

Proposed WQMP Rules

N.J.A.C. 7:15

NJDEP Office of Water Resource Management
Coordination

External Stakeholder Presentation

Agenda

- Rule Proposal and Adoption Schedule
- WQMP History
- DEP Approach to WQMP Rulemaking
- Top Issues Carried Forth from Existing Rules
- Top Changes between Existing and Proposed Rules
- Review of Rule Changes
- Discussion

Rule Proposal and Public Comment Schedule

- Rule published in NJ Register on October 19, 2015
- Public Comment period opens on October 19
- Public Hearings to be held:
 - Frelinghuysen Arboretum – November 10 1-4 p.m.
 - Gloucester County Clayton Complex – November 17 5-8 p.m.
 - DEP Public Hearing Room – November 30 10 a.m. – 1 p.m.
- Public Comment Period closes on December 18, 2015

WQMP History

- The Water Quality Management Planning (WQMP) rules, N.J.A.C. 7:15, implement the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., (WQPA);
- The WQMP rules are one component of NJ's continuing planning process (CPP) required by the Clean Water Act
- Under both the federal and state water quality statutory and regulatory frameworks, the areawide WQM plans are key water quality planning documents:
 - Identify treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area;
 - All projects and activities affecting water quality in any planning area must be developed and conducted in a manner consistent with the areawide WQM plan adopted for that planning area

WQMP History

- The 2008 WQMP rules:
 - Restricted the extension of sewer service in environmentally sensitive areas (ESAs), such as threatened and endangered (T&E) species habitat, Natural Heritage Priority Sites, Category One buffers and wetlands;
 - Incorporated explicit standards to determine the adequacy of wastewater management, water supply and nonpoint source pollution control as part of the evaluation for WMPs and site-specific amendments;
 - Required nonpoint source control ordinances and “downzoning” where necessary;
 - Threatened SSA withdrawal and limited processing of amendments if WMP was not up to date;
- The resulting WQM planning process became an extremely difficult regulatory program to administer: the analyses necessary for updating the WMPs were more complex and time consuming than DEP anticipated;

WQMP Proposal

- Proposed WQMP rules are intended to obviate the need for the provisions of P.L. 2013, c.188.
- Changes specifically address:
 - adverse economic environmental and planning impacts from the authority to withdrawal of wastewater service areas
 - timely review and approval of site specific amendments and WMPs-by streamlining the process

DEP Approach to WQMP Rulemaking

- Repeal and replace WQMP rules and amendments to TWA rules regarding CAP
- Avoids duplication of program action and provides for better synergy amongst DEP programs (WRM, LUM and NHR)
- Core aspects remain intact
 - Mapping
 - Consistency
 - WMP
 - DPA Role
- Meets all State and Federal statutory and regulatory requirements

Top Issues carried forth from Existing Rules

- WMP development and updates
- Role of DPA
- Water treatment capacity analysis
- Nitrate dilution analysis
- What constitutes an ESA
- Limiting SSA in certain Coastal Planning Areas
- Previous adoption (amendments/WMPs) remain in effect
- Consistency determinations conducted
- Listing water quality limited waters and TMDLs

Top Changes between Existing and Proposed Rules

- Elimination of mandatory withdrawal of sewer service delineation for failure to adopt a WMP
- Streamlined wastewater treatment capacity analysis
- Exchange of Data
- Flexibility in sewer service delineation
- Flexibility in CAFRA areas for failing septic systems
- Simplified nitrate dilution analysis
- Eliminate Requirement for Ordinances
- Streamlined Revision and Amendment Process
- Consistency Determination deferred to Permitting
- Expanded regional planning coordination

Elimination of mandatory withdrawal of sewer service delineation for failure to adopt a WMP

- The 2008 rules required the Department to withdraw wastewater service areas if the planning area did not adopt a WMP within the required time frame
- Problem:
 - There may be unacceptable, adverse economic, environmental and planning impacts from the non-discretionary and mandatory withdrawal of wastewater service areas

Elimination of mandatory withdrawal of sewer service designation for failure to adopt a WMP

- The WQMP rules will no longer authorize DEP to withdraw wastewater service area designations if the WMP agency fails to submit a timely WMP
- Department retains authority to develop SSA and/or capacity analyses in areas where responsible WMP agency does not submit in a reasonable time frame
- Adopted plans effective for 10 years
- Proposed N.J.A.C. 7:15-4.2

Streamlined wastewater treatment capacity analysis

- Under 2008 rules, WMP agency required to conduct wastewater capacity analysis and determine future wastewater needs based on population and existing and planned future development as part of WMP
- Problems:
 - Requiring a solution to address an “estimated” gap in future needs is preliminary
 - Factors affecting infrastructure choices vary over time, reflecting technical and qualitative changes

Streamlined wastewater treatment capacity analysis

- WMP agency still required to conduct a wastewater capacity analysis and determine future wastewater needs
- However, WMP agency will **not** be required to demonstrate that any identified deficiency between existing capacity and future wastewater needs has been fully resolved before WMP can be adopted
- When there is actual need to build new or expanded infrastructure, specific infrastructure solutions will be determined through technical review conducted during permitting process
- Proposed N.J.A.C. 7:15-4.5(b)

Exchange of Data

- Previously, DPA had to request DEP data, for the DPA to analyze the data and send it back to DEP in order for DEP to analyze again
- Problem:
 - This approach creates inefficient and unnecessary burdens to adopting a WMP

Exchange of Data

- DEP will make available to WMP agencies, and to the public, existing data for permitted treatment works for WMP areas to assist in WMP development
- DEP will post the Continuing Planning Process (CPP) on its website
- Annual update of inventory of wastewater treatment facilities, their existing and permitted flows, and the wastewater management needs for each facility
- DEP will maintain an updated wastewater service area map for the entire State
- Proposed N.J.A.C. 7:15-2.4

Flexibility in sewer service delineation

- The procedure for delineating sewer service areas remains largely the same, but DEP is adding flexibility to delineation process
- Based on whether the area is:
 - Infill, within an area identified for growth in an endorsed plan, or in Planning Area 1
 - Within threatened or endangered wildlife species habitat, or is a Natural Heritage Priority Site
 - Habitat Suitability Determination
 - Habitat Impact Assessment
- Proposed N.J.A.C. 7:15-4.4, 4.6 and 4.7

Flexibility in CAFRA areas for failing septic systems

- Under 2008 rules, only means to include areas within Coastal Planning Areas within sewer service area was to change the Coastal Planning Area designation
- Problem:
 - The process is administratively challenging and unnecessarily burdensome

Flexibility in CAFRA areas for failing septic systems

- Proposed rule allows inclusion of portions of identified Coastal Planning Areas in sewer service area where necessary:
 - To address imminent public health and safety issues;
 - To accommodate infill development; and
 - For manageable sewer service area delineation without first having to modify the Coastal Planning Area designation
- Proposed N.J.A.C. 7:15-4.4(f)

Simplified nitrate dilution analysis

- 2008 rule required downzoning as the sole solution to an analysis that indicated that there is insufficient nitrate dilution capacity to achieve the 2 mg/L nitrate ground water standard
- Problem:
 - Rezoning is a time-consuming and often controversial process, and can be misleading

Simplified nitrate dilution analysis

- Proposed rule still requires comprehensive build-out analysis based on current zoning and used to identify potential issues in meeting ground water antidegradation nitrate target of 2 mg/L on a regional basis
- Rules will no longer rely solely on downzoning as response to analysis concluding insufficient nitrate dilution capacity to achieve ground water standard
 - Still recommended but not required
- Rules will also not require that the solution to insufficient dilution capacity be resolved as a component of the WMP
 - Local government shall work with DEP to evaluate options and appropriate strategies to address this issue
- Proposed N.J.A.C. 7:15-4.5(c)

Eliminate Demonstration of Existing Water Supply Analysis

- 2008 rules required a demonstration of sufficient existing water supply to provide for future development projects
- Problem:
 - Many of the protections in the 2008 rules are duplicative of regulatory requirements in other DEP permitting programs

Eliminate Demonstration of Existing Water Supply Analysis

- DEP to eliminate the requirement of a demonstration that the environmental standards for water supply have been met prior to adoption of a WMP or site specific amendment
- DEP's water supply program ensures planning and permitting of water supply infrastructure and new or expanded sources of water

Eliminate Nonpoint Source Pollution Requirements

- 2008 rules required the adoption of municipal ordinances controlling stormwater, and preventing new disturbances in riparian zones and on steep slopes in order to adopt a WMP or site specific amendment
- Problem:
 - These requirements were difficult to enforce and negatively impacted timely adoption of WMPs

Eliminate Nonpoint Source Pollution Requirements

- Demonstration that municipal ordinances addressing stormwater runoff, riparian zones, and steep slopes have been enacted no longer required in order to adopt a WMP
 - Many of these protections are duplicative of regulatory requirements in other DEP permitting programs
- DEP's Nonpoint Source Management Program Plan will be included in the CPP document posted on DEP's website

Streamline Revision and Amendment Process

- Problems:
 - Previous rule required an update to the overall capacity analysis for small projects even if they were not likely to make a substantive difference in the calculation of actual flow against permitted flow for a treatment facility
 - WMP Subchapters did not lead to long-term strategy

Streamline Revision and Amendment Process

- **Revision** -reserved for correcting factual mistakes, transferring WMP responsibility and changing WMP submission schedules
- **Site specific amendments** -a two-tiered approach
 - For service area changes < 100 acres or 20,000 GPD flow
 - For service area changes of > 100 acres or 20,000 GPD flow
 - Proposed N.J.A.C. 7:15-3.4 and 3.5

Site specific amendment process

- For service area changes less than 100 acres or 20,000 GPD flow
 - Identification of flow for specific wastewater needs for project
 - Notice and Comment at local level via the Preliminary Notice and at draft DEP permits issuance
- For service area changes greater than 100 acres or 20,000 GPD flow
 - Wastewater treatment capacity updated for SSA
 - Provide notice to interested parties (i.e. regulatory, planning, wastewater, water supply, land use)
 - Provide notice and opportunity to comment to property owners who will experience change in SSA
- Proposed N.J.A.C. 7:15-3.3 and 3.5

Consistency Determinations

- 2008 continued formal consistency review process requiring compliance with sewer service area designations, assignments to treatment facilities, identification of adequate water supply capacity, and NPS standards
- Problem:
 - These requirements were detailed and cumbersome

Consistency Determinations

- Simplify Consistency – In/Out of sewer service area
- Continue to acknowledge that DEP permits must not conflict with WQM plans but eliminate the separate issuance of a consistency determination
 - Determination of WQ/WS regulatory consistency would be done as part of the applicable permit program review
 - Compliance with other environmental standards would be determined through permitting in relevant programs
- Proposed N.J.A.C. 7:15-3.1 and 3.2

Expanded Regional Planning Coordination

- Previously, there was a lack of consideration for local planning objectives in DEP decision making, as well as a lack of a coordination with regional planning entities
- Also there was no clear authority to defer to Pinelands and Highlands plans

Expanded Regional Planning Coordination

- DEP will support implementation of water and water-related requirements within comprehensive regional plans and will coordinate planning actions undertaken or overseen with regional planning agencies responsible for development and implementation on a regional basis
 - Pinelands Comprehensive Management Plan
 - Highlands Regional Master Plan
 - DRBC Comprehensive Plan
 - Meadowlands Master Plan
- Proposed N.J.A.C. 7:15-2.9



Discussion