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**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**LAND USE MANAGEMENT**

**WATER MONITORING AND STANDARDS**

**Surface Water Quality Standards**

**Surface Water Classifications**

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

Authorized By: Bradley M. Campbell, Commissioner,  
Department of Environmental Protection

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq.,  
N.J.S.A.13:1D-1 et seq.

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

DEP Docket Number: 32-04-11/432

Proposal Number: PRN 2004-474

Submit written comments by February 18, 2005 to:

Leslie W. Ledogar, Esq.  
Attn. DEP Docket Number 32-04-11/432  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
P.O. Box 402  
Trenton, NJ 08625-0402

The New Jersey Department of Environmental Protection (Department) requests that commenters submit comments on 3.5-inch disk or CD as well as paper. 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, the commenter's name and affiliation.

Copies of this rule proposal can be downloaded electronically from the Department's web page at <http://www.state.nj.us/dep/rules>.

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The agency proposal follows:

### Summary

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

The Department administers the Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B, for the protection of surface water quality of the waters of the State. The Department develops and administers the SWQS pursuant to the Water Quality Planning Act (WQPA), N.J.S.A. 58:11A-1 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The SWQS are further developed and administered in conformance with the requirements of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., commonly known as the Clean Water Act (CWA), and the Federal regulatory program established by the United States Environmental Protection Agency (USEPA) at 40 CFR § 131. The SWQS include general requirements, use classifications, antidegradation categories, and water quality criteria applicable to the surface waters of the State. The SWQS are established to address the Department's responsibility to conduct a continuous planning process pursuant to Section 303 of the CWA, 33 U.S.C. § 1313, and the WQPA, N.J.S.A. 58:11A-1 et seq.

The SWQS are intended to aid the Department in its implementation of the New Jersey Pollutant Discharge Elimination System (NJPDDES) rules (N.J.A.C. 7:14A); Freshwater Wetlands Protection Act (N.J.A.C. 7:7A); Coastal Zone Management rules (N.J.A.C. 7:7E); Flood Hazard Area Control rules (N.J.A.C. 7:13); Stormwater Management rules (N.J.A.C. 7:8); and Water Quality Management Planning rules (N.J.A.C. 7:15).

The SWQS establish three categories of antidegradation protection: Outstanding National Resource Waters (ONRW); Category One waters; and Category Two waters. "Category One

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waters,” are defined in the SWQS at N.J.A.C. 7:9B-1.4 as “those waters designated . . . for protection from measurable changes in water quality characteristics because of their . . . exceptional ecological significance [or their] exceptional water supply significance . . .” and may include, but are not limited to:

1. Waters originating wholly within Federal, interstate, State, county or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated FW1 at N.J.A.C. 7:9B-1.15(h) Table 6;
2. Waters classified at N.J.A.C. 7:9B-1.15(c) through (g) as FW2 trout production waters and their tributaries;
3. Surface waters classified in this subchapter as FW2 trout maintenance or FW2 non-trout that are upstream of waters classified in this subchapter as FW2 trout production;
4. Shellfish waters of exceptional resource value; or
5. Other waters and their tributaries that flow through, or border Federal, State, county or municipal parks, forests, fish and wildlife lands, and other special holdings.

Under the antidegradation policies at N.J.A.C. 7:9B-1.5(d)iii, Category One waters are protected from any measurable changes to existing water quality. A fact sheet explaining New Jersey’s antidegradation policies and Category One implementation is available at <http://www.state.nj.us/dep/wmm/sgwqt/c1factsheet.pdf>.

In the existing SWQS at N.J.A.C. 7:9B-1.15(c), the Shark River is divided into three segments. The Colts Neck segment (from the source to Route 33) is classified as FW2-NT. (FW2 means the general surface water classification applied to those fresh waters that are not designated as FW1 or Pinelands Waters, and NT means nontrout). The Neptune segment (running from Route 33 to the Brighton Avenue bridge, Glendola) is classified as FW2-TM/SE1.

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(TM means trout maintenance and SE1 is the general surface water classification applied to saline waters of estuaries.) The Glendola segment (from Brighton Avenue Bridge, Glendola to the Atlantic Ocean) is classified as FW2-NT/SE1.

As explained further below, the Department is proposing to amend the SWQS at N.J.A.C. 7:9B-1.15(c) to segment the non-tidal portion of Shark River from its source to Remsen Mill Road and rename this segment as Shark River Brook. In addition, the Department is proposing to upgrade the antidegradation designation of the Shark River Brook and its named and unnamed tributaries from Category Two to Category One based on "exceptional water supply significance."

Also, as explained below, the Department is proposing to delete the twofold fresh and saline use classifications, FW2-TM/SE1 and FW2-NT/SE1 applicable to portions of the Shark River Brook and Shark River based on the monitoring data available on the levels of salinity. As a result, the non tidal portion of Shark River Brook from Route 33 to Remsen Mill Road is being proposed for reclassification as freshwater (FW2) and the tidal portion of the Shark River from Remsen Mill road to Atlantic Ocean is being proposed for reclassification as saline estuarine (SE1). However, the use classifications based on the trout status (FW2-TM and FW2-NT) applicable to the freshwater portion of the Shark River Brook remain the same.

### **Proposed Category One Antidegradation Designation Based on Exceptional Water Supply Significance**

The Department is proposing to upgrade the antidegradation designation of Category One for Shark River Brook and all of its named and unnamed tributaries based on "exceptional water supply significance." In January 2004, the Shark River Clean-up Coalition provided the Department with a proposal justifying an upgrade of Shark River Brook and its tributaries to Category One. The proposal was supported by resolutions submitted to the Department by affected municipalities.

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Upon review of available data, the Department is now identifying Shark River Brook as a waterbody in need of special protection because it provides a vital supply of drinking water for New Jersey residents. The result of extending the Category One antidegradation designation to the Shark River Brook and its tributaries will be that the entire sub-watershed (HUC 14) will be protected by the Category One designation.

Protection of the entire sub-watershed of Shark River Brook, including all its tributaries, from further degradation is critical to the Glendola Reservoir which is already designated as Category One. The New Jersey American Water Company (NJAWC) pumps water from the Shark River Brook and send it directly to the Jumping Brook Treatment Plant in Neptune Township or stores it in the Glendola Reservoir. The Jumping Brook Plant provides potable water for approximately 245,000 NJAWC customers in the municipalities of Avon, Bradley Beach, Belmar, Neptune City, South Belmar, Neptune Township, Bay Head and Tinton Falls.

Protecting the Glendola Reservoir from further degradation is not adequate if the streams that flow into the reservoir are allowed to degrade. Therefore, the Department has determined that a preventive focus in the form of a more protective antidegradation designation for Shark River Brook and its tributaries is necessary to preserve and manage the drinking water supplies serving the residents of New Jersey.

The Department is proposing to establish the Category One antidegradation designation for Shark River Brook and its named tributaries (Reevy Branch, Robins Swamp Brook, Sarah Green Brook, South Brook, and Webleys Brook) and unnamed tributaries because these waters are of “exceptional water supply significance.” In addition, the Department is proposing to list the four named tributaries of Shark River Brook in the SWQS, which are currently not listed. As a result of these upgrades, the total river miles designated as Category One under the SWQS will increase by approximately 21.9 river miles.

### **Proposed Use Classifications**

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Currently, Shark River is classified as FW2-NT from the source to Route 33; FW2-TM/SE1 from Route 33 to Brighton Avenue; and FW2-NT/SE1 from Brighton Avenue to Atlantic Ocean. Under the SWQS, both FW2 and SE1 water quality criteria are applicable to the portion of the stream with the twofold use classification depending on the salinity at mean high tide.

Based on the monitoring data on salinity, the Department had determined that the salinity in the section of the Shark River Brook between Route 33 and Remsen Mill Road is less than 3.5 parts per thousand. Remsen Mill Road intersects the Shark River Brook upstream of Brighton Avenue. Therefore, the Department is proposing to delete the saline estuarine use classification for the non tidal portion of the Shark River Brook and is proposing to reclassify this segment as freshwater (FW2-TM(C1)). At the same time, the Department is also proposing to delete the freshwater use classification for the tidal portion of the Shark River from Remsen Mill Road to the Atlantic Ocean where the salinity is greater than 3.5 parts per thousand and reclassifying it as saline estuarine or SE1.

The Department is proposing to rename the non-tidal portion of the Shark River as Shark River Brook and retain the name of Shark River for the tidal portion. The new segmentation and classification retains the current uses but defines where these uses apply.

The proposed stream classifications and the antidegradation designations of Shark River Brook, its tributaries and Shark River are summarized and presented in the Table below.

<b>Waterbody</b>	<b>Portion of the Stream</b>	<b>Current Classification</b>	<b>Proposed Classification</b>
Shark River Brook	(Colts Neck) - Source to Rt. 33, including all unnamed tributaries	FW2-NT	FW2-NT(C1)
	(Neptune) - Rt. 33 to Remsen Mill Rd., including all unnamed tributaries	FW2-TM/SE1	FW2-TM(C1)
	Reevy Branch (Reevytown) - Source to confluence with Shark River Brook	FW2-NT	FW2-NT(C1)

Shark River Brook  
Named  
Tributaries:

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	Robins Swamp Brook (Neptune) - Source to confluence with Shark River Brook	Not Listed in Existing Rule	FW2-TM(C1)
	Sarah Green Brook (Neptune) - Source to confluence with Shark River Brook	Not Listed in Existing Rule	FW2-TM(C1)
	South Brook (Wall) - Source to confluence with Shark River Brook	Not Listed in Existing Rule	FW2-TM(C1)
	Webleys Brook (Wall) - Source to confluence with Shark River Brook	Not Listed in Existing Rule	FW2-NT(C1)
Shark River	(Glendola) - Remsen Mill Road bridge to Atlantic Ocean	FW2-NT/SE1	SE1

### **Social Impact**

The proposed upgraded antidegradation designation for Shark River Brook will allow the Department to better protect the surface waters of the State and will, therefore, result in a positive social impact. The proposed Category One antidegradation designation will help prevent degradation of water quality and thereby help increase recreational opportunities and improve the health of the aquatic resources. Category One antidegradation designation will discourage development where it could impair or destroy natural resources and the environmental qualities vital to the health and well being of the citizens of New Jersey. The maintenance of water quality resources is important to all residents, particularly to the many communities that depend upon surface waters for public, industrial, and agricultural water supplies, recreation, tourism, fishing, and shellfish harvesting. The proposed amendments will enable the Department to maintain existing water quality for the protection of existing and designated uses of the Shark River Brook and its tributaries.

### **Economic Impact**

The antidegradation provisions included in the Surface Water Quality Standards are triggered when an applicant proposes an activity that could lower water quality. The Department has determined that there are no existing wastewater discharges in the sub-watershed. Therefore the upgrade in antidegradation to Category One should not result in economic impact to point sources.

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Under the NJPDES rules, N.J.A.C. 7:14A, a discharge permit for a new wastewater discharge to a Category One stream segment must include effluent limitations that will ensure that existing water quality will be maintained. In calculating effluent limitations, the Department considers the size of the receiving stream, the volume of wastewater, current levels of pollutants in the receiving stream, and effluent characteristics. These site-specific conditions preclude a “one size fits all” analysis. Should an applicant propose a new wastewater discharge to Shark River Brook or its tributaries, the applicant would be required to determine existing water quality as part of its NJPDES application and demonstrate that the new discharge would not result in a measurable change in water quality.

Under the recently adopted Stormwater Management rules, N.J.A.C. 7:8, Special Water Resource Protection Areas (buffers) were established as a new BMP to meet the Category One antidegradation standard. The buffers are required for all new major development adjacent to all Category One waters and upstream tributaries of Category One waters within the same sub-watershed, including new development along the Shark River Brook and its tributaries. Under the Stormwater Management Rules, a buffer includes an area extending 300 feet from the top of stream bank or center channel, if the stream has no defined bank. This buffer requirement will not affect existing development.

Exceptions to the buffer BMP under N.J.A.C. 7:8-1.6 include redevelopment within the buffer that is confined to the footprint of existing impervious areas (buildings, roads, parking, etc.). Where the buffer is already disturbed by active agriculture, the width may be reduced in the disturbed area, but may not extend more than 150 feet from either bank. The buffer requirement can also be adjusted to reflect local conditions through the approval of a stream corridor protection plan as part of a regional stormwater management plan. Also, the buffer will not apply for five years to single-family homes being constructed on lots that received subdivision approval prior to February 2, 2004. Further, small development projects resulting in less than 0.25 of an acre of new impervious surface and less than one acre of site disturbance are not regulated by the Stormwater Management Rules.



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The designation of Shark River Brook as Category One may impact the scope and extent of development potential for a parcel and may therefore, generate an increased financial burden on developers and municipalities seeking to build near the Shark River Brook watershed. Depending on the type of development and the cost of services the municipality would provide to the new development, the Category One designation may or may not increase the financial costs. For example, there may be an increase or decrease in costs for school construction, fire and police protection. However, the designation of Shark River Brook as Category One may also add value to the areas adjacent to the waterbody and therefore, the cost is offset by the protection of the State's most sensitive and unique waters including the Shark River Brook and its tributaries.

### **Environmental Impact**

The proposed amendments increase the number of waterbodies in the State with Category One antidegradation designation. The same surface water quality criteria apply in Category One and Category Two streams. The additional protection provided by the Category One antidegradation designation is to prevent degradation of existing water quality. While Category Two provides water quality protection, the Department has made a determination that the Shark River Brook deserves a greater level of protection to ensure that potable water supplies, and therefore, drinking water are as pollutant-free as possible. Since the Glendola Reservoir is already designated as a Category One waterbody, upgrading the antidegradation designation for the Shark River Brook watershed will provide better protection for the water supply of 245,000 customers of New Jersey American Water Company in Monmouth County.

### **Federal Standards Analysis**

Executive Order 27 (1994) and N.J.S.A. 52:14B-1 *et seq.* (P.L. 1995, c.65) require that State agencies which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements include in the rulemaking document a Federal standards analysis.

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The Federal Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987 (PL 100-4) requires the establishment of water quality standards for all surface waters of the United States. Individual states are given the primary responsibility for developing and adopting surface water quality standards applicable to their waters. The USEPA is given responsibility to oversee and approve state water quality standards, provide guidance on the content of the standards and develop water quality criteria guidance documents. Key elements of the surface water quality standards program required under the CWA are: a classification system establishing designated beneficial uses of the waters; ambient water quality criteria necessary to protect those uses; minimum uses to be attained, which reflect the fishable and swimmable goals of the CWA; and antidegradation policies, and implementation procedures to prevent water quality from deteriorating. Furthermore, the CWA includes provisions requiring the USEPA to promulgate superseding Federal standards where the USEPA concludes that a State's standards are not consistent with the requirements of the CWA or where Federal requirements are necessary to meet the requirements of the CWA.

N.J.A.C. 7:9B-1.15 contains specific waterbody classification listings and antidegradation designations, arranged by major drainage basin, and instructions for the use of the classification tables. The Federal water quality regulations at 40 CFR § 131.10 require that states specify appropriate water uses to be achieved and protected. The Department's SWQS waterbody classification listing is a tool to identify designated uses such as protection and propagation of fish, shellfish, and wildlife, recreation in and on water, public water supplies, agricultural, industrial, etc. Therefore, these waterbody classifications are consistent with the Federal regulations.

In addition, 40 CFR § 131.12 establishes requirements for the states to develop and adopt antidegradation policies and implementation procedures. The policies and procedures ensure that the level of water quality needed to protect existing uses is maintained, and that water quality better than necessary to protect existing uses is maintained and protected unless demonstrations are made in support of lowering the water quality. The proposed changes in

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antidegradation designation for Shark River Brook and its tributaries identify the level of protection and implementation procedures that must be followed. The antidegradation designations are consistent with and do not exceed Federal standards, and therefore, no further analysis is required.

### **Jobs Impact**

Pursuant to N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 166), all rule proposals must contain a jobs impact statement assessing the number of jobs to be generated or lost if the proposed rule takes effect.

The proposed more stringent antidegradation designation for the Shark River Brook and its tributaries is not expected to create any additional jobs or cause any jobs to be lost. Losses of existing jobs would only occur in the event that a discharger to one of the waterbodies proposed for reclassification would curtail or cease operations rather than provide the necessary measures to abate NJPDES regulated discharges so as to comply with any new permit requirements. However, since no discharges have been identified, this rule proposal is not expected to impact jobs associated with meeting NJPDES permit limits.

### **Agriculture Industry Impact**

Pursuant to P.L. 1998, c.48, adopted on July 2, 1998, the Department has evaluated this rulemaking to determine the nature and extent of the impacts of the proposed rules on the agriculture industry. Agricultural operations generally do not require NJPDES permits; therefore, the proposed rules are not expected to have a significant impact upon the agriculture industry. Although Concentrated Animal Feeding Operations (CAFO) may have to install hydraulic controls to maintain the existing water quality of the receiving waterbody, the Department is not aware of any CAFOs that are located on the Shark River Brook or its tributaries.

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### **Regulatory Flexibility Analysis**

The proposed amendments might affect small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., engaging in activities that affect the quality or uses of the Shark River Brook and its tributaries.

As a result of the proposed change in the antidegradation designation for the Shark River Brook, applicants for new NJPDES wastewater dischargers would have to demonstrate that their discharge would not impact water quality. In addition to any capital costs, there may be annual operating costs such as, increased use of chemicals, increased electrical costs, increased costs for sludge handling/disposal, etc. The cost to small businesses, where costs are incurred, is expected to vary from several thousand dollars to several million dollars depending on facility-specific factors such as type of activity, size of the discharge relative to the receiving stream, classification and/or antidegradation designation of waterbody affected, and required level of pollutant reduction. Small businesses that propose expansions that result in less than 0.25 acres additional impervious surface and less than one acre disturbance are not subject to the Special Water Resource Protection measures required in the Stormwater Management Rules and should not be impacted.

In proposing these amendments, the Department has balanced the need to protect the environment and the public health and to comply with the Federal law with any expected economic impacts of the rules upon small businesses. The Department has determined that to exempt small businesses from any requirements or reduce the requirements for them would endanger the environment, public health, and safety.

### **Smart Growth**

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 52:14B-4(a) of the Administrative Procedure Act to describe the impact of the proposed rule on the achievement of smart growth and implementation of the

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New Jersey State Development and Redevelopment Plan (State Plan), N.J.S.A. 52:18A-196 et seq. The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments' impact on smart growth and implementation of the State Plan. Smart growth discourages development where it may impair or destroy natural resources or environmental qualities that are vital to the health and well being of the present and future citizens of New Jersey. The proposed amendments to upgrade the antidegradation designation for the Shark River Brook watershed will likely impact decisions concerning land use and infrastructure development because any proposed new wastewater discharges will have to meet the antidegradation policies at N.J.A.C. 7:9B-1.5(d). The Department believes that the upgraded antidegradation designations are consistent with Smart Growth and will ensure that development can occur without compromising critical environmental resources. The amendments are intended to conserve the State's natural resources, namely, its surface waters, which implements State Planning Goal 4: Protect The Environment. Goal 4 provides that "A clean, safe and attractive environment is essential to assuring the health of our citizens. Sustainable supplies of clean water, clean air and an abundance of open space and recreational opportunities also will assure a sustainable economy." The implementing strategy is to "Protect the environment by planning for growth in compact forms, at locations and densities of use that make efficient use of existing and planned infrastructure and by increasing infrastructure capacities and growth potential in areas where development will not damage water resources, critical habitats or important forests . . . ." These proposed amendments advance the goals of the plan by designating waters which provide a sustainable supply of water for additional protections. These proposed amendments also provide additional protections for environmentally sensitive areas identified through the State Planning process.

In the current State Plan, most of the surface waters proposed for Category One designation in this rule proposal are located either in the Environmentally Sensitive Planning Area (PA 5) or in the Parks and Natural Areas Planning Area. The preliminary State Plan Policy Map that accompanies the preliminary State Plan that is now going through the Cross-acceptance process, would place almost all of the surface waters proposed for Category One designation in this rule proposal in PA 5, the Parks and Natural Areas Planning Area or within a Critical

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Environmental Site. Under the preliminary State Plan Policy Map, there are small areas of surface waters that are proposed for Category One designation that would be located in either the Metropolitan (PA 1) or Suburban (PA 2) Planning Areas outside of proposed Critical Environmental Sites. The Department will be coordinating with the State Planning Commission to maximize the consistency between the adopted rule and the readopted State Plan.

These amendments will also discourage development where it would impair or destroy natural resources and environmental qualities vital to the health and well being of the citizens of New Jersey consistent with Executive Order No. 114 (1994), Executive Order No. 4 (2002), and Executive Order No. 38 (2002).

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

CHAPTER 9B. SURFACE WATER QUALITY STANDARDS

SUBCHAPTER 1. SURFACE WATER QUALITY STANDARDS

7:9B-1.15 Surface water classifications for the waters of the State of New Jersey

- (a) – (b) (No Change.)
- (c) The surface water classifications in Table 1 are for waters of the Atlantic Coastal Basin:

**TABLE 1**

<u>Waterbody</u>	<u>Classification</u>
...	
SHARK RIVER ( <b><u>See also SHARK RIVER BROOK</u></b> )	
[(Colts Neck) - Source to Rt. 33	FW2-NT
(Neptune) - Rt. 33 to Brighton Ave. bridge, Glendola	FW2-TM/SE1]
(Glendola) - [Brighton Ave. bridge] <b><u>Remsen Mill Road</u></b> to	
Atlantic Ocean	[FW2-NT/SE1] <b><u>SE1</u></b>
<b><u>SHARK RIVER BROOK (See also SHARK RIVER)</u></b>	
<b><u>(Colts Neck) - Source to Rt. 33</u></b>	<b><u>FW2-NT(C1)</u></b>

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<b><u>(Neptune) - Rt. 33 to Remsen Mill Road, including</u></b>	
<b><u>all unnamed tributaries</u></b>	<b><u>FW2-TM(C1)</u></b>
<b>[TRIBUTARY] <u>TRIBUTARIES</u></b>	
REEVY BRANCH (Reevytown) - Source to confluence with Shark River <b><u>Brook</u></b>	FW2-NT <b><u>(C1)</u></b>
<b><u>ROBINS SWAMP BROOK (Neptune) - Source to confluence</u></b>	
<b><u>with Shark River Brook</u></b>	<b><u>FW2-TM(C1)</u></b>
<b><u>SARAH GREEN BROOK (Neptune) - Source to confluence</u></b>	
<b><u>with Shark River Brook</u></b>	<b><u>FW2-TM(C1)</u></b>
<b><u>SOUTH BROOK (Wall) - Source to confluence with Shark</u></b>	
<b><u>River Brook</u></b>	<b><u>FW2-TM(C1)</u></b>
<b><u>WEBLYS BROOK (Wall) - Source to confluence with</u></b>	
<b><u>Shark River Brook</u></b>	<b><u>FW2-NT(C1)</u></b>
...	
(d) - (i)	(No Change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal standards analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of these proposed amendments. I hereby authorize this proposal.

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

\_\_\_\_\_  
Bradley M. Campbell, Commissioner  
Department of Environmental Protection