

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 1, 2002 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPENCIES BETWEEN THE TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

PLEASE NOTE: EXECUTIVE ORDER #26 AMENDED EXECUTIVE ORDER #21. THE EXEMPTIONS PROPOSED AT 4.2 ARE NOT IN EFFECT. TO SEE EXEMPTIONS GO TO EXEMPTION LIST LINK ON THE OPRA WEB PAGE

ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

Requests for Access to Government Records; Confidential Records

Proposed New Rules: N.J.A.C. 7:1D-3 and 4

Proposed Amendments: N.J.A.C. 7:1-1.2 (c) 2 and N.J.A.C. 7:1-1.3(b)

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

Authority: N.J.S.A. 47:1A-1, 52:4B-9, 52:13D-21, 52:17B-4, 52:17B-170, and

Executive Order No. 9 (Hughes 1963)

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

DEP Docket Number: 13-02-06/323

Proposal Number: PRN 2002-

Submit written comments by August 30, 2002 to:

Janis Hoagland, Director
Attention: DEP Docket Number 13-02-06/323
Office of Legal Affairs
P.O. Box 402
Trenton, N.J. 08625-0402

The agency proposal follows:

Summary

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On January 8, 2002, the Legislature passed and the Acting Governor approved P.L. 2001, c. 404, known as the Open Public Records Act, which enacted changes in the law concerning public access to government records. The law will be effective July 7, 2002. This law expands the public's right of access to government records and facilitates the way in which that access is provided by the custodian of those records. Section 18 of the law authorizes public agencies to take anticipatory administrative action in advance as may be necessary for the smooth and efficient implementation of the act. The Department of Environmental Protection proposes rules establishing the process by which members of the public may seek access to government records in the possession or control of the Department or agencies within the Department under the revised law. The act requires the custodian of government records of a public agency to adopt a form for providing public access to government records. The proposed rules in Subchapter N.J.A.C. 7:1D-3 establish a process to be followed by members of the public who seek access to government records held or controlled by the Department and agencies within the Department.

The act provides that all government records shall be subject to public access unless exempt from such access by: P.L. 1963, c.73 as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; any Federal law, Federal regulation or Federal order. The Commissioner, pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), proposes to classify as exempt from public access certain records held or controlled by the

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Department or agencies within the Department. The act also provides that a public agency should be mindful of the need to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy. The rules proposed in Subchapter N.J.A.C. 7:1D-4 are designed to serve both these legislative policies by facilitating public access to government records while, at the same time, balancing citizen's reasonable expectations of privacy and the integrity and effectiveness of governmental operations.

N.J.A.C. 7:1-1.2 Department Organization

The Department proposes to amend N.J.A.C. 7:1-1.2 (c) (2) and N.J.A.C. 7:1-1.3 (b) to delete the references to the Department's Office of Legal Affairs as the central receiving point for requests in the agency. The proposed rule at N.J.A.C. 7:1D-3 outlines a new process for receipt of requests from the public.

N.J.A.C. 7:1D-3 Access to Government Records

Proposed new N.J.A.C. 7:1D-3.1 states the scope and applicability of the rules contained in the subchapter. These new rules apply to agencies under the supervision of the Commissioner and those not under the supervision of the Commissioner, commonly known as "in but not of" agencies.

Proposed new N.J.A.C. 7:1D-3.2 provides that the Commissioner will designate a person to be Department records custodian. This person will be the custodian of records for the Department.

The section further lists the eight "in but not of" agencies which will directly receive requests for

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information. The Department does not maintain the records for these entities; therefore they will handle their own requests. The address of the Office of the Records Custodian and the address of the eight “in but not of” agencies are set out in this rule and will be made available to the public by posting on the Department web site.

Proposed new N.J.A.C. 7:1D-3.3 provides that all requests for access to government records under the public access to government records law must be on a form approved by the Department.

The requester will be asked to provide certain information on the form, including a name, address and telephone number; a brief description of the records requested including, if known, the name of the facility, the owner or operator, street address, municipality and county of any site or facility, lot and block of any site or facility, type of permit and any DEP identification numbers such as permit or case numbers, and a statement as to whether the matter is in litigation. The Department believes this information will be helpful in attempting to identify the correct program and records. In addition, the requester will be asked to identify the type of access (examination, inspection or copying) and medium requested; and the requester’s signature and date submitted to the proper custodian. The form will also provide space for: specific directions and procedures for requesting a government record; which records will be made available; when the record will be available; the fee to be charged; the amount of prepayment of fees that is required; a statement of the requester’s right to challenge a denial and the procedures for challenging a denial; whether the requester has agreed to grant an extension of time; the toll free number of the Government Records Council; a

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certification by the requester that they have not been convicted of an indictable offense; the custodian to sign and date; and reasons if access is denied. Copies of the form will be available at the Department's Office of the Record Custodian, the eight "in but not of agencies listed in N.J.A.C. 7:1D-3.2(b) and on the Department web site.

Proposed new N.J.A.C. 7:1D-3.4 establishes the procedure for submitting requests for access to government records. Forms may be hand delivered during normal business hours, mailed or transmitted electronically by e-mail to the Department records custodian. All requests must be delivered to the Department records custodian in order to trigger the requirements of the public access to government records law. Upon receipt of the form, the custodian will review it for clarity and completeness and will advise the requester of any deficiencies or request additional information, provided the requester has included contact information. The requester's identity will be required in order to insure compliance with the provision of the law that prohibits a person convicted of an indictable offense under the laws of this State, any other state or the United States, from receiving personal information concerning the person's victim or the victim's family. Requests for records will be assigned a tracking number, if available, which will be used to track the request and respond to inquiries. The custodian will estimate the fee, including the cost of any special form of mailing requested. A request shall not be deemed complete until any prepayment required is received by the custodian. A requester will also be required to prepay any special mailing or delivery costs such

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as UPS or Express Mail. A requester will not be charged for ordinary mailing costs. There is no charge for merely inspecting records.

Proposed new N.J.A.C. 7:1D-3.5 provides that the balance of any fee over and above the estimated prepaid fee is due on delivery of the record.

Proposed new N.J.A.C. 7:1D-3.6 specifies the records for which a citizen is ordinarily entitled to immediate access. These documents include budgets, bills, vouchers, contracts and public employee salary and overtime information.

Proposed new N.J.A.C. 7:1D-3.7 provides that, except as otherwise provided by law, if the custodian fails to grant access to a government record within seven business days after the custodian receives the completed request or such other time as may be required under the law or may be agreed upon, the failure will be deemed a denial of the request for access. As provided in the statute, a custodian need not respond to an anonymous request until the requester reappears before the custodian.

Proposed new N.J.A.C. 7:1D-3.8 provides that if requested records are stored in an offsite storage facility outside of the regular business office of the agency, the custodian will advise the requester of the date the records will be available and the estimated cost within seven business days of receipt of the request form. This section codifies the requirements of the statute.

Proposed new N.J.A.C. 7:1D-3.9 codifies the requirements of the statute concerning delivery of records in the medium requested. The custodian will deliver the record in the medium requested

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unless the agency does not maintain the record in that medium and cannot reasonably convert it.

In such a case, the custodian will advise the requester of the cost of providing the record in the medium requested. Such charge may include labor.

Proposed new N.J.A.C. 7:1D-3.10 deals with the computation of time. Consistent with statutes, court rules and case law, it provides that in computing the time period for granting access, the day the request is received is not included in the computation, but the last day of the period so computed is to be included. This section also clarifies that a request is not complete until all necessary information is provided by the requester and all applicable fees are paid.

N.J.A.C. 7:1D-4. Confidentiality of Records

Proposed new subchapter N.J.A.C. 7:1D-4 contains a list of records deemed by the Commissioner to be confidential and not subject to public access under the provisions of N.J.S.A. 47:1A-1 et seq. as amended and supplemented. This subchapter is proposed under the authority of N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963). Under authority of the statute, that Executive Order authorized the head or principal executive of each principal Department of State government to adopt and promulgate regulations setting forth which records of the Department shall not be deemed public records. The regulations apply to all divisions within the Department as well as those assigned or allocated to the Department, commonly known as "in but not of" agencies. Proposed new N.J.A.C. 7:1D-4.1 describes the scope and applicability of the subchapter.

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Proposed new N.J.A.C. 7:1D-4.2 sets forth those records of the Department that are not deemed government records for the purposes of N.J.S.A. 47:1A-1 et seq. as amended and supplemented and establishes the responsibility for access to records of the Department held by the Office of Information Technology (OIT, the State Records Center of the Division of Archives and Records Management (DARM) of the Department of State, or in an offsite storage facility outside of the regular business office of the agency, and furthermore, institutes legal custody of, and responsibility for access to, records of the Department transferred to the State Archives. N.J.A.C. 7:1D-4.2(a)26.

Proposed new N.J.A.C. 7:1D-4.2 (a) 1 makes confidential information regarding the location of threatened and/or endangered plant and animal species, rare plant and animal species, and natural communities, as well as information regarding the location of historic and/or archeological sites, provided the record is not being used as the basis for a regulatory or enforcement action. The Department is concerned that the release of locational information regarding endangered and rare plants and animals, and regarding historic and archeological sites might result in the illegal collection of specimens or vandalism of sites. There is also concern that these areas might be damaged by people who might want to eliminate an impediment to developing a piece of property. However, where the Department uses such information as a basis for its permit or enforcement decisions, it will provide the information to the public.

Proposed new N.J.A.C. 7:1D-4.2 (a) 2 makes information related to Green Acres and

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Natural Lands Trust land acquisitions, program offerings, active projects, and title investigations, confidential if disclosure would jeopardize these transactions or affect penalty negotiations. The Department is concerned that releasing this information would hamper negotiations for land purchases, because the State's "bottom line" would be known while the seller or other potential purchaser of a property would not be required to divulge such information while negotiating a possible sale. The confidentiality of the information until the closing of title is essential to the integrity of the contracts for purchase, the functioning of the programs, and the achievement of the goals of acquiring and preserving open space and natural resources. This exemption balances the public's interest in the information with the Department's obligation to ensure the taxpayers' and State's interests in these transactions are protected.

Proposed new N.J.A.C. 7:1D-4(a)3 is intended to protect the Department's accounts from unauthorized use. It is supported by the provisions in OPRA that protect from disclosure personal and financial information, as well as by those that protect from disclosure information that would give an advantage to competitors or bidders.

Proposed new N.J.A.C. 7:1D-4(a) 4 makes information related to a nuclear power plants confidential if it would jeopardize the public health, safety and welfare or the security of the plant if it were disclosed. An OPRA exemption applies to emergency or security information or to procedures for a building or facility that would jeopardize security of the building or facility or the people therein. This exemption expands the scope of the exemption so that information

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that would jeopardize the public beyond the power plant itself can be protected.

Proposed new N.J.A.C. 7:1D-4(a) 5 and 23 makes certain information concerning individuals confidential, including medical information, personal contact information, information related to inquiries in possible violations of law except as necessary to investigate or prosecute the violation; tax returns, personal financial information unless required by law to be disclosed, information related to fitness to obtain or retain a license other than disciplinary history, employment history except as necessary to show compliance with requirements of the employee's position. This rather detailed listing of personal identifying information is supported by the provisions in OPRA exempt from disclosure certain identifying personal information, as well as personnel and pension records. The proposed exemption more specifically lists the information that would likely be part of an employee's personnel file that should be protected for privacy reasons or to prevent potential misuse against the employee by a third party.

Proposed new N.J.A.C. 7:1D-4(a) 6 makes records relating to mediation proceedings conducted by or on behalf of the Department confidential. This exemption is intended to help ensure the integrity of the mediations the Department conducts, since mediations may not involve attorneys, and attorney-client privilege would not attach as it would for settlement discussions. The New Jersey courts have stressed that mediation proceedings should be confidential. The final agreement that results from the mediation will be a public record.

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Proposed new N.J.A.C. 7:1D-4(a) 7 makes standard operating procedures (SOPs) relating to how the Department conducts enforcement actions confidential. Under OPRA, the Department's internal procedures manuals, once completed and put into practice, are likely to be considered public records. However, release of the SOPs that describe enforcement protocols, such as frequency of inspection, could undermine the integrity of the Department's enforcement programs. Since OPRA supports the protection of records related to ongoing investigations or inspections, the protection of the underlying SOPs for conducting enforcement actions is an appropriate, and limited, extension.

Proposed new N.J.A.C. 7:1D-4(a) 8 makes records that reveal the identity of a complainant confidential. This exemption is supported by the OPRA exemption for records of criminal investigations, which records would include the identity of the complainant. However, the Department believes protection of the identity of complainants who provide information to the Department in non-criminal matters is necessary. Release of the identity of complainants could have a chilling effect, for instance, on the use of the DEP hotline to register complaints or potential violations of the environmental laws and regulations.

N.J.A.C. 7:1D-4(a) 9 makes inventories of enforcement resources and policies or plans of

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the Department pertaining to mobilization and deployment for emergency response, including employee emergency contact information, confidential. This exemption is intended to protect information that, if disclosed, might be used to hamper the Department's ability to respond to emergencies and consequently put the public health, safety, and welfare at risk.

N.J.A.C. 7:1D-4(a) 10 makes meeting minutes and records relating to executive sessions of advisory groups or councils confidential. This exemption is supported by the Open Public Meetings Act.

N.J.A.C. 7:71D-4(a) 11 makes solid waste hauler customer lists confidential. This exemption is based on the New Jersey Supreme Court's ruling in In Re Request for Solid Waste Utility Customer Lists, 106 NJ 508 (1987), and the Department has codified the protection of these records in its solid waste regulations at N.J.A.C. 7:26H. However, since the Solid Waste Utility Control Act under which those regulations are promulgated does not explicitly authorize the confidentiality protection, the Department is proposing to establish the exemption in this rule.

Proposed new N.J.A.C. 7:7-1D-4(a) 12 exempts information requested by any Federal agency, including USEPA, to be maintained confidential in connection with enforcement of a

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federally delegated program or a joint Federal/State enforcement action. The records covered by this exemption would be exempt from disclosure under the Federal Freedom of Information Act.

Since the records would be confidential while in the possession of the Federal agency, they should also be confidential in the possession of the Department when the Department is engaged in enforcement of the Federal program or a joint Federal/State enforcement action.

Proposed new N.J.A.C. 7:7-1D-4(a) 13 through 22 exempts records that raise concerns from a domestic security perspective. Proposed N.J.A.C. 7:7-1D-4(a) 13 exempts Discharge Prevention Containment and Countermeasure (DPCC) and Discharge Cleanup and Removal (DCR) plans and related site plans. These are plans detailing measures to prevent discharges of hazardous substances at major facilities and to minimize the impact of and outline the cleanup procedures for any discharges that may occur. The site plans show the location of storage tanks, drum storage and other structures or areas involving hazardous substances and areas used for prevention of discharge and other security measures.

Proposed new N.J.A.C. 7:7-1D-4(a)14 exempts off-site consequence analyses which describe impacts of worst case and alternative case accidental release scenarios for facilities regulated under the Toxic Catastrophe Protection Act.

Proposed new N.J.A.C. 7:7-1D-4(a)15 exempts transmission pipeline registrations that describe and depict locations of hazardous substance pipeline alignment, storage areas, transfer

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areas and points at which pipelines enter and leave the State as well as the throughput.

Proposed new N.J.A.C. 7:71D-4(a)16 and 17 exempt certain information issued by the Nuclear Regulatory Commission. Section 16 addresses radioactive materials licenses and section 17 addresses advisories related to the use and possession of radioactive material including information regarding “lessons learned” and related to improving security.

Proposed new N.J.A.C. 7:71D-4(a)18 exempts the listing of generators of low level radioactive waste which reflects the amounts and types of wastes and its location. This information is not otherwise available to the public.

Proposed new N.J.A.C. 7:71D-4(a)19 exempts national defense related information from Lockheed Martin’s Aegis Radar system facility.

Proposed new N.J.A.C. 7:71D-4(a)20 exempts shielding designs for sources of radiation which would identify the location of this equipment.

Proposed new N.J.A.C. 7:71D-4(a)21 exempts Environmental Emergency preparedness plans such as emergency procedures plans for Wastewater Treatment facilities pursuant to N.J.A.C. 7:14A-6.12(D).

Proposed new N.J.A.C. 7:71D-4(a)22 exempts inundation maps submitted as part of the Emergency Action plans pursuant to N.J.A.C. 7:20-1.7f and 1.11i which estimate the impact of flooding due to dam failures.

Proposed new N.J.A.C. 7:71D-4(a)24 exempts information related to examination data

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for public employment or licensing. This provision ensures that test scores and exams are not public thereby undermining the purpose of the test.

Lastly, proposed new N.J.A.C. 7:71D-4(a)25 ensures that records which one state agency makes confidential will be treated as confidential by any agency that retains the records.

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

Social Impact

The proposed new rules implement the requirements of N.J.S.A. 47:1A-1 et seq. as amended and supplemented by P.L. 2001, c.404. The proposed new rules will have a positive social impact by establishing a procedure for public access to government records held or controlled by the Department of Environmental Protection. The law requires that government records be readily accessible for inspection, copying or examination by citizens of this State unless exempt by law or regulation, but also calls upon a public agency to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. These proposed new rules attempt to balance the competing policies in the statute and to exclude records where it would not be in the public interest to permit indiscriminate disclosure or copying of certain records. The proposed new rules also provide safeguards to protect, certain environmental information such as the location of endangered plants, species, historic site nominations and archeological sites if release would result in a present, imminent and substantial

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risk to the resource or Green Acres and Natural Land Trust land acquisitions if it would jeopardize those transactions; emergency information such as certain emergency preparedness information or nuclear power plant information where disclosure would jeopardize health, safety and welfare; certain enforcement information that, if released, could hamper oversight or investigations such as standard operating procedures regarding the method by which the Department conducts enforcement; records that reveal the identify of a complainant; filings by whistle blowers or certain federal enforcement information provided to the State; records related to mediation proceedings; and information in which people have an expectation of privacy such as personal identifying information, solid waste hauler customer lists, and certain information that is a concern from a domestic security perspective.

Economic Impact

The proposed new rules will not have an economic impact on the public in excess of that provided by the statute. Persons requesting copies of government records will be required to pay the fees authorized by the statute for copies of records. The proposed rules do not impose any additional costs. The cost incurred will depend on the type and volume of records requested and the medium of delivery.

The Department, however, will incur costs in processing requests for access to government records in the time set by the Act.

Federal Standards Statement

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A Federal standards analysis is not required because the proposed new rules are not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. 550a et seq., does not apply to records of State government and does not constitute a Federal standard.

Jobs Impact

The proposed new rules will not have an impact on the number of jobs generated or lost in the private sector in New Jersey. It may, however, require public agencies in this State to increase the number of employees designated to respond to requests for public access.

Agriculture Industry Impact

The proposed new rules will not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules do not impose reporting or recordkeeping requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose compliance requirements on all persons seeking access to government records pursuant to N.J.S.A. 47:1A-1 et seq. as amended and supplemented. All persons, including small businesses, will be required to submit requests for access to government records on a form approved by the Department. The statute requires the custodian of records to adopt a form for access to records. The statute authorizes fees for copies of government records. There is no exception for small businesses. The cost depends on the number of copies requested. The proposed new rules

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provide that the fee will be the maximum set forth in the statute or a fee authorized by the statute that does not exceed the actual cost of providing the record. The cost to the Department of providing the record does not depend on whether the requester is a small business.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed amendments and deletions indicated in brackets [thus]; additions indicated in boldface **thus** new rules follows:

CHAPTER 1 – DEPARTMENT ORGANIZATION

SUBCHAPTER 1. GENERAL PROVISIONS

7:1-1.2 Organization of the Department

(a) – (b) (No change.)

(c) The Counselor to the Commissioner is the Commissioner's legal liaison with the Department of Law and Public Safety. The Counselor advises the Commissioner regarding policy implications of legal issues that arise in connection with the Department's work. The Counselor to the Commissioner oversees the following organizational units:

1. (No change.)
2. The Office of Legal Affairs, which, pursuant to Executive Order No. 6(1990), is the legal liaison with the Division of Law (in the Department of Law and Public Safety) and with the

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Office of Administrative Law regarding rulemaking, adjudicatory hearing requests, and final decisions in contested cases. This office also manages [requests for public records,] subpoenas of Department employees and records, and requests for ethics advice from Department employees, and serves as the central filing point for other communications with legal consequences (such as bankruptcy and tort claim notices); and

3. (No change.)

(d) – (o) (No change.)

7:1-1.3 Communicating with the Department

(a) (No change.)

(b) Requests for inspection, copying, or obtaining a copy of any [public] government record required to be made available under N.J.S.A. 47:1A-1[, Examination and Copies of Public Records, should] et seq. shall be submitted to[:

Department of Environmental Protection

Office of Legal Affairs

Attention: Public Records Request

401 East State Street

PO Box 402

Trenton, NJ 08625-0402]

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the Department in accordance with the procedures set forth in the Department's rules of General Practice and Procedure at N.J.A.C. 7:1D-3, Requests for Access to Government Records, and N.J.A.C. 7:1D-4, Confidential Records.

CHAPTER 1D – GENERAL PRACTICE AND PROCEDURE

SUBCHAPTER 3 REQUESTS FOR ACCESS TO GOVERNMENT RECORDS

7:1D-3.1 Scope and applicability

The rules in this subchapter apply to the Department of Environmental Protection and all divisions and agencies in the Department, including those agencies allocated to the Department to satisfy the requirements of Article V, Section 4, Paragraph 1 of the New Jersey Constitution, commonly known as “in but not of” agencies except as provided in N.J.A.C. 7:1D- 3.2 below.

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7:1D-3.2 Custodian of records

(a) Pursuant to P.L. 2001, c. 404, the Commissioner shall designate a custodian of records for the Department of Environmental Protection, who shall be responsible for requests for access to government records of the Department.

(b) The following agencies allocated to the Department to satisfy the requirements of Article V, Section 4, Paragraph 1 of the New Jersey Constitution, commonly known as “in but not of”

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agencies, shall designate a custodian of records who shall be responsible for requests for access to records held or controlled by that agency:

1. New Jersey Environmental Infrastructure Trust
2. Board of Commissioners of Pilotage
3. Delaware and Raritan Canal Commission
4. Brownfield Redevelopment Task Force
5. Clean Ocean and Shore Trust
6. Environmental Risk Assessment and Risk Management Study Commission
7. The Pinelands Commission
8. New Jersey Water Supply Authority

(c) The address and other contact information for the records custodian shall be posted on the Department of Environmental Protection web site and otherwise made available to the public. The contact information is as follows:

1. Chief

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Office of the Records Custodian

New Jersey Department of Environmental Protection

P.O. Box 402

401 East State Street

Trenton, New Jersey 08625-0402

E-mail: Records.Custodian@dep.state.nj.us

Web site: www.nj.gov/dep/records

2. Attention: Record Custodian

New Jersey Environmental Infrastructure Trust

P.O. Box 440

3131 Princeton Pike

Bldg. 6, Suite 201

Lawrenceville, New Jersey 08648

3. Attention: Records Custodian

Board of Commissioners of Pilotage

2 DeWolf Road

Old Tappan, New Jersey 07675

4. Attention: Records Custodian

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Delaware and Raritan Canal Commission

P.O.Box 539

Stockton, New Jersey 08559

5. Attention: Records Custodian

Brownfield Redevelopment Task Force

33 West State Street, 4th floor

P.O. Box 204

Trenton, New Jersey 08625

6. Attention: Records Custodian

Clean Ocean and Shore Trust

Cook College Rutgers University

Institute of Marine and Coastal Sciences

71 Dudley Road

New Brunswick, N.J. 08901-8521

7. Attention: Records Custodian

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Environmental Risk Assessment and Risk Management Study Commission

Environmental and Occupational Health Services

681 Freylingheysen Road

P.O. Box 1179

Piscataway, N.J. 08855-1179

8. Attention: Records Custodian

The Pinelands Commission

P.O. Box 7

Springfield Road

New Lisbon, New Jersey 08064

9. Attention: Records Custodian

New Jersey Water Supply Authority

P.O. Box 5196

Clinton, New Jersey 08809

7:1D-3.3 Requests for government records

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(a) All requests for access to government records pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented, held or controlled by the Department of Environmental Protection or an “in but not of” agency listed in N.J.A.C. 7:1D-3.2 (b) above, shall be in writing on a form approved by the Department. For the purposes of this subchapter, access means inspection, examination or copying.

(b) The requester shall be requested to provide the following information on the form:

1. The name, address, and telephone number of the requester;

2. A description of the government record sought including:

i. The street address or tax block and lot number of the specific parcel that is the subject of the request;

ii. The name of the municipality in which a facility, site, or parcel that is the subject of a request is located;

iii. The name of the county in which the facility, site, or parcel that is the subject of a request is located;

iv. The name of the facility if the request is related to a facility;

v. The name of the owner or operator of a site or facility if known and the request is related to a site or facility;

vi. The name of the individual, site or facility involved, if the request is related to an inspection; and

vii. The type of permit that is the subject of a request and any identifying numbers such as permit or case numbers.

3. A statement as to whether the requester is involved in litigation with the Department or in litigation with another entity related to the records request.

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4. The method of access and if copies are sought, the medium requested and mode of delivery; and

5. The date submitted to the Department or agency custodian.

(c) The request form shall also include an identified space for:

1. The custodian to indicate whether the request is granted or denied;

2. Specific directions and procedures for requesting a record;

3. A statement that prepayment of fees is required and the fees to be charged;

4. The time period within which the public agency is required to make the record available;

5. The custodian to sign and date the form;

6. A statement of the requester's right to challenge a decision by the custodian to deny access;

7. The reasons for a denial of a request, in whole or in part;

8. The procedures for challenging a denial of access;

9. The custodian to indicate whether the requester has agreed to grant an extension of time;

10. A certification by the requester that they have not been convicted of an indictable offense under the laws of this State, any other state or the United States; and

11. The toll free number of the Government Records Council.

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(d) Copies of the request form shall be available at the Department Office of the Records Custodian, at the “in but not of” agencies listed in N.J.A.C. 7:1D-3.2 and on the Department web site.

7:1D-3.4 Procedures for requests for records in the custody of the Department of Environmental Protection

(a) Request forms shall be hand-delivered during normal business hours of the public agency, mailed, or transmitted electronically by e-mail or web site access by the requester to the Department Custodian of records. Request forms for the “in but not of” agencies listed in N.J.A.C. 7:1D-3.2 shall be hand-delivered or mailed to those agencies during normal business hours.

(b) Any officer or employee of the Department who receives a request for access to a government record shall direct the requester to the Department or “in but not of” agency custodian of records.

(c) Upon receipt of the request form, the custodian shall review the request form for clarity and completeness. If the request form is unclear as to the government record requested, the custodian shall advise the requester of the deficiency, provided contact information is included on the form. The custodian may require the requester to provide additional information to identify the record or to ascertain the requester’s identity and status to determine whether access is authorized. The

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custodian shall deny a request for access if the request is unclear or incomplete after attempting to reach a reasonable resolution with the requester. A request shall not be deemed complete until the pre-payment required under this section is received by the custodian.

(d) All inquiries and processes involving the request shall include the tracking number assigned by the Department, or as applicable, by the "in but not of" agency.

(e) Upon receipt of a request form, the custodian shall estimate the cost of providing the records and shall require the pre-payment of the estimated sum, and of any special mailing or delivery costs. Payment shall be made by cash, check or money order payable to the State of New Jersey. Except as provided otherwise by law or regulation, costs shall be those set forth in N.J.S.A. 47:1A-1 et seq., as amended and supplemented.

(f) The custodian shall sign and date the request form, enter the estimated fee and, if applicable, tracking number, and provide the requester with a copy.

(g) No fee shall be charged for inspecting or examining government records.

(h) Upon request, a custodian may allow requesters to use their own photocopying equipment to

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copy public records, provided that it will not disrupt the business operations of the custodian and will not endanger the public records. No special fee shall be charged to a requester who utilizes its own equipment.

(i) If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable resolution with the requester that accommodates the interests of the requester and agency.

7:1D-3.5. Delivery of records

The custodian shall notify the requester when the records are available and shall collect any additional fees and charges due prior to delivery of copies.

7:1D-3.6 Immediate access to certain records

Immediate access ordinarily shall be granted for requests to inspect, examine or copy budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

7:1D-3.7 Failure to respond

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Except as provided in N.J.A.C. 7:1D-3.6, a custodian shall grant or deny access within seven business days after receiving a request completed in accordance with N.J.A.C. 7:1D-3.4 or such additional time as may be allowed by law or these rules or as may be agreed to by the requester. The failure to grant access shall be deemed a denial of the request, unless the requester has elected not to provide a name, address, telephone number or other means of contact. If the requester has elected not to provide contact information, the custodian shall not be required to respond until seven business days after the requester reappears before the custodian seeking a response to the original request.

7:1D-3.9 Records Stored offsite

If the requested record is in storage offsite at a facility outside of the regular business office of the Department or “in but not of” agency, the custodian shall so advise the requester within seven business days after the custodian receives the request. The custodian shall advise the requester of the date when the record will be made available. If the record is not made available by the identified date, the request shall be deemed denied.

7:1D-3.10 Requests for copies of a government record in a specified medium

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(a) Unless otherwise specifically requested, copies of records shall be provided in printed form on ordinary business size paper. The requester may request that the agency provide a copy of a record in a specific medium. If the agency maintains the government record in the medium requested, the custodian shall provide the record in the medium sought.

(b) If the agency does not maintain the government record in the medium requested, the custodian shall convert the record to the medium requested if reasonable or provide a copy in some other meaningful medium. If a requester asks for copies of a record in a medium not routinely used by the agency, not routinely developed or maintained by the agency, or requiring a substantial amount of manipulation or programming of information technology, the custodian may charge, in addition to the actual cost of duplication, a special charge which shall be reasonable and shall be based upon the cost of any extensive use of information technology or for the labor cost of providing the service actually incurred. The requester shall be given the opportunity to review and object to the charge prior to its being incurred. If the requester objects to the charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the agency.

(c) Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined or copied is such that the record cannot be

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reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the Department or agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies. The requester shall have the opportunity to review and object to the charge prior to its being incurred. If the requester objects to the charge and refuses to withdraw the request, the custodian may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the agency.

7:1D-3.11 Computation of time

(a) In computing any period of time under P.L.2001, c. 404 and these rules, the business day a completed request for access is received is not to be included. The last business day of the period so computed is to be included.

(b) For purposes of P.L. 2001, c. 404 and these rules, a request for access is deemed to be complete when the requester provides the information required by N.J.A.C. 7:1D-3.3 and 3.4 of these rules and pre-pays the fees required by P.L. 2001, c. 404 and these rules.

SUBCHAPTER 4 CONFIDENTIALITY OF RECORDS

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7:1D-4.1 Scope and applicability

The rules in this subchapter apply to the Department of Environmental Protection and all divisions and agencies in the Department, including those agencies allocated to the Department to satisfy the requirements of Article V, Section 4, Paragraph 1 of the New Jersey Constitution, commonly known as “in but not of” agencies.

7:1D-4.2 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other law, regulation promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:

1. The location of threatened and/or endangered plant and animal species, rare plant and animal species, and natural communities; and the location of historic and/or archeological sites where the record is not being used for permit or enforcement decisions;

2. Information related to Green Acres and Natural Lands Trust land acquisitions, program

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offerings, active projects and title investigations, which, if disclosed, would jeopardize these transactions or affect penalty negotiations;

3. Department bank account information, including routing numbers and vendor account numbers;

4. Information related to a nuclear power plant, which, if disclosed, would jeopardize the public health, safety and welfare or the security of the plant;

5. Information concerning individuals as follows:

- i. Information compiled and identifiable as part of an inquiry or investigation into a possible violation of law, civil or criminal, except to the extent necessary to prosecute the violation or continue the investigation, whether open, closed or inactive;
- ii. Information compiled as part of an inquiry into an individual's fitness to be granted or retain a license, other than disciplinary history with the licensing agency;

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- iii. Employment related documents and information related to the employment of any individual, whether employed by a private employer or Departmental body, including but not limited to information related to an individual's employment history (except as necessary to demonstrate compliance with requirements for a particular Department position); information comprising a personal recommendation or evaluation; and information contained in or derived from personnel records or files;

6. Records relating to mediation proceedings conducted by or on behalf of the Department;

7. Standard operating procedures relating to how the Department conducts enforcement actions;

8. Records that reveal the identity of a complainant;

9. Any inventory of enforcement resources compiled and any policies or plans compiled by the Department pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, including employee emergency contact information; and

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10. Meeting minutes and records relating to executive sessions of advisory groups or Councils;

11. Solid waste hauler customer lists;

12. Information requested by any Federal agency, including the U.S. Environmental Protection Agency, to be maintained as confidential in connection with enforcement of any Federally delegated program or joint Federal/State enforcement action;

13. Discharge Prevention Containment and Countermeasures and Discharge Cleanup and Removal Plans and related general site plans;

14. Off-Site Consequence Analyses developed pursuant to the Toxic Catastrophe Prevention Act;

15. Transmission Pipeline Registrations pursuant to the Spill Act;

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16. Radioactive Materials Licenses issued by the Nuclear Regulatory Commission

17. Advisories issued by the Nuclear Regulatory Commission that address “lessons learned”, security or enforcement issues;

18. Listing of Low Level Radioactive Waste generators including amounts of wastes generated;

19. National defense related information from Lockheed Martin’s Aegis Radar System facility;

20. Shielding designs for sources of radiation;

21. Environmental Emergency Procedures plans such as emergency procedures for Wastewater Treatment facilities pursuant to N.J.A.C. 7:14A-6.12(D); and

22. Inundation maps submitted as part of Emergency Action Plans pursuant to N.J.A.C. 7:20-1.7f and 1.11i.

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23. Information concerning individuals as follows:

i. information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;

ii. home addresses, home telephone numbers, personal e-mail addresses or other personal contact information;

iii. Information in an income or other tax return; and

iv. Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness, except as otherwise required by law to be disclosed;

24. Test questions, scoring keys and other examination data pertaining to the administration of an examination or an application for public employment or licensing;

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25. Records of another Department or agency allocated to that Department in the possession of this Department or any agency allocated to this Department when those records are made confidential by a regulation of that Department or agency allocated to that Department adopted pursuant to N.J.S.A. 47:1A-1 et seq. and Executive Order No. 9 (Hughes 1963), or pursuant to another law authorizing the Department or agency to make records confidential or exempt from disclosure; and

26. Records of this Department or any agency allocated to this Department held by the Office of Information Technology, the State Records Storage Center of the Division of Archives and Record Management (DARM), in the Department of State, or an offsite storage facility outside of the regular business office of the agency. Such records shall remain the legal property of this agency and be accessible for inspection or copying only through a request to the proper custodian of this Department or agency allocated to this Department. In the event that records of this Department or any agency allocated to this Department have been or shall be transferred to and accessioned by the State Archives in the Division of Archives and Records Management, all such records shall become the legal property of the State Archives, and requests for access to them shall be submitted directly to the State Archives.

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Date: _____

Bradley M. Campbell, Commissioner