, such that there is no discharge to groundwater.**
- (f) Subsection (b) through (e) above do not apply to operations in which all phases of handling, storing and blending occur in a completely enclosed setting.**

SUBCHAPTER 21. REQUIREMENTS FOR INDIRECT USERS

7:14A-21.3 Additional requirements for all significant indirect users

(a) (No change.)

(b) Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final decision by the control authority on the categorical determination request submitted under (a) above, whichever is later, each existing indirect user subject to a categorical pretreatment standard and currently discharging or scheduled to discharge to a local agency shall submit to the control authority a baseline report. The baseline report shall contain the information specified in (b)1 through 7 below. New sources and sources that became users

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1. – 3. (No change.)

4. Information showing the measured average daily and maximum daily flow, in gallons per day, to the local agency's treatment works from each of the following:

i. (No change.)

ii. Other streams as necessary to allow use of the combined wastestream formula of N.J.A.C. 7:14A-21.4(c)(**h**). The control authority may accept verifiable estimates of these flows instead of measured flows where justified by cost or feasibility considerations;

5. Pollutant levels measured as follows:

i. (No change.)

ii. The indirect user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. **In cases where the standard requires compliance with a best management**

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required by the control authority or the applicable categorical standards to determine compliance with the standard;

[iii. A minimum of four grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples shall be obtained through flow-proportional composite sampling techniques where feasible. The control authority shall waive flow-proportional composite sampling for any indirect user that demonstrates that flow-proportional sampling is infeasible. In such cases, samples shall be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the indirect user demonstrates that this shall provide a representative sample of the effluent being discharged;]

[iv.]**iii.** (No change in text.)

[v]**iv.** Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the indirect user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of N.J.A.C. 7:14A-21.4[(c)]**(h)** in order to evaluate compliance with the pretreatment standards. Where an alternative concentration or mass limit has been calculated in accordance with N.J.A.C. 7:14A-21.4[(c)] this adjusted limit along with supporting data shall be submitted to the control authority;

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Recodify existing vi. through viii. as **v. through vii.** (No change in text.)

6. (No change.)

7. If additional pretreatment and/or operation and maintenance shall be required to meet the pretreatment standards, the shortest compliance schedule under which the indirect user shall provide such additional pretreatment and/or operation and maintenance shall be submitted. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

i. Where the indirect user's categorical pretreatment standard has been modified by the combined wastestream formula pursuant to N.J.A.C. 7:14A-21.4[(c)](**h**) and/or a fundamentally different factors variance pursuant to N.J.A.C. 7:14A-21.5 at the time the indirect user submits the baseline report required under this subsection, the information required under (b)6 above and this paragraph shall pertain to the modified limits;

ii. If the categorical pretreatment standard is modified by the combined wastestream formula pursuant to N.J.A.C. 7:14A-21.4[(c)](**h**) and/or a fundamentally different factors variance pursuant to N.J.A.C. 7:14A-21.5 after the indirect user submits the baseline report required under this subsection, any necessary amendments to the information required under (b)6 above and this paragraph shall be submitted by the indirect user to the control authority within 60 days after the modified limit is approved.

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(c) – (d) (No change.)

(e) Within 90 days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, within 90 days following commencement of the introduction of wastewater into the local agency's treatment works, any indirect user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in (b)4 through 6 above. For indirect users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in N.J.A.C. 7:14A-21.4[(c)], this report shall contain a reasonable measure of the indirect user's long term production rate. For all other indirect users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the indirect user's actual production during the appropriate sampling period.

(f) Periodic reports on continued compliance shall be submitted as follows:

1. Any indirect user subject to a categorical pretreatment standard **(except a non-significant categorical indirect user as defined at N.J.A.C. 7:14A-1.2)**, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the local agency, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority [or the Department], a report indicating the nature and concentration of pollutants in the effluent which

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are limited by such categorical pretreatment standards. This report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in (b)4 above except that the control authority may require more detailed reporting of flows. **In cases where the pretreatment standard requires compliance with a best management practice (or pollution prevention alternative), the user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the user.** At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, and budget cycles, the control authority may approve the designation of months other than June and December during which the above reports are to be submitted.

2. An indirect user subject to a categorical pretreatment standard may be authorized by a control authority to forgo sampling of a pollutant regulated by a categorical pretreatment standard if the indirect user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the indirect user. This authorization is subject to the following conditions:

i. A monitoring waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility, provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

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ii. The monitoring waiver shall be valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five years. The user shall submit a new request for the monitoring waiver before the waiver can be granted for each subsequent control mechanism.

iii. In making a demonstration that a pollutant is not present, the indirect user shall provide data from at least one sampling of the facility's process wastewater prior to any treatment provided at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver shall be signed in accordance with N.J.A.C. 7:14A-4.9(a), and include the certification statement at (a)3 above. Non-detectable sample results may be used as a demonstration that a pollutant is not present only if the USEPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

iv. The monitoring waiver approved shall be included as a condition in the user's control mechanism. The reasons supporting the monitoring waiver and any information submitted by the user in its request for the waiver shall be maintained by the control authority for five years after expiration of the waiver.

v. Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the indirect user shall certify each report, using the statement

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the indirect user:

“Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR (specify applicable National Pretreatment Standard part(s)), I certify that, to the best of my knowledge and belief, there has been no increase in the level of (list pollutant(s)) in the wastewaters due to the activities at the facility since filing of the last periodic report under N.J.A.C. 7:14A-21.3(f)1.”

vi. In the event that a pollutant for which the monitoring waiver has been granted is found to be present or is expected to be present based on changes that occur in the user’s operations, the user shall immediately notify the control authority and comply with the monitoring requirements of (f)1 above or other more frequent monitoring requirements imposed by the control authority.

vii. The provisions of (f)2 above do not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

[2.]3. Where the control authority has imposed mass limitations on indirect users as provided for by N.J.A.C. 7:14A-21.4[(c)](h), the report required under (f)1 above shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the indirect user.

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(g) Monitoring and analysis to demonstrate continued compliance shall be conducted as follows:

1. [The] **Except in the case of non-significant categorical indirect users, the** reports required under (b), (e) and (f) **above and (h) below** shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the indirect user. Where the control authority performs the required sampling and analysis in lieu of the indirect user, the indirect user will not be required to submit the compliance certification required under (b)6 and (e) above. In addition, where the control authority itself collects all the information required for the report, including flow data, the indirect user will not be required to submit the report required under (b), (e) and (f) above **and (h) below.**

2. If sampling performed by an indirect user indicates a violation of pretreatment standards, the indirect user shall notify the control authority within 24 hours of becoming aware of the violation. The indirect user shall repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation[, except the indirect user is not required to resample if:]. **Where the control authority has performed the sampling and analysis in lieu of the indirect user, the control authority shall perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:**

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i. (No change.)

ii. The control authority conducts sampling of the indirect user's discharge between the time when the [indirect user performs its] initial sampling **was conducted** and the time when the indirect user **or the control authority** receives the results of this sampling.

3. The reports required under **(b), (c), and** (f) above **and (h) below** shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require [that frequency of] monitoring **at a frequency** necessary to assess [and ensure] compliance by indirect users with applicable pretreatment standards and requirements. **Sampling shall be as follows:**

i. Grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds.

ii. For all pollutants not in (g)3i above, 24-hour composite samples shall be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the control authority.

iii. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples shall be representative of the discharge and the decision to

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iv. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate USEPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows:

(1) For cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field.

(2) For volatile organics and oil and grease, the samples may be composited in the laboratory.

(3) Composite samples for other parameters unaffected by the compositing procedures as documented in approved USEPA methodologies may be authorized by the control authority, as appropriate.

4. For sampling required in support of baseline monitoring and 90-day compliance reports required in (b) and (e) above, a minimum of four grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the control authority may authorize a lower minimum where historical data demonstrates compliance. For the reports required by (f) above and (h)

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[4.]**5.** (No change in text.)

[5.]**6.** If an indirect user subject to the reporting requirement in (f) above **and (h) below** monitors any **regulated** pollutant **at the appropriate sampling location** more frequently than required by the control authority, using the procedures prescribed in (g)[4]**5** above, the results of this monitoring shall be included in the report.

(h) Significant indirect users as defined in N.J.A.C. 7:14A-1.2 shall submit to the control authority at least once each month (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required by the control authority to be reported. These reports shall be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136, as amended. [Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Department determines that the 40 CFR Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the control authority, local agency or the indirect user, approved by the Department.] This sampling and analysis may be performed by the control authority in lieu of the significant indirect user. [Where the control authority itself collects all the information required for the report, the indirect user will not be required to submit the report.]

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pollution prevention alternative, the user shall submit documentation required by the control authority to determine the compliance status of the user.

(i) (No change.)

(j) All indirect users shall promptly notify the [local agency] **control authority (and the local agency if the local agency is not the control authority)** in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the indirect user has submitted initial notification **pursuant to** (i) above.

(k) A facility determined to be an NSCIU pursuant to N.J.A.C. 7:14A-21.9(g) shall annually submit an NSCIU report that includes:

1. The following certification statement:

“Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR , I certify that, to the best of my knowledge and belief that during the period from (month, day, year) to (month, day, year): (a) The facility described as (facility name) met the definition of a non-significant categorical indirect user as described in N.J.A.C. 7:14A-21.9(g); (b) the facility complied with all applicable pretreatment standards and requirements during this

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reporting period; and (c) the facility never discharged more than 100 gallons

of total categorical wastewater on any given day during this reporting period.

This compliance certification is based upon the following information: (user shall list supporting information)."

2. Information necessary to support the certification statement; and

3. A signature in accordance with N.J.A.C. 7:14A-4.9(a).

7:14A-21.4 Categorical standards, calculation of equivalent and/or alternative limits

(a) When the categorical pretreatment standards are expressed in terms of production, equivalent effluent limitations shall be calculated as follows:

1. – 3. (No change.)

(b) When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an indirect user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority.

1. To be eligible for equivalent mass limits, the indirect user shall:

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i. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

ii. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and not have used dilution as a substitute for treatment;

iii. Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate shall be representative of current operating conditions;

iv. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

v. Have consistently complied with all applicable categorical pretreatment standards during the period (determined by the control authority) prior to the user's request for equivalent mass limits.

2. An indirect user subject to equivalent mass limits shall:

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i. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

ii. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

iii. Continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20 percent from those production rates determined in (b)1iii above. Upon notification of a revised production rate, reassessment and revision of the equivalent mass limit will be performed by the control authority as necessary to reflect changed conditions at the facility; and

iv. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to (b)1ii above, so long as the indirect user discharges under an equivalent mass limit.

(c) Mass limits for the categorical pretreatment standards at 40 CFR Parts 414, 419 and 455 may be converted to concentration limits by the control authority for purposes of calculating limitations applicable to individual indirect users provided:

1. The concentrations listed in the applicable subparts of 40 CFR Parts 414, 419 and 455 are used; and

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2. The user documents that dilution is not being substituted for treatment as prohibited by

(g) below.

[4] **(d)** Equivalent limitations calculated in accordance with (a)[2], **(b)** and [3]**(c)** above [shall be] **are** deemed pretreatment standards for the purposes of section 307(d) of the Federal Act and this subchapter. [Indirect]**Once incorporated into its control mechanism, the indirect** user[s] will be required to] **shall** comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

[5] **(e)** . When a categorical pretreatment standard that specifies one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-day average, limitations are applied, the same production or flow figure shall be used in calculating both [types of] **the maximum and average** equivalent limitations

[6] **(f)** (No change in text.)

Recodify existing (b) and (c) as **(g) and (h)** (No change in text.)

[(d)]**(i)** Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the indirect user's intake water [as follows:]. **Any indirect user wishing to obtain credit for intake pollutants shall submit a written request to the control authority. Upon such request, the applicable standard will be calculated on a “net” basis (that is, adjusted to reflect credit for pollutants in the intake water) if the requirements of (i)1 below are met.**

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[1. Any indirect user wishing to obtain credit for intake pollutants must submit a written request to the control authority. Upon such request, the applicable standard will be calculated on a "net" basis (that is, adjusted to reflect credit for pollutants in the intake water) if the requirements of (d)2 and 3 below are met.] **1. Categorical pretreatment standards may be adjusted to reflect**

the presence of pollutants in the indirect user's intake water provided either:

i. The applicable categorical pretreatment standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

ii. The indirect user demonstrates that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

[2. Criteria adjusting categorical pretreatment standards to reflect the presence of pollutants in the indirect user's intake water are as follows:

i. The indirect user shall demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.]

Recodify existing ii. through iv as **2. through 4.** (No change in text.)

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[3. The applicable categorical pretreatment standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis.]

7:14A-21.7 Additional requirements for facilities which meet the SIU definition and discharge to a delegated local agency's treatment works

Any indirect user which meets the SIU definition in N.J.A.C. 7:14A-1.2 and discharges or plans to discharge to a delegated local agency's treatment works shall obtain an IPP permit from that delegated local agency **unless exempted by the delegated local agency as an NSCIU in accordance with N.J.A.C. 7:14A-21.9(g)**. Delegated local agencies are required pursuant to N.J.A.C. 7:14A-19.3(c)2 to issue IPP permits to such indirect users.

7:14A-21.9 Exemptions from the requirements for an individual NJPDES-SIU permit from the Department

(a) An indirect user authorized to discharge by the local agency is exempt from the requirement to obtain an individual NJPDES-SIU permit from the Department if:

1. The indirect user does not meet the SIU definition; [or]
2. The indirect user discharges to a delegated local agency's treatment works[.]; **or**

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3. The indirect user meets the non-significant categorical indirect user criteria set forth in

(g) below.

(b) – (f) (No change.)

(g) An indirect user subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N, may be determined by the control authority to be an NSCIU rather than a significant indirect user if the user meets the following criteria:

1. The indirect user never discharges more than 100 GPD of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard);

2. The indirect user has consistently complied with all applicable categorical pretreatment standards and requirements; and

3. The indirect user never discharges any untreated concentrated wastewater.

7:14A-21.10 Establishing conditions and effluent limitations for an individual NJPDES-SIU permit issued by the Department

(a) Effluent limitations for NJPDES-SIU permits shall be developed for the applicable pollutants based on one or more of the following:

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1. – 2. (No change.)

3. In the absence of local limits developed by the local agency in accordance with N.J.A.C. 7:14A-19.7, limitations will be calculated by the Department to prevent pass through or interference at the receiving local agency's treatment works using the [*Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program*, USEPA, (December 1987)]**Local Limits Guidance Manual (USEPA, Office of Wastewater Management, July 2004), incorporated herein by reference, including any supplements and amendments thereto;**

4. – 5. (No change.)

(b) In addition to effluent limitations, the individual NJPDES-SIU permit shall contain the following conditions, requirements and/or provisions, as applicable:

1. - 4. (No change.)

5. Compliance schedule pursuant to N.J.A.C. 7:14A-6.4(a); [and]

6. Bypass provisions pursuant to N.J.A.C. 7:14A-21.6[.]; **and**

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7. Best management practices (BMP) provisions to implement the prohibitions listed in 40

CFR 403.5(a)(1) and (b).

SUBCHAPTER 22. TREATMENT WORKS APPROVALS, SEWER BANS, SEWER BAN EXEMPTIONS

7:14A-22.1 General policy and purpose

(a) It is the purpose of this subchapter to:

1. – 4. (No change.)

5. Establish criteria for exemptions from sewer connection bans;[and]

6. Establish a mechanism for actions by local and regional sewerage authorities to provide for adequate sewage conveyance and treatment facilities within their sewer service areas, and to ensure that sewage generating facilities are located within the appropriate sewer service area as determined by the applicable water quality management plans[.]; **and**

7. Establish procedures for timely decisions by the Department on treatment works approvals pursuant to N.J.S.A. 13:1D-29 et seq.

(b) (No change.)

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7:14A-22.3 Activities for which a treatment works approval is required

(a) Except as provided in N.J.A.C. 7:14A-22.4, no person shall engage in any of the following activities except in conformance with a valid treatment works approval from the Department:

1.-3. (No change.)

4. Building, installing, operating or modifying any domestic or industrial treatment works that discharges directly to the surface water or groundwater of the State[, with the exception of individual subsurface disposal systems exempted pursuant to N.J.A.C. 7:14A-22.4(a)3];[or]

5. Building, installing, operating or modifying any individual subsurface disposal system if required pursuant to N.J.A.C. 7:9A-3.9;

[5]**6.** Building, installing, operating or modifying any industrial treatment works located in an area of the State where the Department is the control authority (non-delegated areas) for an industrial pretreatment program pursuant 40 CFR 403 and N.J.A.C. 7:14A-19[.]; **or**

7. Building, installing, operating or modifying any process unit, storage unit or conveyance facilities that treat and/or convey RWBR. Projects utilizing RWBR shall be authorized under a NJPDES discharge permit.

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(b) – (c) (No change.)

7:14A-22.4 Activities for which a treatment works approval is not required

(a) A treatment works approval from the Department is not required for the following activities:

1. - 2. (No change.)

3. [Building,] **Except as provided at N.J.A.C. 7:14A-22.3(a)5, building,** installing, operating or modifying a septic system or other subsurface disposal system where the aggregate projected flow of the facility, using the criteria established in N.J.A.C. 7:9A, is less than or equal to 2,000 gallons per day of sanitary sewage. Treatment works for such facilities are regulated pursuant to N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems;

4. - 13. (No change.)

(b) In addition to (a) above, a treatment works approval or general industrial treatment works approval will not be required for the following facilities:

1. – 3. (No change.)

4. Mobile treatment works to be specifically utilized for the treatment of water in relation to a short-term pump test or dewatering associated with an underground storage tank project

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5. Building, installing, modifying or operating any system for discharges to ground water that are authorized by permit-by-rule in accordance with N.J.A.C. 7:14A-7.5 or 8.5[.]; **or**

6. Process units for the sole purpose of treating effluent to achieve a higher quality RWBR than what is required by the NJPDES permit and the onsite distribution system located at the facility where the RWBR is to be utilized.

(c)-(e) (No change.)

7:14A-22.5 Treatment works approval

(a) - (c) (No change.)

(d) A preapplication review is an optional service especially recommended for large-scale development. During this review the Department will discuss the apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The conference is intended to provide guidance and does not constitute a commitment of approval or denial of a treatment works approval application for the proposed development.

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approval pursuant to this subchapter [and N.J.A.C. 7:1C-1,] within 90 days of receipt of [a] **an** **administratively** complete application by the Department. This time period may be extended for one 30-day period upon the mutual consent of the applicant and the Department.

1. Within a maximum of 20 business days following the date of receipt of the application, the Department shall perform a review to determine administrative completeness of the treatment works application in accordance with N.J.A.C. 7:14A-22.6 or 22.8 as appropriate, assign an agency project number and notify the applicant in writing the administrative status of the application and any additional information required to make the application administratively complete.

i. In the case where the application has been determined to be administratively incomplete, the Department shall make a decision on the treatment works approval application within 90 days following the date of receipt of the additional information required to make the application administratively complete.

ii. In the case where the application has been determined to be administratively incomplete, the Department reserves the right to deny the application without prejudice if the additional information required to make the application administratively complete has not been received by the Department within 20 days of the date of the notice of the administrative status of the application.

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2. Comments received on an application will be included in the application file and will be considered by the Department in the application review process.

3. If the Department fails to act within the 90 days of receipt of an administratively complete application, the application shall be deemed to have been approved, to the extent that the application does not violate other statutes or regulations then in effect, and subject to any standard terms and conditions applicable to such treatment works approvals.

4. For treatment works approval applications that have been denied by the Department, a subsequent application by the same applicant for a revised project of the same or reduced scope on the same site may be submitted within one year of the date of denial without additional fees. The waiving of such fees is limited to only one resubmittal request. The resubmitted application will be treated as a new application, although references may be made to the previously reviewed application.

Recodify existing (e) through (l) as **(f) through (m)**. (No change in text.)

(n) The Department shall publish in the DEP Bulletin, a report of the receipt of each new treatment works application and the final action taken. Publication in the DEP Bulletin constitutes constructive notice to all interested persons of the receipt by the Department of each new treatment works application and the final action taken by the Department on treatment works approvals.

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1. The application status report shall include, but is not limited to:

i. The applicant's name;

ii. The agency project number;

iii. The nature of the project; and

iv. The date and description of the receipt of each new treatment works application and the final action taken on the project.

7:14A-22.6 [Information and submission]**Application** requirements for general industrial treatment works approvals

(a) Industrial treatment works not exempt pursuant to N.J.A.C. 7:14A-22.4 shall submit the following information as an application for a General Industrial Treatment Works Approval **to the address at N.J.A.C. 7:14A-22.8(d):**

1. (No change.)

2. The minimum fee for a treatment works pursuant to N.J.A.C. [7:1C-1.5] **7:14A-22.25;**

3. - 7. (No change.)

8. [Copies of notification to local agencies by certified mail, return receipt requested] **Evidence**

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of the intent to file with the Department a treatment works approval application, in

accordance with N.J.A.C. [7:1C-1.5] **7:14A-22.8(a)4.**

(b) - (d) (No change.)

7:14A-22.8 [Requirements]**Application requirements** for construction, installation, or modification of treatment works-Stage II

(a) Persons who propose to build, install or modify treatment works that require the Department's approval pursuant to this subchapter, shall submit the following information and documents in the manner prescribed in this subchapter:

1. (No change.)

2. The appropriate fee, calculated in accordance with N.J.A.C. [7:1C-1.5] **7:14A-22.25**, made payable to Treasurer, State of New Jersey, Environmental Services Fund;

3. (No change.)

[4. Copies of notification to local agencies by certified mail, return receipt requested, in accordance with N.J.A.C. 7:1C-1.5;] **4. Evidence that the following agencies have been notified by certified mail, return receipt requested, of the intent to file with the Department**

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a treatment works approval application:

i. The municipal environmental commission, if any;

ii. The county environmental commission, if there is no municipal environmental commission;

iii. The municipal planning board; and

5. – 10. (No change.)

11. Copies of Pinelands **Commission** approval or certificate of filing, Delaware and Raritan Canal Commission approval, **and a Highlands Preservation Area Approval**, if required;

12. - 13. (No change.)

(b) - (c) (No change.)

(d) Applications and any other information pertaining to treatment works shall be sent to the Department's Division of Water Quality, Bureau of Permit Management, PO Box 029, Trenton, NJ 08625-0029.

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(e) Any inaccurate material that could affect the outcome of a treatment works approval decision or falsification of information submitted shall be cause for rejection of the application at any time during the review procedure.

7:14A-22.10 Requirements for stage III treatment works approval applications

(a) - (b) (No change.)

(c) For treatment works approvals that have been issued as stage II ("construct only"), except for the temporary operation of treatment works for the purpose of performance testing, operation may begin only after written approval in the form of a stage III treatment works approval is issued by the Department. Requirements for a stage III approval include:

1. – 2. (No change.)

3. An appropriate fee for a permit modification pursuant to N.J.A.C. [7:1C-1.5] **7:14A-22.25**;
and

4. (No change.)

7:14A-22.11 Modifications and revocations of treatment works approvals

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(a) – (b) (No change.)

(c) Unless such a requirement is specifically waived by the Department, a modification request will generally not be considered, and instead, a new treatment works application will be required for major modifications of the project scope including, but not limited to, the addition of a pumping station or alternate treatment units or processes, significant changes to the collection system and the inclusion of sewage generating structures not covered in the original approval.

1. Requests for modifications shall include the following documents:

i. An appropriate fee pursuant to N.J.A.C. [7:1C-1.5] 7:14A-22.25;

ii. – vi. (No change.)

2. (No change.)

7:14A-22.12 Extensions of time for treatment works approvals

(a) (No change.)

(b) At the Department's discretion, a treatment works approval may be extended beyond the original two-year approval date, to a maximum period of five years from the original issuance

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1. A request for an extension of time must be received by the Department prior to the expiration date of the permit and shall include the following:

i. An appropriate fee pursuant to N.J.A.C. [7:1C-1.5(b)] **7:14A-22.25**;

ii. - iii. (No change.)

2. If the extension request is not received by the Department prior to the expiration date of the permit, then in addition to the information required under (b)1 above, the applicant shall also submit written proof of consent for the time extension from the sewerage authority or municipality which owns the receiving treatment plant, and the minimum fee in accordance with N.J.A.C. [7:1C-1.5] **7:14A-22.25**. In such cases, if the request is approved, the Department will issue the permit extension in the form of a new TWA valid for one year, but extendible up to a maximum of five years from the issuance date of the original approval.

(c) - (e) (No change.)

7:14A-22.24

Requests for adjudicatory hearings

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(a) Subject to the limitations of (d) below, a person may request an adjudicatory hearing to

contest the issuance or denial of a treatment works approval of the approval or denial of a sewer ban exemption request.

(b) A request for an adjudicatory hearing shall:

1. Be in writing on a hearing request form available from the Department and shall set forth:

i. The name, address and daytime telephone number of the person requesting the hearing;

ii. When the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant;

iii. A copy of the Department notice or decision for which a hearing is being requested;

iv. The Department file number or project number on the notice or decision;

v. A statement requesting a hearing;

vi. A specific admission, denial or explanation of each fact appearing in the Department notice or decision or a statement that the person is without knowledge thereof; and

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vii. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense; and

2. Be submitted to the Department as follows:

i. Submit the original request to:

Office of Legal Affairs

Attention: Adjudicatory Hearing Requests

Department of Environmental Protection

401 East State Street, 4th Floor

PO Box 402

Trenton, New Jersey 08625-0402.

ii. Submit a copy of the request to:

Division of Water Quality

Attention: Director

Department of Environmental Protection

PO Box 029

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Trenton, NJ 08625-0029.

(c) If a hearing request does not include a specific admission, denial or explanation of each fact alleged, or a statement that the person is without knowledge thereof, the facts alleged in the Department's notice or decision shall be deemed to have been admitted.

(d) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14B-3.1 through 3.3.

(e) To contest the Department's issuance or denial of a treatment works approval a person shall submit a hearing request no later than 30 days after notice of the decision or determination is published in the DEP Bulletin. To contest the Department's approval or denial of a sewer ban exemption, a person shall submit a hearing request no later than 30 days after receipt of the Department's approval or denial. If a person submits the hearing request after this time, the Department shall deny the request. The DEP Bulletin is available through the Department's website at www.state.nj.us/dep.

(f) As part of a request for an adjudicatory hearing, a person may request that the Department determine whether the matter for which the adjudicatory hearing is requested is suitable for mediation by the Department's Office of Dispute Resolution. The Department shall promptly notify the requester of its determination. If the Department determines the matter is suitable for mediation, it shall also notify the requester of the procedures and schedule for mediation.

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(g) The person requesting a hearing may ask the Department to stay the operation of the approval that is the subject of the hearing request. The Department shall grant the request for a stay for good cause shown, or may allow certain regulated activities pending hearing and decision, upon such terms and conditions the Department deems appropriate.

(h) The Department shall notify the requester if the request for a hearing is granted and, if denied, the reason why. If a hearing request is granted, the Department shall refer the matter to the Office of Administrative Law for an adjudicatory hearing in accordance with the Administrative Procedure Act, N.J.S.A 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(i) At the conclusion of any adjudicatory hearing in the Office of Administrative Law, the administrative law judge will submit an initial decision to the Commissioner. The Commissioner shall issue a final decision affirming, rejecting, or modifying the findings of fact and conclusions of law in the Initial Decision, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(j) The Commissioner's final decision under (i) above may be appealed to the Appellate Division of the Superior Court, within the time provided by court rule.

7:14A-22.25

Treatment works approval fees

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(a) Fees charged for treatment works approvals shall be calculated as follows:

1. Applicants for a treatment works approval shall be categorized based on the construction costs of their projects as follows:

i. Category 1 includes projects where the construction costs are greater than \$1,000,000;

ii. Category 2 includes projects where the construction costs are greater than \$250,000 but are less than or equal to \$1,000,000.

iii. Category 3 includes projects where the construction costs are less than or equal to \$250,000.

2. Fees for treatment works approvals shall be based upon the coefficient “P” where:

i. “P” = $EB / \{T1 + 2(T2) + 4(T3) + 1,500,000(N1) + 500,000(N2)\}$;

ii. “EB” = the estimated budget for the Department's treatment works approval program for the forthcoming fiscal year;

iii. “T1” = the sum of the construction costs for all projects in Category 1 from the prior fiscal year;

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iv. "T2" = the sum of the construction costs for all projects in Category 2 from the prior fiscal year;

v. "T3" = the sum of the construction costs for all projects in Category 3 from the prior fiscal year;

vi. "N1" = the total number of projects in Category 1 from the prior fiscal year; and

vii. "N2" = the total number of projects in Category 2 from the prior fiscal year.

3. All applicants for a treatment works approval shall pay one of the following fees based upon the category in which the project falls as determined by (a)1 above:

i. Category 1 fee = $4P(\$250,000) + 2P(\$750,000) + P(\text{construction cost of the applicant's project} - \$1,000,000)$;

ii. Category 2 fee = $4P(\$250,000) + 2P(\text{construction cost of the applicant's project} - \$250,000)$; or

iii. Category 3 fee = $4P(\text{construction cost of the applicant's project})$.

4. An applicant for a treatment works approval shall pay a minimum fee of \$850.00.

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5. The Department shall prepare an annual fee schedule report that will include the following:

i. The coefficient “P” of the fee formula derived from the equation in (a)2i above;

ii. A detailed financial statement showing the estimated budget for the forthcoming fiscal year. The statement shall include a breakdown of the treatment works approval program by account title (for example, print and office supplies, vehicular, and maintenance of vehicles); and

iii. A detailed financial statement of the previous fiscal year's actual expenditures including a breakdown by account titles, total by category of treatment works approval applications reviewed, actual revenue and any credit/deficit to be carried forward to the next fiscal year.

6. The Department shall hold a public hearing concerning the fees to be assessed for the forthcoming fiscal year only when projected fees exceed a 10 percent increase as compared to the previous fiscal year's fees. The Department shall hold the hearing prior to the actual assessment of fees. The Department shall provide public notice of the hearing in the New Jersey Register, the DEP Bulletin, and one or more newspapers with general circulation.

7. In those years not requiring a public hearing, publication of the forthcoming fiscal

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New Jersey Register, the DEP Bulletin and one or more newspapers with general circulation.

8. The annual TWA fee schedule report will be made available on the Department's website at <http://www.nj.gov/dep/dwq/>, at any time after public notice is published in accordance with (a)6 or 7 above, or may be obtained by submitting a request and self addressed 10 inch by 13 inch (minimum size) envelope to:

New Jersey Department of Environmental Protection

Environmental Regulation

Division of Water Quality

Bureau of Financing and Construction Permits

TWA Fee Report Request

PO Box 425, 3rd floor

Trenton, New Jersey 08625-0425

(b) Requests to extend the expiration date of a valid treatment works approval will be processed in accordance with N.J.A.C. 7:14A-22.12. The fee for a request for an extension of time is \$200.00.

(c) Request to modify a valid treatment works approval will be processed in accordance with N.J.A.C. 7:14A-22.11. The fee for a request to modify a treatment works approval shall be calculated based upon the construction cost of the project change(s) in accordance

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(d) All fees shall be made payable to the “Treasurer, State of New Jersey - Environmental Services Fund” and shall accompany the application.

(e) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

SUBCHAPTER 23. TECHNICAL REQUIREMENTS FOR TREATMENT WORKS APPROVAL APPLICATIONS

7:14A-23.2 Scope

(a) – (c) (No change.)

(d) The technical standards for those subsurface disposal systems that require a treatment works approval pursuant to N.J.A.C 7:14A-22.3(a)5 are established in N.J.A.C 7:9A. The Department will consider deviations from the design criteria in N.J.A.C. 7:9A provided that appropriate documentation addressing the need for deviation and justification for the proposed design are submitted with the treatment works approval application and includes a signed and sealed statement from the design engineer attesting to the adequate design of the treatment works to meet the purposes intended.

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7:14A-23.3 Projected flow criteria

(a) The values specified below are to be used in computing the projected flow to wastewater conveyance and treatment facilities and when making an application for a treatment works approval pursuant to N.J.A.C. 7:14A-22. The specific measurement unit listed for each category shall be used as the basis for the projected flow. No additional provisions for inflow and infiltration are required. For the purposes of design only, other values, proposed by the design engineer, through actual water usage data, may be accepted at the Department's discretion, with an appropriate safety factor. However, all determination concerning whether or not any specific project requires a treatment works approval and/or sewer ban exemption shall be based upon the projected flow criteria established below. These criteria are not mandated to be used by sewerage authorities as a basis for establishing local user fees and/or connection fees.

Type of Establishment	Measurement Unit	Gallons Per Day
Residential Dwellings		
(single family home, duplex units, townhouses, condominiums, apartments)		
1 bedroom unit	Per Dwelling	150
2 bedroom unit	Per Dwelling	225
3 bedroom unit or larger	Per Dwelling	300

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<u>1 bedroom unit (age restricted)</u>	<u>Per Dwelling</u>	<u>110</u>
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<u>2 bedroom unit (age restricted)</u>	<u>Per Dwelling</u>	<u>170</u>
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<u>3 bedroom unit (age restricted)</u>	<u>Per Dwelling</u>	<u>225</u>
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Institutions (includes staff)

Hospitals	Bed	175
<u>Assisted living facility</u>	<u>Bed</u>	<u>100</u>
<u>Skilled nursing facility</u>	<u>Bed</u>	<u>75</u>
Other institutions	Bed	125

Miscellaneous

Office buildings (gross area)	Sq. Ft.	0.100
Stores and shopping centers (gross area)	Sq. Ft.	0.100
Factories/warehouses (add process wastewater)	Employee	25
with showers, (add process wastewater)	Employee	40
Laundromats	Per machine	580
Bowling alleys	Alley	200
Picnic Parks (restrooms only)	Person	10
Picnic Parks with showers	Person	15

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Fairgrounds (based upon average attendance)	Person	5
Assembly halls	Seat	3
Airports (based on passenger use)	Passenger	3
Churches (worship area only)	Seat	3
Theater (indoor)	Seat	3
Dinner theater	Seat	20
Catering/Banquet Hall	Person	20
Sports stadium	Seat	3
Visitor Center	Visitor	5
<u>Multi-member swimming pool</u>	Person	15

(b) – (c) (No change.)

SUBCHAPTER 24. ADDITIONAL REQUIREMENTS FOR CERTAIN STORMWATER DISCHARGES

7:14A-24.2 Stormwater discharges for which [a] **an** NJPDES permit is required under this subchapter; exemptions

(a) - (b) (No change.)

(c) The following stormwater discharges are exempt from the requirement to obtain [a] **an** NJPDES permit from the Department:

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1. (No change.)

2. Stormwater DSW from mining operations [or oil and gas exploration, production, processing or treatment operations or transmission facilities,] composed entirely of flows which are from conveyances or systems of conveyances (including, but not limited to, pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations;[and]

3. Stormwater DGW that are from municipal separate storm sewers, residential areas (including residential streets, parking lots, easements, and open space), commercial areas other than areas of high pollutant loading as described under N.J.A.C. 7:14A-7.4(b)5ii, or animal feeding operations, but that are not through underground injection regulated under N.J.A.C. 7:14A-8 and not identified under (a) above[.]; **and**

4. Stormwater discharges associated with all field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except when the area where the field activity or operation has had a discharge of stormwater resulting in the discharge of a reportable

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has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987. This exemption includes discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities that contribute to a violation of a surface water quality standard.

(d) – (g) (No change.)

7:14A-24.4 Deadlines to apply for NJPDES permit for stormwater discharges

(a) Any operating entity for a stormwater DSW or DGW identified under (a)1 through 8 below that does not have an effective NJPDES permit authorizing its stormwater discharges shall submit a request for authorization for a general NJPDES permit, or an application for an individual NJPDES permit, in accordance with the following deadlines:

1. – 3. (No change.)

4. For a stormwater DSW or DGW that is the subject of a notice under N.J.A.C. 7:14A-24.2(b), or that is subject to N.J.A.C. 7:14A-24.7(a)[5]4, a request for authorization for a stormwater general permit, or an application for an individual permit, shall be submitted within 180 days of notice, unless the Department approves a later date.

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5. (No change.)

6. [Except as provided in [(a)6i below, the] **The** deadline to obtain NJPDES permit authorization for all stormwater DSW identified under paragraph 1 of the definition of “stormwater discharge associated with small construction activity” in N.J.A.C. 7:14A-1.2 is March 3, 2004, or the date on which construction commences, whichever is later. General permits for such discharges shall specify deadlines for submitting requests for authorization under such permits. An entity submitting an individual permit application for such discharges shall submit an application at least 90 days before the date on which construction is to commence (unless the Department approves a later date), or by March 3, 2004, whichever is later.

[i. The deadline to obtain NJPDES permit authorization for stormwater discharge associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities is March 10, 2005, or the date on which construction commences, whichever is later. General permits for such discharges shall specify deadlines for submitting requests for authorization under such permits. An entity submitting an individual permit application for such discharges shall submit an application at least 90 days before the date on which construction is to commence (unless the Department approves a later date), or by December 10, 2004, whichever is later.]

7. – 8. (No change.)

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(b) (No change.)

7:14A-24.7 Permit application requirements for stormwater discharges associated with industrial activity or small construction activity, and for certain other stormwater DSW

(a) Operating entities for stormwater discharges associated with industrial activity or small construction activity (from point or nonpoint sources), and for industrial or commercial stormwater DSW (from point or nonpoint sources) identified under N.J.A.C. 7:14A-24.2(a)1 or 7, shall apply for an individual NJPDES DSW permit or request authorization under a final stormwater general NJPDES DSW permit in accordance with the deadlines set forth at N.J.A.C. 7:14A-24.4. Any such operating entity that is required or seeks to obtain an individual DSW permit shall submit an individual permit application in accordance with the requirements of N.J.A.C. 7:14A-4 as modified and supplemented by this section and N.J.A.C. 7:14A-24.8. Except as provided in (a)2 and (b) below, this individual permit application shall include (for discharges composed entirely of stormwater) the NJPDES-1 Form, NJPDES Form RF, and NJPDES Form R, Part A (the facility's residual use or residual disposal practices may require the completion of additional sections of Form R). If this individual permit application is for a stormwater discharge mixed with domestic sewage and/or an industrial nonstormwater discharge that requires a NJPDES-DSW permit, the operating entity shall comply with N.J.A.C. 7:14A-4, but is exempt from the requirements of (a)1 and 2 below, and shall not submit NJPDES Form RF.

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1. - 2. (No change.)

[3. The operating entity for an existing or new discharge composed entirely of stormwater from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to apply for a NJPDES DSW permit in accordance with this section, unless the facility:

i. Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. 117.21 or 40 C.F.R. 302.6 at anytime since November 16, 1987;

ii. Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. 110.6 at any time since November 16, 1987; or

iii. Contributes to a violation of a surface water quality standard.]

Recodify existing 4. and 5. as **3. and 4.** (No change in text.)

(b) – (c) (No change.)