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## **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

### **LAND USE MANAGEMENT**

#### **WATER MONITORING AND STANDARDS**

##### **Surface Water Quality Standards**

##### **Surface Water Classifications**

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

Proposed:	November 3, 2003 at 35 N.J.R. 4949(a)
Adopted:	July 10, 2004 by Bradley M. Campbell, Commissioner, Department of Environmental Protection
Filed:	July 12, 2004
Authority:	N.J.S.A. 58:10A-1 <u>et seq.</u> , 58:11A-1 <u>et seq.</u> , and 13:1D-1 <u>et. seq.</u>
DEP Docket Number:	23-03-10/412
Effective Date:	August 2, 2004
Expiration Date:	April 17, 2005

The Department of Environmental Protection (Department) is adopting amendments to the Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B, proposed on November 3, 2003 at 35 N.J.R. 4949(a). The adopted amendments modify the antidegradation designation and/or the stream classification of several waterbodies. The amendments upgrade Category One antidegradation designation for seven streams, including both named and unnamed tributaries, based upon “exceptional ecological significance.” Antidegradation designation of Category One based upon “exceptional water supply significance” is also being adopted for significant drainage areas of the Manasquan River, Metedeconk River and natural drainage to the Oradell Reservoir. In addition, the stream classification for two stream segments will be upgraded to FW2-TP (Trout Production) and Category One antidegradation designation would apply to the stream segments reclassified as FW2-TP. As a result of these upgrades, the total river miles designated as Category One will increase by approximately 500 river miles. The Department is also adopting an upgrade of South Branch Rockaway Creek from FW2-TM(C1) to FW2-TP(C1)

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based on confirmation of trout production in this waterbody. The South Branch Rockaway Creek was previously upgraded to a Category One antidegradation designation based upon "exceptional ecological significance"(35 N.J.R. 2264(b), May 19, 2003).

Summary of Hearing Officer's Recommendation and Agency Response:

A public hearing regarding this proposal was held on December 15, 2003 at the Department of Environmental Protection, 401 East State Street, Trenton, New Jersey. Debra Hammond, Chief of Bureau of Water Quality Standards and Assessment, served as the hearing officer and 7 people presented oral comments at the hearing. The comment period for this proposal closed on January 2, 2004.

Ms. Hammond, Chief of the Bureau of Water Quality Standards and Assessment, recommended that the proposed amendments to N.J.A.C. 7:9B-1.15 be adopted. The Department accepts the recommendation of Ms. Hammond.

The record of the public hearing is available for inspection in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection  
Office of Legal Affairs  
Attn. DEP Docket Number 23-03-10/412  
P.O. Box 402  
Trenton, NJ 08625-0402

**Summary of Public Comments and Agency Responses:**

**Summary**

The following people submitted written and/or oral comments on the proposed amendments on Surface Water Quality Standards, N.J.A.C. 7:9B. The numbers in parentheses after each comment correspond to the number identifying commenters below:

<b>Number</b>	<b>Last Name</b>	<b>First Name</b>	<b>Affiliation</b>
1	Abbott	Dorothea	

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2 Abbott	Katherine	
3 Abels	Jane & Leonard	
4 Akers	Fred	
5 Allen	Doris	
6 Allen	Kenneth	
7 Allen	Paul	
8 Altman	Tracye	
9 Altomari	Chris	
10 Ambrosino		
11 Anderson, Jr.	Gary	
12 Andrews	Peter J.	
13 Apramian	Mr. & Mrs.	
14 Aronov	Elise	
15 Aumack	David	
16 B Illegible	Mark	
17 Babinsky	Stephen	
18 Babula	Gregory	
19 Bader	Frank	
20 Baillie	Evelyn	
21 Balint	Christine	
22 Balla	Nick	
23 Barbaris	Ernest	
24 Barnett	Daniel	
25 Battell	Family	
26 Beckner	Azel	
27 Beckwith	Anita	
28 Bedrosian	Aram	
29 Bellinger	Michele	
30 Bender	Mary Kay	
31 Bennetsen	Walter	
32 Bennington	Will	
33 Bernzott	Beatrice	
34 Bertoline	Gina	
35 Biccaye ?	Pierre E.	
36 Bilenky	June	
37 Biondi	Edith A.	
38 Biro	Robert	
39 Blackford ?	M. ?	
40 Blackiston	Robert	
41 Blackwood	Janet	
42 Blessing	Alfred	
43 Blumenkrantz	Ellen	
44 Bobrow	Warren	
45 Bogar	Eleanor	
46 Boghosian	Thomas	
47 Bolyai	Melani	
48 Bonette	Andrea M.	East Amwell Township
49 Boras	Jo	
50 Boras	Leonard	
51 Bosca	Jeanne	

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52 Bowles-Debiasa	Donna	
53 Boyle	Brian	
54 Brady	Ann	Regional Planning Partnership
55 Bramberg ?	Sinifried T. ?	
56 Breen	Kristin	
57 Brennenstuhl	Jim	
58 Brenner	Patricia A.	
59 Brewington	Kathryn L.	
60 Brine	Charles	
61 Brinker	Erica	
62 Brinker	Sandra	
63 Brnicevic	Linda	
64 Brockerhoff	Frank G.	
65 Bronhard	Jennifer	
66 Brosko	Eileen	
67 Brown	Tom	
68 Brown	Michael	
69 Brown	Sandra	
70 Browne	Wendy	
71 Bryson	Jennifer	Sourland Planning Council
72 Burani	Sergio	
73 Burd	Jill	
74 Burke	Frank	
75 Burket	Cheryl	
76 Burns	Steve	
77 Butler	Better	
78 Byrne	Geraldine & George	
79 C Illegible	Ellen	
80 Calder	Virginia	
81 Calenti / Rancich	Joanne & John	
82 Callahan	Sharon	
83 Calogero	Gina A.	
84 Calogers ?	Diane	
85 Cannata-Nowell	Anita	
86 Capozucca	John	
87 Carlo	John	
88 Carlson	Carl	
89 Carluccio	Tracy	Delaware Riverkeeper
90 Carnevale	Robert & Denise	
91 Carola	Gina	
92 Carr	Bob	
93 Carrick	Diane	
94 Carringer	Nancy	
95 Carver	Chip	
96 Cavanaugh	Ann	
97 Chaikovsky	Dimitry	
98 Chambers	Janet	
99 Chaplin	Ron	
100 Charkey	Lori	
101 Charkey ?	Lori	

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102 Chirichello	Carolyn	
103 Chupa	Janie	
104 Clegg	Elmer	
105 Cochrane	Barbara	
106 Cohn	Robert	
107 Colletta	Viola	
108 Colson	Linda	
109 Connolly	Arlene	
110 Cook	Shirley H.	
111 Cooke	Nathan	
112 Cooke	R.	
113 Cooklin	Michele	
114 Corbett	Frances M.	
115 Cosgrove	James F.	TRC Omni Environmental Corp.
116 Covington	Katharine	
117 Crum	Dan	
118 Cruz	Alice	
119 Cucchiaro	Ronald D.	Weiner Lesniak Llp
120 Cuillerier	Michel	
121 Cunningham	James	
122 Curcio	John F & S. J.	
123 Curtis	Barbara	
124 Curtis	Marie A.	
125 Curtis	Illegible	
126 Cyrus	Sara	
127 D'alessandro	Michele	Franklin Township
128 Dallam	Beth	
129 D'angelo	Thomas	
130 Daul	Chris	Delaware Township
131 Dave		
132 Davis	Bruce	Township of Howell
133 De La Torre	Andrew	
134 Defilippis	Maria	
135 Dehart	Barry	
136 Deis	Louise	
137 Dell	Penelope	
138 Dellatorre ?	Faye	
139 Dellechiaie	J.	
140 Demeo	Elise	
141 Denzer	Joan	
142 Deoseph	Doris	
143 Descisciolo ?	Helen	
144 Descisciolo ?	Tony	
145 Desjardins	Donna	
146 Devallance	Brendan	
147 Devane	Max	
148 Dey	Barbara R.	
149 Digiacinto	Barry	
150 Dillingham	Tim	American Littoral Society
151 Dilts	Margaret B.	Township of Lopatcong

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152 Dipasquale	Hank	
153 Discenza	Regina & Frank	
154 Dodds	Jill Stein	
155 Domidion	Vincent	Monmouth County Water Resources Assoc.
156 Donato	Vincent	
157 Donohue-Conway	Maureen	
158 Downing	Hilary	
159 Dreyling	Chris	
160 Duesterberg	Karl	
161 Duggan	Frances	
162 Dullea	Frances	
163 Dumais	Susan	
164 Dunham	Trudy	
165 Eckert	Robert	
166 Edelman	Carolyn Foote	
167 Ehrenbeck	Robert	
168 Else	I. L.	
169 Ember	Steve	
170 Epstein	Susan	
171 Epstein	Patricia & David	
172 Epstein	Naomi	
173 Erickson	Florence	
174 Failla	Lynda	
175 Farkas	Daniel Evans	
176 Farri	Virginia	
177 Feinstein	Jerome	
178 Fenster	Steven	
179 Ferrara	Raymond	Matzel & Mumford Organization
180 Finch	Kathy	
181 Finn	Pat	
182 Finnegan	John	
183 Fiorei ?	Elena	
184 Fischer	Jackie	
185 Fisher	Alan M.	Borough of Washington
186 Fisher	David	Matzel & Mumford Organization
187 Flanagan	Carol	
188 Fogel	Joel S.	
189 Foley	Barbara	
190 Foes	Ellen	
191 Forwalk	Ellen	
192 Fox	Eugene	
193 Fox	Illegible	
194 Frantz	Charles	
195 Freid ?	Ruth	
196 Freilich ?	Jeannie	
197 Friedlander	Edward	
198 Fristensky	Sandra	
199 Fritsch	Wayne	
200 Frontz	Jeff	
201 Fucci	Linda & John	

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202 G Illegible	P.	
203 Galetto	Jane Morton	
204 Galligan	Kathy	
205 Gardner	William	
206 Garner	Denise	
207 Garry	Lorraine Gagliardotto	
208 Gehring	Eric	
209 Geiger	Glenn C.	Pitney, Hardin, Kipp & Szuch LLP
210 Gillespie	Tristan	
211 Gillman	Meryl	
212 Gioielli	Lawrence	
213 Giotta	Madeline	
214 Giovanetti	Suzanne	
215 Goehring	Dorothy	
216 Goldshoer	Bernard	
217 Goldsholl	Bernard & Adeline	
218 Goldsmith	Patrick	
219 Gonzales	Gretchen & Peter	
220 Goun	Richard	
221 Grace	Rosemary	
222 Grahn	Charlene	
223 Graver	Robert	
224 Greberis	Stan	
225 Griffin	Alex	
226 Gripenburg	Henry	
227 Grunebaum	Franklin	
228 Guena	Lee Strom (Mrs)	
229 Gurzenda	Mary-Jean	
230 Guyler ?	John	
231 Gwyer	Gail	
232 Hagon	Catherine	
233 Haight	Josephine K.	
234 Hall	Burton	River Vale Neighborhood Assoc.
235 Halliday	Jean	
236 Hamilton	Mary Lynne	
237 Hamm	Henry	
238 Hammel	Maryjane	
239 Hanlon	Sonja	
240 Hardy	Robin	
241 Harley	Robert & Bonnie	
242 Hartwick	Janice	
243 Haselton	Kerry	
244 Havens	Gifford	
245 Havens	Matt	
246 Hawkins	George	
247 Hayes	Brian	
248 Heffernan	Robert	
249 Held	Rich	
250 Helwig	Helen	
251 Hepburn	Christine	

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252 Herson	Michael	
253 Hickey	Rita	
254 Higgins	Deborah J.	
255 Hjelm	Carla E.	United Water
256 Hodgetts	Patricia	
257 Holuit ?	Cynthia	
258 Hood	Kim	
259 Hornung	Sieglinda	
260 Housepian	Edgar M.	
261 Howell ?	Mary G.	
262 Hulit	Gerald W.	
263 Hunt	Elliot	
264 Hutchinson	Terrance	
265 Illegible	Illegible	
266 Illegible	Illegible	
267 Illegible	Illegible	
268 Illegible	Illegible	
269 Illegible	Illegible	
270 Illegible	Jeanne ?	
271 Illegible	Merle & D Illegible	
272 Illegible	Michael	
273 Ipp	Dee Ann	
274 Jackson	Gloria	
275 Jaffe	Michael	
276 Janusko	Robert	
277 Jensen	Karl	
278 Jewell	Douglas	
279 Johanson	Kenneth	
280 Johanson	Wynn	
281 Johnson	Robert	
282 Johnson	Timothy	
283 Johnson	Don	
284 Johnson	Anita M.	
285 Johnston	Robin	
286 Juettner	Donna	
287 Juzan	Barbara	
288 K Illegible	Hauns ?	
289 Kahn	Mitch	
290 Kalish	Shirley	
291 Kamuski	Lynn	
292 Kaplan	Paula	
293 Karl	Robert A.	Brick Utilities
294 Kassel / Leeman	Kerul & David	
295 Kaye	Emma	
296 Kaye, Sr	Thomas	
297 Kearns	Patricia	
298 Keats		
299 Keeve ?	K.	
300 Kehayes	Stephen	
301 Keith ?	Troy ?	



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302 Kelley	April
303 Kennedy	Diane
304 Kern	Charles
305 Kesich	John
306 King	Michael
307 Kinsman	Karen
308 Kirchner	Kathleen
309 Klizas	Jonathan
310 Kloss	Richard
311 Knab	Robert
312 Knice	Philip
313 Knowlton	Stephen
314 Kopp	Jacob
315 Koralja	Jason
316 Kornfeld	Laurel
317 Korte	Joanne
318 Kraft	Verna
319 Kratzer	Deborah J.
320 Krawczyk	Greg
321 Krulan	Steve
322 Krupka	Chris
323 Kubach	Allen
324 Kuehn	Carol
325 Kurowski	Klara
326 Kus	Robert
327 Kyle	Iuana
328 Labuda	Joseph
329 Landau	Karen
330 Landerer	A.
331 Laue	Peter
332 Lausell	Susan
333 Lawlor	Kathleen & Roger
334 Leach	Rosemary O. Leach
335 Lechtanski	Cheryl
336 Lee	Hudson
337 Legge	R. J.
338 Legge	Mary T.
339 Lehmann	Robert
340 Lentchner	Irwin
341 Lequire-Schott	Toni
342 Lerwab ?	Charles
343 Leslie	Malcolm
344 Lesser	Jonathan
345 Lewicki	Susan
346 Lewis	Timothy
347 Lieu	Mary Van
348 Liszewski	Brian D.
349 Locascio	Ralph
350 Loeffel	Diana & Dick
351 Loew	Ian

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352 Lopuh	Joyce	
353 Lozada	Bianca	
354 Ludwig	Susan	
355 Lundy	Joellen	
356 Lynch	Patti	
357 Lynch	Ray	
358 Lynch	Laura	
359 Lynch	Jimmy	
360 M Nordlund	James	
361 Ma	Jessica	
362 Macchio	Ralph	
363 Machacek	Judy & Philip	
364 Mack	Linda J.	
365 Magno	Sam	
366 Maihack	A.	
367 Malmid	Wendy	
368 Manicone	Joseph	
369 Manning	Alexa	
370 Mans	Deborah A.	NY/NJ Baykeeper
371 Marchesi	Rudy	
372 Marlow	Margaret	
373 Marquette	Lisa	
374 Marsh	Ed	
375 Marsh	Peter	
376 Marshall	Lisa	
377 Martens	Alan	
378 Martin	Mary Ann	
379 Martin-Borrero	Phyllis	
380 Martinet	Glenn	
381 Mason	Christopher	
382 Mattan	Steve	
383 Mausner	Marvin & Laura	
384 Maxfield	Carol	
385 Maxwell	John	
386 Mccabe	Tanya	
387 Mcginty	Kathleen	
388 Mcmenamin-Pass	Eileen	
389 Mcmonage	Mark	
390 Mcmonagle	Patricia	
391 Mcparland	Marion	
392 Mcpartland	Lora	
393 Mcpherson	Kenneth D.	Waters, Mcpherson, Mcneill
394 Messina	Frank	
395 Meyer	Aurora	
396 Mihok	Michael	
397 Mikkelsen	David	
398 Mikkelsen	Sally	
399 Miles	Katherine	
400 Miller	Regina	
401 Miller / Golodik	Sharon & James	

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402 Mitchell	Alison	N.J. Conservation Foundation
403 Mont ?	Thomas	
404 Monti	Paul	
405 Moore	Millicent	
406 Moore	David F.	
407 Morley	Michael	
408 Morris	C.	
409 Mulji	Salman	
410 Munro	Laetitia	
411 Murgitroyde	M.	
412 Murray	Mark	
413 Murray	Robert	
414 Musgrave	Elaine	
415 Nargi	Robert	
416 Navon	Gina	
417 Nelson	Katherine	
418 Nelson	Carol	
419 Nix	Leonard S.	
420 Nixon	David	
421 No Name	No Name	
422 No Name	No Name	
423 No Name	No Name	
424 No Name	No Name	
425 No Name	No Name	
426 No Name	No Name	
427 No Name	No Name	
428 No Name	No Name	
429 No Name	No Name	
430 Nordahl	Bill	
431 Nugent	Monica	
432 Nutt	Mary Jo	
433 Nuzzo	Jennifer	
434 Nyhan	Yulgoo	
435 O'byrne	Gloria	
436 Odgers	Carrie	
437 O'hara	Kathleen	
438 O'hearn	Robin	
439 O'keefe	Patrick J.	N.J. Builders Assoc.
440 Olick	Frances	
441 O'malley	Doug	N.J. PIRG
442 Orlow	Richard	
443 O'rourke	Donald	
444 Osowski	Amie	
445 Owens	Nanette	
446 Owles	R. Joseph	
447 Palchanes	Thomas	
448 Palmer	Karen	
449 Palmer	George	
450 Pascarella	Michael	
451 Patroni	Ursula	

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452 Paul	Edward	
453 Paula	Hayes	
454 Pavese	Richard	
455 Pecha Iii	Anton F.	
456 Peck	Kimberly	
457 Pelletier	Claire	
458 Pendergast	Terri	
459 Pesin	Sam	
460 Petermann ?	R.	
461 Peterson	Kathryn	
462 Petrignani	Phil	
463 Petta	Joseph	
464 Pierce	Carol M.	
465 Pigoncelli	Rebecca A.	
466 Plany ?	Robert & Josephine	
467 Plotkin	Alexis	
468 Poppe	Sue	
469 Potashnick	Steven	
470 Prahm	C.	
471 Praul	Josh	
472 Preschle	August	
473 Primiano	Bob	
474 Pringle	David	N.J. Environmental Federation
475 Puglisi	Richard	
476 Rapping	Judith	
477 Reuttes, Jr	Edmund	
478 Riben	Adira	
479 Richardson	Rani ?	
480 Richko	Carl	
481 Riehl	Andrew	
482 Robbins	Nancy	
483 Rocco	Teri	
484 Rocselel ?	Herbert W.	
485 Rodriguez	Joseph	
486 Rodriguez	Rudy	
487 Rose	Sanford	
488 Rubin	Drew	
489 Rubin	Donna	
490 Ruskin	Helena	
491 Ryan	Nancy	
492 Ryan	Susan & Donald	
493 Ryan	Stephan F.	
494 S Illegible	Robert	
495 S Illegible	A Illegible	
496 S. Illegible	S. Illegible	
497 Salzman	Karen M.	
498 Samiljan	Michael	
499 Sampson	Allison	
500 Saparara ?	John & Ginna ?	
501 Satmari	Juliana	

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502 Sauer	Roger	
503 Scahill	Frank	
504 Schaeffer	Janine	
505 Schatzmann	Kathleen	
506 Schazer ?	Sandra	
507 Schmelz	Lance	
508 Schmoyer	Rebecca	
509 Schneider	Greg	
510 Schneider	Paul H.	K. Hovnanian Companies
511 Schneider	Paul H.	Pulte Homes
512 Schroeck	Betty A.	
513 Schullman	Lisa	
514 Schvejda	Tina	
515 Schvejda	Dennis W.	
516 Schwartz	Howard	
517 Schwartz ?	Illegible	
518 Secare	Steven	Secare, Delanoy, Martino & Ryan
519 Sembos	Phyllis	
520 Semmler	Judith	
521 Serra	Kathleen	
522 Serra	Dawn	
523 Shapella	Ron	West Amwell Township
524 Shaw	Mary Ellen	
525 Shay	Sharon	
526 Shea	Stephanie	
527 Shea	Timothy	Jackson Township MUA
528 Sheehan	Bill	Hackensack River Keeper, Inc.
529 Shuckman	Richard	
530 Sidwa	Charles	
531 Siecke	Martin	
532 Sills	Charles	
533 Simmons	George	
534 Sinden	Grace	
535 Skelly	John	
536 Smedile	Angela	
537 Smiler	Bonnie	
538 Smith	Rebecca	
539 Smith	Charlotte	
540 Smith-Reeps	Heather	
541 Smoller	Nancy	
542 Soll ?	Anna M.	
543 Solomon	Beverly	
544 Somalwar	Sunil	
545 Somers	Julia	
546 Spann	Kate	
547 Spencer	Jordan	
548 Spiegel	Robert	NY/NJ Baykeeper
549 Spielberger	Joyce	
550 Spotts	Richard	
551 Sroczynski	Thomas	

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552 Stager	Maryanne	
553 Stark	Jeanne	
554 Startare	Nancy L.	
555 Stensgaard	Dorothy	
556 Stewart	Sydney	
557 Stiles	Eric	
558 Stilwell	Jonathan	
559 Stitt	Laura	
560 Stock	Curtis A.	
561 Stout	B. Collene	
562 Stout	Jesse	
563 Stricker	Peter	
564 Sudol	Diane	
565 Sugar	Nina	
566 Suthers	Hannah B.	
567 Swallow	Pamela	
568 Sziber	Ray	
569 Sziber	Patricia P.	Washington Crossing Audubon Society
570 Szuszkowski	Robert	
571 Szwec	Frances	
572 Taggart	Regina	
573 Taggart	Norman	
574 Tallaksen	Leslie	
575 Tarlowe	Paul	
576 Tatum	Jody E.	
577 Taylor	Steve	Manasquan River Watershed Association
578 Temple	Dena	
579 Thielke	Carol	
580 Thomas	Alfred B.	
581 Thomason	Elizabeth	
582 Thompson	Stevan	
583 Thompson	Glenn	
584 Tittle	Jeff	Seirra Club
585 Toft	Dennis M.	Wolff & Samson P.C.
586 Tousman	Jane	
587 Truncer	James J.	Board of Recreation Commissioners
588 Tuohy	Victor E.	
589 Upham	Paul	
590 Van Abs	Daniel J.	N.J. Water Supply Authority
591 Van Allen	Howard	
592 Vanderwolk	Charlotte	
593 Varian	Lee	
594 Varjian	Leon	
595 Vicari	Joan	
596 Vuckovaz	Helen	
597 Vyff	Marnie	
598 W ?	Linda	
599 Waide	Kevin	
600 Walcott	Barbara	
601 Walden	Donald	

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602 Walnut	A. Jerome	Ocean County Environmental Agency
603 Walsh	Mary	
604 Walsh	Kathleen	
605 Walsh	Carolyn	
606 Walsh	Barbara	
607 Warkala	Eileen	
608 Weber	George	
609 Weeks	Jessie	
610 Weiman	Rick	
611 Weiss	Joan	
612 Welsch	Nathaniel	
613 Wentink	Dianna	
614 Whieldon	David	
615 White	Lawrence E. M/M	
616 Whiteford	Richard	
617 Wilkinson	Bradley	
618 Williams	W. A.	
619 Williams	Doug	
620 Wilson	Michael	
621 Wilson	Louise	Township of Montgomery
622 Witkowski	Kenneth G. ?	
623 Wood	Gary	
624 Wright	Tim	
625 Wright	Jim	
626 Yellowitz	Irwin	
627 Young	Sandra	
628 Zach	Myrna	
629 Zachary	Richard	
630 Zajac	Robert	
631 Zampetti	Suzanne	
632 Zawoysky	Barbara	
633 Zawoysky	Russell	
634 Zeck	Brian	
635 Ziegler	Ric	
636 Zinn	Robert	
637 Zuidewliek ?	Dorothy & R.	

***Extension of comment Period:***

**COMMENT 1:** The proposed antidegradation upgrade should be held in abeyance pending the adoption of the proposed Stormwater Regulations and the analysis of any water quality benefits that may accrue therefrom. At a minimum, the public comment period should be extended to provide necessary opportunities for further analysis and evaluation of the proposed antidegradation upgrade. (393)

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**COMMENT 2:** The Department should extend the comment period for an additional thirty days because the commenters did not receive all the trout related information on the South Branch Rockaway Creek that they requested pursuant to the Open Public Records Act (OPRA) before the close of the comment period. (115, 511)

**RESPONSE TO COMMENTS 1 THROUGH 2:** The Department believes that the 60-day comment period originally provided was sufficient to identify and comment upon the impacts of the proposed upgrades in the antidegradation designations and stream classifications for the selected waterbodies. The proposal identified the stream segments affected by the rulemaking and provided the basis for the Department's decision to upgrade each waterbody. However, the Department did consider and has summarized in this adoption comments submitted subsequent to the close of the comment period by commenters who had requested additional information from the Department under Open Public Records Act (OPRA) (P.L. 2001, c. 404) where those comments were specifically related to the additional information requested.

***General Support:***

**COMMENT 3:** The commenters support the proposed regulations providing Category One protection to more New Jersey waterways. (1-6, 8-47, 49-53, 55-63, 65-70, 72-81, 83-88, 90-108, 110-114, 116-118, 120-126, 128-129, 133-149, 152-153, 156-178, 180-181, 183-184, 187, 189-208, 210-211, 213-225, 227-233, 235-245, 247-251, 253-254, 256-292, 294-297, 299-318, 320-342, 344-392, 394-401, 403-405, 407-438, 440, 442-458, 460-461, 463-473, 475-509, 512-517, 519-522, 524-526, 528-538, 540-553, 555-565, 567-568, 570-571, 574-576, 578-583, 586, 588-589, 591-601, 603-620, 622-637)

***Bergen County Streams***

**COMMENT 4:** The Commenters support the proposed Category One antidegradation designation for Oradell Reservoir tributaries and Hackensack River Watershed. (3, 12-13, 16, 20, 25, 28, 30, 35, 37, 39, 42, 51-52, 55, 58-59, 76, 78-79, 81, 83-84, 87, 96, 98, 101, 106-107, 110, 112, 114, 122, 125, 134, 138, 143-144, 148, 156, 162, 168, 171-173, 177, 181, 183, 188, 191, 193, 195-197, 201-202, 211, 213, 216, 227-228, 230, 233-234, 236, 239, 241-242, 250, 254-255,



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257, 259-262, 265-273, 284, 287-288, 290-292, 294, 299, 301, 323, 325, 329-330, 333, 342, 348, 350, 362-363, 366, 383-384, 387, 394, 399-401, 403, 413-414, 419, 421-429, 433, 437, 445, 450, 457, 460, 466, 470, 477, 479, 484, 487, 491-496, 500, 503, 506, 517, 519-520, 528-529, 542, 560, 580-581, 584, 588, 591-592, 594, 598, 600, 606, 614-615, 622, 625-626, 629, 631, 637)

***Tributaries to the Delaware River:***

**COMMENT 5:** The commenters support the State's and the Department's efforts to ensure protection of valuable water resources by providing Category One antidegradation protection to the following waters:

Hunterdon County: Alexauken Creek, Harihokake Creek, Little Nishisakawick Creek, Lockatong Creek, Nishisakawick Creek, and Wickecheoke Creek;

Warren County: Lopatcong Creek and Pohatcong Creek.

(48, 54, 130, 154, 212, 406, 554, 584)

**COMMENT 6:** The commenters support the proposed upgrade of the Lopatcong Creek from trout maintenance to trout production and Category One. (151, 64, 556, 584)

**COMMENT 7:** The commenters support the proposed Category One antidegradation designation of the Alexauken Creek and its tributaries. (71, 523, 566, 569, 621)

**COMMENT 8:** The commenter supports the proposed Category One antidegradation designation for the Delaware streams in Hunterdon and Warren Counties, specifically the Lockatong Creek and the Wickecheoke Creek in Franklin Township. Category One designations will help give the local and State planners the tools required to design and build a safe and responsible future. (127)

**COMMENT 9:** The commenter supports the proposed surface water classifications for waters in the Delaware River Basin. The proposed designations are consistent with findings from the Delaware Riverkeeper Network's (Network) stream monitoring data, where available, gathered for more than a decade through the Network's Citizen's Volunteer Monitoring Program. (89)

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***Atlantic Streams***

**COMMENT 10:** The commenters support the proposed Category One antidegradation designation for waters in the Atlantic Coastal Basin. (89, 132, 150, 584, 602)

**COMMENT 11:** The commenters support the proposed Category One antidegradation designation of the Manasquan River and Manasquan Reservoir. (131, 577, 590)

**COMMENT 12:** The commenter supports the expansion of Category One designations for water supply sources in Monmouth County. (155)

**COMMENT 13:** The commenter strongly supports the proposed surface water classification of the Metedeconk River. The Brick Township Municipal Utilities Authority provides drinking water to more than 100,000 residents of northern Ocean County. The major source of water supply is the Metedeconk River. By upgrading the entire Metedeconk drainage area to Category One antidegradation designation, the Department will be taking a significant step in protecting the health and welfare of the population of northern Ocean County, and assuring a sustainable supply of drinking water for this region of the State. (293)

**RESPONSE TO COMMENTS 3 THROUGH 13:** The Department acknowledges the commenters' support for the upgraded antidegradation designation for the proposed streams in Bergen, Hunterdon, Warren, Ocean and Monmouth counties.

**COMMENT 14:** The commenter strongly supports the storm water regulations including the 300-foot buffers in Category One watersheds. (1-6, 8-47, 49-53, 55-63, 65-70, 72-88, 90-114, 116-118, 120-126, 128-129, 132-133, 135-137, 139-149, 152-153, 156-178, 180-184, 187, 189-208, 210-245, 247-254, 256-292, 294-297, 299-318, 320-369, 371-392, 394-401, 403-405, 407-438, 440-461, 463-473, 475-509, 512-517, 519-522, 524-526, 528-538, 540-547, 549-553, 555-565, 567-568, 570-571, 574-576, 578-583, 586, 588-589, 591-620, 622-637)

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**RESPONSE TO COMMENT 14:** The Department acknowledges the commenters' support for implementing the new provisions in the Stormwater Management Rules.

***CI Process:***

**COMMENT 15:** The Department should provide a transparent overview of the process used to identify waters to be redesignated as Category One. This information should include both the details of the thresholds used and the maps showing the reaches and boundaries of all waters reclassified. The Department needs to make clear how it is determined if a specific water body meets the "exceptional ecological significance" criteria.

For each proposed segment the Department should provide the details of the decision making process used to determine exceptional ecological significance. Does each of the five data sources listed as being the basis for the reclassifications have to show the highest or best rankings? If not, do most of them have to meet the highest ranking? How are these determinations made? For each proposed segment the Department must provide the total miles of water impacted. This should include both the identified segment as well as all impacted tributaries. (439)

**COMMENT 16:** The Department needs to explain how these data justify a Category One antidegradation designation not only for the entire length of these creeks but for all the tributaries as well. (439)

**RESPONSE TO COMMENTS 15 THROUGH 16:** The current definition of Category One waters at N.J.A.C. 7:9B-1.4 provides the general framework within which the Department determines which waterbody should be provided Category One protection. The Department believes that this definition is technically sound and comprehensive in scope, and that it provides sufficient clarity. The definition is broad to provide protections to waterbodies deemed "special" and therefore, worthy of additional protection. In 2002, the Department began the initiative to identify and protect those waterbodies. The Department does not anticipate any changes to the current definition.

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In the rule proposal the Department listed all the information upon which it relied to make the determination that the waterbodies have "exceptional ecological significance". For the specific waterbodies covered by this rulemaking, the proposal summarized the basis upon which each segment was determined to qualify for Category One protection. The bases include occurrence of endangered and threatened species, water supply significance and fish assemblage data. Some streams such as Alexauken Creek, were upgraded for their entire length while other streams such as Lopatcong Creek were upgraded for specific segments in this rulemaking. The Department believes that the proposal adequately identified areas affected by the upgrades. The proposal indicated that the Department was upgrading the antidegradation designation for approximately 500 river miles of the 18,000 total state river miles. The Department believes that the description of the stream segments affected by the proposal are sufficient and does not believe it is necessary to provide the exact number of miles attributable to each segment to allow for informed comment on the upgrades. Additionally, maps delineating the spatial extent of the upgrade in the antidegradation designation were also provided at <http://www.state.nj.us/dep/wmm/sgwqt/sgwqt.html>.

As indicated in the proposal Summary, the Department takes a variety of information into account in determining if a stream segment qualifies for a Category One protection on the basis of "exceptional ecological significance." This information may include, water supply significance, occurrence of endangered and threatened species, and non-impaired water quality conditions. It is not necessary that each data source be present at a "highest or best" ranking. Instead, the decision to upgrade is based upon the unique characteristics of each waterbody. For example, Nishisakawick Creek is impaired for fecal coliform. This impairment is being addressed through a Total Maximum Daily Load (TMDL) analysis and implementation plan as required at N.J.A.C. 7:15-7. Despite this impairment, the Nishisakawick Creek qualifies for special protection because of the occurrence of State-threatened wood turtle and longtail salamander, and due to the overall health and condition of the biological community and habitat. The Department's evaluation of these data sources and which data source(s) were significant in leading to the determination to upgrade each stream segment were explained in the proposal

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summary. The Department believes the basis for the Department's decision to upgrade each waterbody or stream segment was sufficiently detailed in the proposal.

Where the Department determined that the designation of an entire stream should be upgraded, it also included all named and unnamed tributaries for upgrade by extrapolating assessments into unmonitored tributaries. The Department assumed that unmonitored tributaries flowing into monitored waterbodies would exhibit similar qualities as the monitored waterbodies and would therefore benefit from additional protections. With the exception of the Manasquan River, all the proposed upgrades include the entire watershed.

**COMMENT 17:** The Department should define the terms “tributary,” “headwater,” and “source” in the Surface Water Quality Standards so that the geographic limits of a water reclassified as Category One can be determined. Without the clear definitions, the proposed reclassifications based on these criteria should be withdrawn. (439)

**RESPONSE TO COMMENT 17:** The Department uses the terms “tributary”, “headwaters” and “source” in their commonly accepted meanings. The Department believes that the descriptive terms used in this proposal in conjunction with the maps (provided at <http://www.state.nj.us/dep/wmm/sgwqt/sgwqt.html>) of the proposed stream classifications and antidegradation designations are self-evident.

**COMMENT 18:** The Department uses terms such as “exceptional water supply significance” and “exceptional ecological significance” as a basis for reclassifying seven streams to Category One and/or to upgrade the stream classification from FW-TM to FW-TP. The commenter is not able to find any definition or criteria coded in the State regulations which defines and classifies streams based upon “exceptional water supply significance” and “exceptional ecological significance.” Please provide the definitions and regulatory citation. The Department should also provide a technical and regulatory basis which justifies use of these definitions to reclassify the streams. Does the Department implement these criteria uniformly throughout the State? (179, 185, 209, 585)

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**RESPONSE TO COMMENT 18:** In accordance with the definition section at N.J.A.C. 7:9B-1.4, the Department has identified waters that meet the definition of Category One. Waterbodies may be designated because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance or exceptional fisheries resource (see Response to Comments 14 through 15). The Department has provided a technical justification concerning why each of the proposed waterbodies qualifies as Category One, including the data sources used to make the finding of “exceptional ecological significance.” As the Department indicated in the proposal, the rulemaking is part of a continuing process to review information on the State's waters and determine where upgrade is appropriate (see 35 N.J.R. 4949). Through this initiative, the Department is seeking to identify waters throughout the State that qualify for Category One designation based on "exceptional water supply significance" or "exceptional ecological significance."

**COMMENT 19:** The water quality at any point in a stream or river is determined, at least in part, by the quality of water upstream of that point. This fact would support a Category One antidegradation designation for the entire HUC 11 watershed upstream of potable water intakes or on-line reservoirs. (155)

**RESPONSE TO COMMENT 19:** The Department agrees that the water quality upstream does affect the quality of streams downstream. The Department afforded the Category One antidegradation designation to the entire drainage systems or entire watersheds (HUC 11) for all the proposed streams that drain to Delaware River and Oradell Reservoir (Hackensack River, and Pascack Brook) except the Manasquan River. Based on the larger drainage area of the Metedeconk River, the Department assigned Category One antidegradation designation to several HUC 11 watersheds that covered almost the entire drainage system from source to Forge Pond which is just downstream of the water intake.

***Oradell Reservoir drainage:***

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**COMMENT 20:** The proposal notes that the Category One antidegradation designation will apply to the entire natural drainage to the Oradell Reservoir. This language differs from all other proposed waters, yet there is no description of why it is different or what this means. The rule must be clear as to what the term “entire natural drainage” means and must include specific mapped limits. (439)

**COMMENT 21:** The designation of tributaries to the Oradell Reservoir is arbitrary and capricious. It is not possible for the regulated community to determine which water bodies are included or are not included. The Department should withdraw this part of the proposed rule and reissue it with a specific map to indicate which water bodies are included or are not included as “tributaries” so that the regulated community can determine whether an impact on specific property will occur. (585)

**COMMENT 22:** The Department has proposed an upgrade in antidegradation designation for the tributaries of Oradell Reservoir and Lake Tappan based on “exceptional water supply significance.” It is not clear from the proposal how these water bodies are incorporated into the water supply system and hence deserving of the increased protection. The Department should specifically include the information in the proposal that led to its determination that the Lake and the unspecified tributaries meet its as yet undefined criteria. (585)

**RESPONSE TO COMMENTS 20 THROUGH 22:** The Department proposed to upgrade the antidegradation designation for the “entire natural drainage” to the Oradell Reservoir. The map provided at <http://www.state.nj.us/dep/wmm/sgwqt/sgwqt.html> along with the proposal shows the spatial extent of this area. As indicated in the proposal, the natural drainage area includes all named and unnamed tributaries that flow directly into the Oradell Reservoir or to a named or unnamed tributary flowing into the reservoir. All streams that drain naturally to the reservoir have been designated as Category One through this rulemaking. As a result of this designation the Special Water Resource Protection Area (SWRPA) required by the Stormwater Management Rule applies all streams that drain directly (entire natural drainage) into the reservoir. Activities occurring in the upper reaches of the watershed have the potential to adversely impact the quality

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of the water in the Oradell Reservoir. Since United Water relies on the Oradell Reservoir to supply potable water to approximately 700,000 users, these waterbodies are part of the water supply system. The mechanical transfers from other streams either downstream or outside of the basin are not considered “natural drainage”. (See Response to Comment 62 for further explanation on water transfers to a reservoir.)

**COMMENT 23:** The Department should negotiate with the New York State DEC to apply the same level of protection to the parts of the Hackensack and the Pascack Brook within New York State. Now that the Category One antidegradation designation will be established to the waters up to the State line, it is our responsibility to obtain the same level of protection all the way from the source of the waterway. (528)

**RESPONSE TO COMMENT 23:** The Department recognizes the commenter's concern about providing the same level of protection to Category One waters that originate beyond New Jersey/New York state line. The State of New York and the State of New Jersey currently coordinate their efforts to provide an equivalent level of protection to waters that originate within New York. All the waters within the Hackensack River watershed within New York State are already classified as Class A in New York State's Surface Water Quality Standards. The best uses of Class A waters are water supply, culinary or food processing purposes, primary and secondary contact recreation, and fishing. These waterbodies are also suitable for fish propagation and survival. These stream classifications were adopted by the New York Department of Environmental Conservation in 1994 (6 NYCRR 860.2(m)).

**COMMENT 24:** The commenter is proposing development which could be severely impacted by the proposed designation of the Oradell Reservoir tributaries and Lake Tappan as Category One Waters. This designation could eliminate the development and cause a regulatory taking of River Vale's property. This impact could cause a loss of affordable housing. (585)

**RESPONSE TO COMMENT 24:** The upgrade in the antidegradation designation does not create a regulatory taking as described by the commenter. The SWQS rules assure that



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appropriate protection is afforded to a waterbody, while the design of the development to assure this protection may require changes in the scale of development. Other regulatory programs throughout the Department issue permits for projects such as the one identified by the commenter that enable permittees to conduct a variety of activities on properties containing waterbodies with the Category One antidegradation designation.

***Tributaries to Delaware River:***

**COMMENT 25:** Some sections of Pohatcong Creek are moderately impaired and/or exceed standards for pH, phosphorus, temperature, and fecal coliform. How does the Department intend to address these pollutants of concern? Does the Department propose to concentrate on point-source discharges or will you include non-point sources also? The Department has proposed a TMDL study for Pohatcong Creek to evaluate different options to meet elevated levels of pollutants. Pohatcong Creek has received a “Good Fish” IBI Rating, with 22 different species identified in the stream (highest of all six creeks, see Table-D). Table-C indicates less than optimal (sub-optimal) quality for in-stream habitat. The existing quality of the stream supports moderately good conditions for fish and other species. The reclassification of Pohatcong Creek to even higher stream classification (Category One and/or TP) should be stayed until a TMDL study (for pollutants of concern) is completed by the Department. (185)

**COMMENT 26:** The reclassification of Pohatcong Creek in the vicinity of the property within the Brass Castle Creek (a tributary to the Pohatcong Creek) Watershed from FW2-TM to FW2-TM(C1) is based on a finding of “exceptional ecological significance.” (35 N.J.R. 4952) The Department cites various data sources upon which it claims to be relying in coming to this conclusion. The determination is purely qualitative and advanced in furthering alternative objectives, namely to stop the so-called overdevelopment and sprawl. A conclusion that the Pohatcong Creek deserves the designation “exceptional ecological significance” based on the data sources cited is flawed. (179, 209)

**COMMENT 27:** A designation of “exceptional ecological significance” for any waterway implies, indeed requires, that the waterway have exceptional attributes. The Pohatcong Creek,

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by the Department's own criteria, is already classified as impaired - chemically, biologically and physically - as declared in the supporting statements with the proposed amendments. (35 N.J.R. 4952 through 4955). Note the following impairments:

- a. Physical/chemical monitoring data has caused the Department to include the Pohatcong Creek on its statewide list of impaired waterways, requiring the development of TMDLs to correct those impairments. Those TMDLs have not yet been prepared and there is not a reliable prediction as to when the Pohatcong Creek will be removed from the statewide list of impaired waterways. The basis for characterizing this waterway as impaired is the data gathered from the monitoring stations on the Pohatcong Creek whose locations as cited by the Department lead one to the conclusion that Pohatcong Creek is impaired over the entire length proposed for redesignation from FW2-TM to FW2-TM(C1).
- b. Benthic macroinvertebrate monitoring data has caused the Department to conclude that the Pohatcong Creek is impaired in more than one location, and that ecological habitat is sub-optimal at all locations for which monitoring has been conducted. This indicates that the Pohatcong Creek has a sub-optimal habitat rating over the entire length proposed for redesignation from FW2-TM to FW2-TM(C1).
- c. A fish survey (only one location is cited in the Department's statements supporting the proposed amendments) has caused the Department to conclude that the Pohatcong Creek has a sub-optimal habitat.

Are these the characteristics of a waterway of "exceptional ecological significance?" The Department can not rely upon these chemical, physical and biological monitoring data as the basis for labeling the Pohatcong Creek a waterbody of "exceptional ecological significance." (179, 209)

**COMMENT 28:** The commenter indicates that the proposed amendment lists that some sections of Pohatcong Creek are moderately impaired and/or exceeding standards for Temperature. How does the Department intend to address the temperature issue? Is there any technically feasible solution to control temperature of the discharge to maintain in-stream

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temperature within +/- 2° F (for TM stream) and within +/- 1° F (for TP stream)? How will season-to-season, month-to-month, day-to-day, hour-to-hour variations in a stream, and constant weather changes, be addressed? Have any technical feasibility and/or economic feasibility studies been conducted? How does the Department intend to implement temperature limits? Will the department consider re-analyzing the basis for the existing SWQ-based temperature limits? (185)

**RESPONSE TO COMMENTS 25 THROUGH 28:** In the proposed rule, the Department listed all available information considered for the proposed antidegradation designation upgrades, including the Pohatcong Creek. The Department is upgrading the stream classification for the Pohatcong Creek from Route 519 to the Delaware River based upon fisheries survey information which indicated that trout are reproducing. In addition, the information on the status of the biological community as measured by the AMNET monitoring program, the fisheries assessments, the presence of Endangered and Threatened species, as well as the overall condition of the stream habitat, supported a finding of “exceptional ecological significance.”

The Department has listed the Pohatcong Creek as impaired for pH, phosphorus, temperature and fecal coliform on its 2002 Integrated List in accordance with the Department’s 2002 Integrated Water Quality Monitoring and Assessment Methods. These problems will be addressed through the Total Maximum Daily Load (TMDL) program and/or site specific criteria development. Through the TMDL process, the Department will identify the sources of the pollutants and reductions necessary to achieve the water quality criteria including pH, phosphorus, temperature, and fecal coliform. This process will involve both point sources and nonpoint sources.

The Category One upgrade will prevent further degradation of the Pohatcong Creek, while other actions are initiated to restore identified water quality impairments.

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**COMMENT 29:** The justification for the redesignation of the proposed streams and their tributaries in the Delaware Basin for Category One antidegradation protection is not reasonable for the following reasons:

- Data reported on Alexauken Creek and tributaries have sub-optimal habitat rating for fish and no sightings of threatened or endangered species;
- Data reported on Little Nishisakawick Creek has sub-optimal in-stream habitat quality;
- Data reported on Lockatong Creek has sub-optimal in-stream habitat quality, sub-optimal habitat rating for fish, and no sightings of threatened or endangered species;
- Data reported on Wickecheoke Creek has moderately impaired health of the benthic community, and sub-optimal habitat rating for fish;
- No data provided on Plum Brook, tributary to the Wickecheoke Creek;
- Data reported on Pohatcong Creek has moderately impaired health of the benthic community, sub-optimal in-stream habitat quality, and sub-optimal habitat rating for fish; and
- No data provided on Shabbecong Creek, tributary to Pohatcong Creek. (439)

**RESPONSE TO COMMENT 29:** As indicated in Response to Comments 15 through 16, the designation of Category One to a waterbody can be based on any one of the exceptionally significant factors as stated in the definition of Category One at N.J.A.C. 7:9B-1.4. Based on an integrated ecological assessment, the Department determined that the waterbodies proposed for upgrade to Category One qualified as waterbodies of “exceptional ecological significance.” Through this process, the Department has the opportunity to evaluate the timing, frequency and magnitude of the exceedences of the Surface Water Quality Standards. For this reason, the presence of an impairment does not disqualify a waterbody for Category One designation. The impairments will address through restorative measures such as the TMDL program. The Category One designation is a proactive measure that will prevent future water quality degradation. The water quality upstream impacts the quality downstream. Therefore, if the quality at the downstream location supported a finding of “exceptional ecological significance”, it is likely that the unmonitored stream upstream would also display similar qualities. For this reason, the Department upgraded the antidegradation designation for Plum Creek (a tributary to

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Wickecheoke Creek) and Shabbecong Creek (a tributary to Pohatcong Creek) to Category One without any specific supporting data.

**COMMENT 30:** Both the Lockatong Creek and Wickecheoke Creek flow into the Delaware and Raritan Canal and contribute major sediment loads to the Canal during severe storms. Since the canal is a water supply resource, Lockatong Creek and Wickecheoke Creek should also be considered as Category One for their exceptional water supply significance, in addition to their ecological significance as noted in the proposal. (590)

**RESPONSE TO COMMENT 30:** The Department did not propose to upgrade the antidegradation designation for Lockatong Creek and Wickecheoke Creek based upon “exceptional water supply significance” due to the relatively small flows as compared to the flow at the point of withdraw for water supply purposes. Waterways can be designated as Category One because of exceptional ecological significance, exceptional water supply significance, exceptional recreational significance, exceptional shellfish resource, or exceptional fisheries resource. All Category One waters are protected from measurable changes in water quality. The Category One antidegradation designation provides additional protections to waterbodies that help prevent water quality degradation. By upgrading the antidegradation designation for Lockatong Creek and Wickecheoke Creek to a Category One based upon “exceptional ecological significance”, the Department will provide an equivalent level of protection to these waters. The basis for the antidegradation designation does not currently result in the application of different performance measures.

**COMMENT 31:** The “Economic Impact” section of the proposal indicates that existing dischargers, upon renewal of their permit, would be subject to any new water quality criteria resulting from the reclassification from FW2-TM to FW2-TP. This may or may not require an upgrade of wastewater treatment. The proposal specifies that Pohatcong Creek will be reclassified from TM to TP from the Delaware River to the Route 519 Bridge (located considerably downstream of the Washington Borough’s discharge). The proposal does not specify what water quality criteria (TM or TP) might be applicable to this redesignation and how

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this might impact the need to upgrade the Washington Borough's treatment facility. It would be helpful if the Department could indicate what parameters are likely to be involved and what studies would be required to determine if the Washington Borough's treatment facility would need to be upgraded. Furthermore, would the Washington Borough be required to undertake and fund these studies or would they be undertaken by the Department at no cost to the Borough?  
(185)

**RESPONSE TO COMMENT 31:** As indicated in Response to Comments 40 through 44, the change in antidegradation designation will have no effect on Washington Borough wastewater treatment plant unless Washington Borough requests to increase the quantity of pollutant discharged. The stream classification was upgraded from trout maintenance to trout production for the section of the Pohatcong Creek from Route 519 to the Delaware River. Additional studies to make this determination should not be necessary, unless the existing treatment plant proposes to expand. If Washington Borough proposes to expand its wastewater treatment plant beyond its current permitted level, Washington Borough would be required to conduct studies necessary to develop effluent limitations that would comply with the Category One standard.

**COMMENT 32:** The "Economic Impact" section of the proposal indicates that the proposed amendments may result in a range of economic impacts, "ranging from no economic impact to potentially significant impact." It appears that there is the potential for the proposed reclassification to have a significant financial impact on the Borough of Washington treatment facility. Moving forward with a reclassification without defining the impact is not a good planning practice and certainly not in the best interest of the Borough of Washington residents. The proposed reclassification should be suspended until such time as the economic impact can be adequately defined. It is further proposed that the Department undertake such economic impact studies. (185)

**RESPONSE TO COMMENT 32:** The economic impact associated with the upgrades in antidegradation will range from no impact to very significant impacts. As indicated in Response to Comments 40 through 44, an existing wastewater treatment facility, like the one identified by

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the commenter, that is not expanding or requesting an increase in pollutant loading, would not be impacted by the change in antidegradation. Conversely, a new facility seeking to discharge into a Category One stream may find the costs prohibitive. 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. An existing facility seeking to expand its discharge may need to explore alternatives including additional treatment to meet the Category One performance standard. However, the change in antidegradation designation will have no effect on Washington Borough unless the Borough proposes to expand its facility.

**COMMENT 33:** The proposed reclassification along with the proposed storm water regulations would have significant impacts within a 300-foot buffer zone along Shabbecong Creek. The Borough is currently implementing a program of downtown revitalization. It is unclear how the proposed reclassification would impact these efforts as well as all properties adjacent to the creek. Moving forward with a reclassification without defining the impact is not a good planning practice and certainly not in the best interest of the Borough of Washington residents. The proposed reclassification should be suspended until such time as the economic impact can be adequately defined. It is further proposed that the Department undertake such economic impact studies. (185)

**RESPONSE TO COMMENT 33:** The antidegradation designation for Shabbecong Creek, a tributary to the Pohatcong Creek, was upgraded to Category One based upon "exceptional ecological significance." This determination was based upon the integrated ecological assessment completed for the Pohatcong Creek. The Department's regulatory programs implement the antidegradation provisions in the Surface Water Quality Standards. As a result of upgrading the Shabbecong Creek from Category Two to Category One, additional requirements will be imposed for new and expanded discharges and development. New development and redevelopment will be required to comply with the Stormwater Management rule that was adopted on February 2, 2004 (36 N.J.R. 670(a)). The Stormwater Management rule sets forth the required components of regional and municipal stormwater management plans, and establish the

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stormwater management design and performance standards for new development and addresses issues related to redevelopment. The design and performance standards for new development include groundwater recharge, runoff quantity controls, and 300-foot buffer for Category One streams and tributaries located upstream within the same subwatershed. As indicated in the Economic Impact Statement, the impacts may range from no impact to significant impacts and will depend on the nature of the development proposed for the site.

***E & T (Pohatcong)***

**COMMENT 34:** The Department relied upon the claimed presence of the State threatened terrestrial species wood turtle and long tailed salamander as the basis for redesignating Pohatcong Creek as a Category One waterbody. For the entire watershed, three sightings of the long tailed salamander are referenced at 35 N.J.R. 4952, apparently one of which occurred in the year 2003. However, the three locations are not identified in the statements supporting the proposed amendments so we have no way of knowing if these data truly justify redesignating the entire proposed segment of Pohatcong Creek. Furthermore, it is claimed that wood turtles have been sighted throughout the watershed, but primarily in the upper reaches of the Creek and east of Route 31. Again, it is impossible to determine from the information provided whether the wood turtle sightings justify redesignating the entire proposed segment of Pohatcong Creek. The information provided is sketchy at best and the Department has not satisfactorily demonstrated that the presence of threatened species is a sufficient basis for redesignating the entire proposed segment of Pohatcong Creek. (179, 209)

**COMMENT 35:** The Department indicates that the State-threatened wood-turtles have been sighted throughout the Pohatcong drainage basin. Has any scientific study, similar to the Fish IBI Rating, been conducted or documented? If the existing stream conditions support wood turtles, then what specific technical basis is available to support that further reclassification is necessary for the wood turtle population? Has an economic or social impact study been conducted on this issue? (185)



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**COMMENT 36:** The commenter indicates that the proposed amendment lists that the State-threatened long-tailed Salamander has been sighted on three different occasions. Has any scientific study, similar to the Fish IBI Rating, been conducted or documented? What specific technical basis is available to support that further reclassification is necessary for the long-tailed salamander population? Has a technical, economic, or social impact study been conducted on this issue? (185)

**RESPONSE TO COMMENTS 34 THROUGH 36:** The presence of Endangered and Threatened Species (E&T) is an existing use that must be protected through the Surface Water Quality Standards. Upgrading the antidegradation designation to Category One for streams with E&T species and E&T species habitat is an appropriate regulatory response. While the streams upgraded in this action considered factors in addition to the presence of E&T species, the Department believes that there may be circumstances where the presence of E&T species alone warrants Category One protection. With respect to the seven waterbodies that drain into the Delaware River, the Department evaluated the condition of the waterbodies using an integrated ecological assessment. The Department assessed the condition of the aquatic community using macroinvertebrates, fish and E&T species. The Department also evaluated the instream habitat and the riparian habitat. For each of the streams where E&T species were evaluated as a factor, the stream exhibited excellent suitable habitat indicative of supporting a viable population and at least one verified, documented occurrence of an E&T species. This information is available to the public through the Department's Landscape Maps. <http://www.njfishandwildlife.com/ensp/landscape/index.htm>. The Landscape Report explains the methodology for identifying and delineating critical wildlife areas. The presence of an E&T species

Additionally, while the same surface water quality criteria apply in Category One and Category Two streams, the Department believes that additional protection provided by the Category One designation is necessary to prevent degradation of existing water quality of the streams proposed for redesignation. While Category Two does provide water quality protection, the Category One designation prevents water quality degradation.

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As required by the Administrative Procedure Act N.J.S.A. 52:14-B-1 *et seq.*, the Department provided summaries of the economic, social, and environmental impacts of the proposed amendments as part of the proposal.

*Atlantic streams*

**COMMENT 37:** Brick Township MUA has taken over one million water quality samples from the Metedeconk watershed. With this level of data, the Department could develop a water quality profile of the river system and target the areas of greatest impact on river quality. Certainly, some of the developed commercial properties directly along the river in Brick and Lakewood, are contributing to the degradation of the water quality. The Metedeconk River is being proposed as a Category One antidegradation designated waterbody due to its “exceptional water supply significance.” Let the users of that water supply pay for its protection. (527)

**COMMENT 38:** The effect of redesignating the Metedeconk and its tributaries as a Category One waterway as they flow through Lakewood would require that the development and redevelopment have buffers of 300-feet, and in no case would the minimum buffers would be less than 150-feet. The new rule could preclude revitalization that improves water quality improvement. Certainly, there is no basis for imposing the Category One designation in a special urban area such as Lakewood Township under circumstances where it would preclude redevelopment of existing already developed area. This would not help control sprawl, but would encourage it, by encouraging development outside of special urban aid municipalities and discouraging development and redevelopment of such municipalities. Moreover, there is no basis for establishing a 300-foot buffer around the Metedeconk River in a special urban aid municipality such as Lakewood given other provisions in the stormwater management rules that assure protection of water quality. (518)

**COMMENT 39:** Under the current SWQS rules as interpreted by the Department, no surface water discharge may be permitted that would result in a measurable or calculable lowering of water quality (i.e. degradation), unless the Department determines that water quality will remain

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within the standards and that all present and designated uses will be protected, and it is demonstrated that allowing a minimal change in water quality is necessary to accommodate important economic or social development in the area in which the waters are located. Thus, the current Category Two designation of the Metedeconk River assures that this waterway will remain drinkable and that the environment will be protected. The Department should not reclassify the Metedeconk River or its tributaries in Lakewood Township or downstream from Lakewood in the same subwatershed. (518)

**RESPONSE TO COMMENTS 37 THROUGH 39:** The Metedeconk River has been designated as a Category One waterbody based upon “exceptional water supply significance.” This designation will ensure that the water being used by Brick Municipal Utilities Authority to fill their new reservoir is protected from measurable changes in water quality. Exempting segments of a water supply system in special urban areas from the requirements needed to protect the water quality would result in water quality degradation. The Department’s regulatory programs implement the antidegradation provisions in the Surface Water Quality Standards. As a result of upgrading the Metedeconk River from Category Two to Category One, additional requirements will be imposed for new and expanded discharges and development. New development and redevelopment will be required to comply with the Stormwater Management rule that was adopted on February 2, 2004 (36 N.J.R. 670(a)).

***New Jersey Pollutant Discharge Elimination System (NJPDES) Implementation***

**COMMENT 40:** Washington Borough’s wastewater treatment facility has a permitted capacity that provides for full build out of the Borough in accordance with an approved wastewater management plan. However, current discharge flows are below the permitted capacity as the wastewater management plan was prepared for a 20-year planning period. The proposed amendment is unclear on whether or not the Borough would be allowed to maintain their current loading for pollutants which are regulated under the NJPDES permit which would allow the Borough to continue to develop properties in accordance with its wastewater management plan until the capacity of the treatment plant is realized at some point in the future (up to the permitted capacity as per the NJPDES permit). Uncertainty on this point results from the fact that a

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Category One antidegradation designation is intended to prevent further degradation in existing water quality. In summary, the Borough would like confirmation that it can continue to develop up to the permitted capacity of the treatment plant under its current effluent limitations and without having to upgrade the treatment facility. (185)

**COMMENT 41:** Does the Department plan to change its permit renewal review process or internal permit review guidelines for dischargers in these proposed reclassified streams? Will this reclassification trigger changes in selecting additional pollutants for monitoring and/or implementing discharge limits for additional pollutants? Such requirements impose additional labor and economic burdens on the operation of plants. (185)

**COMMENT 42:** The proposed amendment would trigger the antidegradation criteria. The Department should clarify if it intends to use “existing effluent quality (EEQ)” criteria for all treatment plants discharging to these streams, even if the discharges are in compliance with the SWQ standards. Such a requirement may start a vicious cycle of more and more stringent requirements with every permit renewal period and punish more efficient treatment systems. (185)

**COMMENT 43:** The proposed amendments to the Surface Water Quality Standards are not clear with regard to renewal of existing permits. At one point the proposal states, “the proposed Category One antidegradation designation assignments will not automatically require an upgrade of treatment capabilities.” The proposal then states, “existing discharges, upon renewal of their permit, would be subject to any new water quality criteria . . . which may or may not require an upgrade of wastewater treatment.” Without a request for an increase in the discharge upon permit renewal, the proposed rules should be changed to indicate clearly that no additional treatment would be required. (527)

**COMMENT 44:** Washington Borough’s current wastewater treatment facility was required to undertake significant water quality studies of Pohatcong Creek to determine appropriate effluent limitations. This included a nutrient study to determine an appropriate phosphorus limitation.

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That study demonstrated that phosphorus was not a limiting nutrient and the Borough was ultimately given a phosphorus limitation significantly above the original proposed limit of 0.1 mg/L. Given the significant efforts on the part of the Borough, the Borough would like some assurances that no additional studies will be required with regard to the phosphorus issue. The proposal is unclear with regard to the phosphorus issue. Does the Department intend to require additional studies? If so, will the Department fund these studies? (185)

**RESPONSE TO COMMENTS 40 THROUGH 44:** Existing dischargers would not be subject to antidegradation analysis, unless the existing discharger is proposing an expansion. Modification of a sewer service area which does not result in an increase in the permitted flow does not trigger an antidegradation analysis for the wastewater treatment plant. The discharges to a Category One segment will be affected as follows:

**Expansion/Rerating Subsequent to Upgrade to Category One:** For pollutants with both concentration and loading limitations, the new permit will retain the existing loading limits. For pollutants with concentration limits only, the new permit will establish loading limits based upon the current concentration limits and the previously permitted flow. For all pollutants for which a permit limit has not been previously included in a NJPDES permit, and which are known to be present in the effluent when the permit is drafted, the new permit will establish effluent limitations for concentration and loading based upon "existing effluent quality" (N.J.A.C. 7:14A-13.8), and the previously permitted flow.

**Renewal of an Existing Discharge Permit:** Unless additional flow or loading is requested as part of the renewal, an antidegradation analysis is not required.

Under both of these scenarios, the Department will also evaluate the available information for compliance with regulatory requirements such as water quality based effluent limitations, adopted Total Maximum Daily Loads, Effluent Limitation Guidelines, Clean Water Enforcement Act provisions, and monitoring requirements pursuant to the NJPDES program (N.J.A.C. 7:14A). As part of this permit review, if the stream classification changed from FW2-

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NT to FW2-TM or FW2-TP, the Department will calculate water quality based limits using the criteria (temperature, dissolved oxygen, suspended solids, and ammonia) appropriate for the protection of the designated use. The change in criteria may or may not require an upgrade of wastewater treatment.

**COMMENT 45:** The Department should clarify how the Category One status will affect such actions as the review of amendments to Areawide Water Quality Management Plans, especially with regard to nonpoint source pollutant generation. The impact statements in the proposal address point sources and the control of stormwater from new development, but not other nonpoint sources that could be introduced to Category One streams. One example is where new development in an area increases pollutant loads to existing roads and bridges, which then run off to the streams through existing stormwater systems. (590)

**RESPONSE TO COMMENT 45:** The Special Water Resource Protection Area, or 300 foot buffer for Category One waters established in the Stormwater Management Rule, as well as the state-wide minimum standards for quality and quantity controls of stormwater, will be the new basis for review of proposed amendments to Water Quality Management Plans under EO 109. The buffer requirements and other stormwater standards are designed to protect Category One waters from changes in quality and hydrology associated with new development. Cumulative, ancillary impacts, such as additional pollutant loads from increased traffic, will be addressed to the extent that the affected stormwater systems are subject to the Phase II Municipal Stormwater Permitting Rules, such as through street sweeping requirements.

**COMMENT 46:** Due to the interplay between the proposed amendments to the surface water quality standards rules and the proposed Stormwater Management Rules, redesignating these streams as Category One would, in some cases, adversely affect water quality. This would occur if the site were currently an active farm which is planned to be redeveloped as a residential use. Due to the use of fertilizer and its generally poor land cover characteristics, it is well established that agricultural land and runoff from such land is a major source of nutrients and sediment pollution to the adjacent waterways. By contrast, numerous literature sources identify residential

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land use as far less polluting with regard to nutrients and sediment, two parameters of particular concern for downstream reservoirs. (510)

**COMMENT 47:** A newly redeveloped site would be compliant with the Department's Stormwater regulations, and thus would meet stringent requirements with regard to sediment removal and stormwater quality. The redesignation of the streams as Category One, combined with the 300-foot buffer provision of the proposed Stormwater Management Rules, would imperil redevelopment that will have no adverse impact and, in fact, a beneficial impact on the local waterways. (510)

**RESPONSE TO COMMENTS 46 THROUGH 47:** While the actual pollutant loading estimates from residential development may be lower than from agriculture land in some circumstances, the performance standard for Category One of "no measurable change" in water quality does not mean that the Department prefers one land use practice over the other. The goal of the Surface Water Quality Standards program is to maintain water quality that is better than promulgated water quality criteria and to restore water quality where the criteria are not attained. If the agricultural land use is an existing use, continuing that use would probably not result in any changes in pollutant loading that would change the water quality. Moreover, the Department is working cooperatively with the New Jersey Department of Agriculture, the United States Department of Agriculture and the Federal Farm Bureau toward the initiation of the New Jersey Conservation Reserve Enhancement Program (CREP) that is designed to address the issue of water quality impacts from agricultural uses in close proximity to Category One streams. Through CREP, buffers will be established on agricultural lands through purchased permanent or temporary conservation easements.

**COMMENT 48:** A project designed in accordance with the new Stormwater Management Rules could at a later time be subject to a change in the stream classification. Thus this project would now be subject to a 300-foot buffer. All efforts and investments made to date on that project would be lost and a total redesign would be required. This issue of providing an exemption from future reclassifications and the associated buffer requirements for projects that

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have already secured local approvals and Department permits should be included. Such projects which have received local approval and are consistent with the now pending Stormwater Management rules should be exempt from future reclassifications and the associated 300-foot buffer provision. (439)

**COMMENT 49:** Will the new Category One antidegradation designations mean that the 300-foot buffer requirement of the stormwater management rules will apply to all development that has not secured permits by the effective date of those rules (which, in this case, is likely to be before the effective date of the Category One antidegradation redesignations)? Will development within 300-feet of a newly designated Category One antidegradation stream be subject to the new Stormwater Management Rules if it is partially permitted? If it is permitted, but not constructed? (510)

**COMMENT 50:** The rule fails to include a provision for accommodating pending development projects that are in the permitting, approval or construction process at the time the amendments are adopted. (510)

**COMMENT 51:** The Department of Community Affairs proposed amendments to the Residential Site Improvement Standards (RSIS) at N.J.A.C. 5:21-1.10 in the September 2, 2003 New Jersey Register. See 35 N.J.R. 3981(a) at 3982. The proposed amendments to the RSIS would not apply new technical standards to projects that submit applications within the six months of the effective date of the new provisions. The Department's Stormwater Management rules would require the application of the new standards under the RSIS to development that has not obtained certain approvals by the effective date of these new Stormwater Management rules. Could development proceed under the standards that prevail prior to the adoption of the new Stormwater Management rules pursuant to the proposed amendments to the RSIS? (510)

**COMMENT 52:** The commenter is concerned that some of the tributaries of Manasquan River do not have the suggested 300-foot stormwater buffers. When the 300-foot buffers were enacted, planners did not dismantle existing sewers which continue to spew the poisons into the river.



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The same is true with the North and South branches of the Metedeconk River where homes have wells and sewers within the 300-foot storm buffers. (298)

**COMMENT 53:** It is unclear how the proposed amendments to the surface water quality standards would effect pending development that is in the planning, permitting and/or construction stage. Indeed, one cannot determine the effect adoption of the rules would have on pending development projects, including but not limited to applications pending before municipal land use boards or before the Department. Clearly, the rule proposal fails to satisfy the requirements of the APA and its implementing regulations. The Department must clarify these issues and provide additional public notice and opportunity for comment. (510)

**COMMENT 54:** The proposed amendments to the surface water quality standards might be applied in a harshly retroactive manner. (510)

**COMMENT 55:** The new rules represent an abrupt departure from established practice, as the streams proposed for reclassification have long had Category Two designations under the governing surface water quality standards rules. The Department has long had in effect other rules governing stormwater management. Investment of the resources needed to pursue land use approvals has been undertaken in reliance on the former rules. The new proposal would oftentimes require a property owner to tear up its plans and start from scratch. This is contrary to the strong policy against retroactive application of agency rules. Public interest would be protected by applying the new rules in a fully prospective manner as the surface water quality standards rules currently in effect, including designation of waters as Category Two, already assure substantial protection of the environment. (510)

**COMMENT 56:** The rule proposal fails to provide the public with meaningful notice as to the effect of the proposed rule, particularly in light of other pending rule proposals. The rule must be clarified and renoticed for additional public comment. The rule fails to include a provision for accommodating pending development projects that are in the permitting, approval or construction process at the time the amendments are adopted. (510)

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**COMMENT 57:** The proposed amendments to the surface water quality standards in conjunction with the proposed Stormwater Management Rules make no provision for accommodating pending development projects regardless of how long these projects have been in planning or how far advance they are in the permitting or construction process when new Category One antidegradation designations are adopted. (510)

**RESPONSE TO COMMENTS 48 THROUGH 57:** The antidegradation policies in the Surface Water Quality Standards are implemented by other regulatory programs within the Department. The change in antidegradation designation may result in the imposition of additional requirements on new and expanded discharges and development. As required by the APA, the Department explained how regulated activities would be affected in the Economic Impact Statement. Each implementing program is required to explain how regulatory requirements that will be imposed on new and expanded activities. For example, the Stormwater Management rule explained how the new regulations would affect projects that had received some level of review. The Department will continue to issue permits in accordance with the regulations in effect at the time of issuance. Therefore, if a project has received all necessary approvals, the project may be exempt from the requirements of the new Stormwater Management rules whether or not construction has commenced before an upgrade in the antidegradation designation is adopted. Therefore, projects in Category One watersheds that are exempt, will not be subject to the additional requirement for Special Water Resource Protection Areas or 300-foot buffers under N.J.A.C. 7:8. Projects that have not obtained all necessary permits before a Category One designation was adopted would be subject to 300-foot buffer requirements. The Category One designation takes effect upon publication and permits issued after adoption will have to meet the Category One standards.

The Stormwater Management rule was adopted on February 2, 2004 (see 36 N.J.R. 670(a)). The Department has prepared responses to Frequently Asked Questions on the Stormwater Management rules available at [www.njstormwater.org](http://www.njstormwater.org). These documents explain who is subject to the new requirements and when these new requirements will be imposed.

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The upgrade in the antidegradation designation from Category Two to Category One will prevent further degradation. The Municipal Stormwater Permitting program will address the problems associated with existing stormwater outfalls.

**COMMENT 58:** A rule proposal must be sufficient to permit the public to accurately and plainly understand the proposed rule and the expected consequences of adoption of a proposed rule. The notice of proposed rule must include a summary statement that describes, details and identifies who and what would be affected by the proposal; how, when and where the effect will occur; what the proposal prescribes, proscribes or otherwise mandates, and what enforcement mechanism and sanctions may be involved. The proposed rules fail to satisfy these requirements, particularly when considered in light of other proposed rules such as the proposed Stormwater Management Rules and proposed amendments to the Residential Site Improvement Standards (“RSIS”). (510)

**COMMENT 59:** The proposed rules fail to inform the public as to who and what will be effected by the proposal, and as to how, when and where the effect will occur. This further demonstrates that the proposed rules are so vague and ambiguous and hopelessly confused that they fail to provide the public with clear information as to the effect of the rule and thus preclude predictable regulatory outcomes. The proposed rules thus fail to comply with the Administrative Procedure Act, N.J.S.A. 52:14-B-1 *et seq.* and fail to comply with the rules for agency rulemaking, N.J.A.C. 1:30-1.1 *et seq.* (510)

**RESPONSE TO COMMENTS 58 THROUGH 59:** The Department provided the summary and requisite impact statements for the proposed amendments to the antidegradation designation in compliance with the Administrative Procedure Act, N.J.S.A. 52:14-B-1 *et seq.*

**COMMENT 60:** The Department should increase enforcement and implementation of Category One protections throughout all relevant programs of the Department. (82, 109, 182, 474)

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**RESPONSE TO COMMENTS 60:** The Department currently implements and enforces Category One protections throughout all relevant programs within the Department through the permitting programs. The NJPDES wastewater discharge permitting program has historically imposed limits based upon the Category One standard. As a result of the new Stormwater Management Rule, Special Water Resource Protection Areas will be required in permits issued by the Land Use Regulation Program to protect Category One waters. The antidegradation standard is applied through the permit application review process and will result in the establishment of permit requirements that comply with the antidegradation requirements. Specific requirements contained in the individual permits are beyond the scope of this rule.

**COMMENT 61:** A greater effort will be necessary to integrate the Category One designations with the 300-foot buffer that is proposed in the Stormwater Management rules and the use of general permits for certain regulated activities. (155)

**RESPONSE TO COMMENT 61:** The Stormwater Management Rules are implemented by the Department of Environmental Protection through the Land Use Regulation Program permit programs, (Stream Encroachment, Freshwater Wetlands, CAFRA, Waterfront Development and Coastal Wetlands). The Stormwater Management Rules are also implemented by local authorities through the Municipal Land Use Law and the Residential Site Improvement Standards. Per the Department of Community Affairs, the Residential Site Improvement Standards (RSIS) are applicable to any residential application that goes before a local board. The Department has provided guidance on how the new Stormwater Management Rules affect various general permits. This document is available on the Department's website at [www.njstormwater.org](http://www.njstormwater.org).

**COMMENT 62:** The Department should clarify in the rules that the Category One antidegradation designation will not interfere with the operation of water supply facilities. Given that the Category One status is intended to provide additional protection to New Jersey's water supply facilities, it would be unfortunate if the SWQS inadvertently reduced the safe yields available to Central New Jersey (and any other regions with similar operation). There is nothing in the SWQS proposal to indicate a desire by the Department to modify operations of the

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reservoir systems, but the proposal also does not make clear that operational modifications will not be needed. In the Department's response to New Jersey Water Supply Authority comments regarding the previous proposal, the Department did specify that existing water supply operations would be considered part of the existing water quality. However, this proposal does not include that clarification, as it only focuses on impacts to existing NJPDES permittees. This point is important due to the impacts of Round Valley Reservoir releases to the South Branch of Rockaway Creek, and Manasquan Reservoir impacts on the Manasquan River. (590)

**RESPONSE TO COMMENT 62:** The Department indicated in its response to comments through previous rulemaking (35 N.J.R 2295, May 19, 2003) that withdrawals and transfers authorized under an existing Water Allocation Permit are part of the “existing water quality” for the purposes of implementing the antidegradation protection for Category One. This includes interbasin transfers of water. The antidegradation designation of source waters subject to water transfers is not impacted by this action. The Category One boundary for a Category One reservoir is at the point of diversion or intake. Department regulates the withdrawal and transfer of water from one location to another through the New Jersey Water Allocation Program. The water purveyors will be authorized to continue pumping and transferring water up to the volume specified in their Water Allocation Permits which will ensure that the calculated safe yield will be maintained. Through the Water Allocation permitting process, the Department may establish a minimum passing flow based upon 125,000 gallons per day per square mile of watershed to protect aquatic resources. Establishing a minimum flow condition down to which water can be safely withdrawn will balance the need to provide potable water and ensure that adequate stream flow exists to protect aquatic life uses.

The intent of the Category One designation is to maintain the existing water quality and prevent any degradation of water supply reservoirs. As a result, existing water management regimens are not expected to be impacted. This can be achieved by ensuring that waterbodies that are tributaries to reservoirs are protected from water quality changes at the point of diversion for transfers or at the point where the water enters the reservoir for natural drainage.

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**COMMENT 63:** The Stormwater Management rules include Special Water Resource Protection Areas for Category One waterbodies. The buffer will impose restrictions on use of land within 150 – 300 feet from the top of the stream bank or center channel of the stream.

By its inherent nature, water treatment plant operations and facilities are located near sources of water. Many treatment plants and their ancillary facilities are located in low-lying areas, either along a river or adjacent to a lake or reservoir. Over the years, drinking water standards have become increasingly more stringent, thus requiring additional treatment with expanded facilities. To locate treatment facilities and associated operations further from the treatment plant could prove to be physically and economically not viable. It is for this reason that consideration should be given to lessening the restrictions on use of land for water treatment plant operations that are located adjacent to water bodies with these proposed buffers. (255)

**RESPONSE TO COMMENT 63:** The Department has upgraded the antidegradation designation for about 500 miles of streams based upon “Exceptional Water Supply Significance” or “Exceptional Ecological Significance”. These upgrades are intended to protect and maintain the exceptional water resource value from degradation. The 300 foot buffer requirement imposed pursuant to the Stormwater Management Rule for Category One waters is applicable for new major development. As indicated in Response to Comment 62, existing wastewater and potable water treatment plants will not be subject to this requirement unless activity which qualifies as a new major development is proposed.

**COMMENT 64:** A distinction could be made between Category One waters associated with site-specific threatened or endangered species habitats and broader water supply protection objectives. (155)

**COMMENT 65:** The Department should consider the development of a very simple annual or open-ended permit or waiver for water related government activities available to government agencies at little or no cost would make sense. The permits would be for actions and activities including, but not limited to, road and bridge work, mosquito control and public recreational use

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and access. This would facilitate and encourage continued efforts by agencies at other levels of government to do necessary and beneficial work related to these waters. (155)

**RESPONSE TO COMMENT 64 THROUGH 65:** The commenters are requesting changes to the antidegradation implementation procedures at N.J.A.C. 7:9B-1.5(d). The Department did not propose amendments to the antidegradation implementation policies; therefore, these comments are beyond the scope of this rule.

However, Category One waters are protected from measurable changes in water quality. The basis for the antidegradation designation does not alter the performance standard. The Department would need to modify the Surface Water Quality Standards through rulemaking to provide the type of changes that the commenters have suggested. The Department intends to evaluate antidegradation implementation policies and propose amendments as part of a future rulemaking.

### ***Trout Methodology***

**COMMENT 66:** Lopatcong Creek and Pohatcong Creek are proposed for a change in both the use classification (trout maintenance to trout production) as well as Category One antidegradation designation, while a third waterbody, the South Branch Rockaway Creek, is proposed for a change to protect trout production uses. Each of these waters is stocked with trout by the State. Does the assessment of trout producing status take into account the fact that the trout may not naturally live in these waters? For such waters does the presence of young trout have to occur for several years in succession to address whether the waters are in fact successfully supporting a natural population rather than one that is artificially engineered? The proposal states that the trout must be naturally produced. If the survey of stocked waters does not encompass more than one year how could the naturally produced criteria be documented? This issue should be addressed. (439)

**COMMENT 67:** It is inappropriate to upgrade the surface water classification for the South Branch Rockaway Creek from its headwaters to the Readington Township boundary. The

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Department indicates that electrofishing surveys confirmed reproducing Brown Trout in a survey conducted on August 22, 2003. (This date appears to be a typographical error and should be August 22, 2002.) Then, the Department states that when an additional survey was conducted on August 30, 2002, trout production was not confirmed, but subsequent surveys within a few weeks were able to confirm reproduction. (115)

**COMMENT 68:** The results of trout surveys performed by the Department for the purpose of determining appropriate trout classifications are contained in annual Job Performance Reports for Job II-2 of the Grant titled, "*Investigations and Management of New Jersey Freshwater Fisheries Resources.*" In 2002, seven out of the ten trout surveys conducted in New Jersey were performed in the South Branch Rockaway Creek and used as the basis for the proposed upgrade. The commenter suspects it is highly unusual to perform seven out of ten surveys from an annual grant on the same stream. The Job Performance Reports for 1997 and 1998 demonstrate that one to two locations in a given year on a given stream are typically monitored. In 1998, four of seventeen trout surveys were located on a single stream.

The New Jersey Division of Fish and Wildlife (NJDFW) reinstated the South Branch Rockaway Creek to the trout-stocking program, beginning April 2002, after a several year hiatus. Stocking was conducted April 29, May 6, and May 15, 2002. Hundreds of Brown Trout, Brook Trout, and Rainbow Trout were placed in the Creek at the Windy Acres Farm Bridge right in the middle of the proposed Windy Acres development. This location is called the "lane adjacent to Buzby's Hardware" in the trout survey. It is not uncommon while stocking adult trout to add a bucket or two of young-of-the-year trout at the same time. In late August and early September of 2002, a few months after stocking trout at the same location, NJDFW conducted surveys in the Creek to identify the fish present. This is when the alleged "trout production status" was confirmed.

Without detailed trout stocking information, including dates, exact locations, number, species, age and size, it is not possible to confirm trout reproduction. It is likely that the relatively few trout enumerated in the numerous surveys in 2002 are merely remnants surviving from the stocking a few months earlier. Indeed, the number of young-of-the-year, while small at



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every location, are highest at the location where stocking occurred and decrease both upstream and downstream.

Furthermore, the information provided is not adequate to determine whether the stream even qualifies for Trout *Maintenance* status, since “Incidence of Occurrence” is not provided. Incidence of Occurrence must be over 20 for a stream to be classified as Trout Maintenance. This information was also requested under OPRA but not provided (see section below on information not provided), along with information on how the Department determined the age of trout surveyed. (115)

**COMMENT 69:** The Brown Trout is an aggressive, fast-growing fish that tolerates warmer water, lower oxygen levels, and more pollution than the New Jersey native trout species (Brook Trout). This allows the Brown Trout to thrive in waters that will not support other trout species, and helps to explain why the other less pollution tolerant trout (the Brook Trout and Rainbow) were not found in South Branch Rockaway Creek. Of all the Brook and Rainbow Trout stocked in the stream only a few months prior, only one Rainbow Trout was found in all seven surveys. Therefore, the evidence suggests that the South Branch Rockaway Creek is only capable of supporting the introduced pollution-tolerant trout.

It is also important to note that the South Branch Rockaway Creek does not satisfy the New Jersey Surface Water Quality Standards for temperature. During the NJDFW surveys, instream temperatures were recorded in excess of the FW2-Trout Maintenance stream standard of 20 degrees Celsius at the very location where Brown Trout were found. This agrees with prior data collected by Omni Environmental Corporation in 1991 and 1994 where temperatures above 24 degrees Celsius were measured in the segment of the creek proposed for upgrade. Indeed, data from the discontinued USGS station 01399690 (South Branch Rockaway Creek at Whitehouse) indicate temperatures as high as 31 degrees Celsius. While this station is slightly downstream of the portion of the stream proposed for upgrade, it is close enough to be relevant in terms of temperature history.

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Setting aside the issue of whether Brown Trout are actually reproducing in the stream or merely surviving between time of stocking and time of surveying, it is clear that Brown Trout are surviving in a stream that routinely exceeds the 20 degrees Celsius temperature criterion for Trout Maintenance. It is also clear that Brook and Rainbow Trout are not surviving in the same stream. Brown Trout either require a separate classification and associated temperature criterion or should not be used to assess trout status for the purpose of classification. (115)

**COMMENT 70:** The Job Performance Report for the 2002 trout surveys indicated that seven locations were sampled in the South Branch Rockaway Creek on four dates between August 22 and September 9, 2002. However, the March 12, 2003 memo from the Bureau of Freshwater Fisheries to the Bureau of Water Quality Standards and Assessment entitled, *“Recommended Changes to Individual Surface Water Classifications”* only mention six locations. No explanation is provided as to why the Department left out the location upstream of the Main Street Bridge, sampled August 30, in its basis for upgrading the stream.

Occurrence of trout decreases precipitously downstream of Windy Acres Farm Bridge (“Lane adjacent to Buzby’s Hardware”), where trout were stocked a few months prior to the trout surveys. The Department sampled the more downstream location behind Valley Brook Farm on September 6 and found no adults and only one juvenile. The Department returned September 9 to sample the other location behind Valley Brook Farm. Surveys from the two locations behind Valley Brook Farm yielded only 1 adult and 5 juvenile trout. One adult in 2 surveys would not even qualify for Trout *Maintenance* classification. The fact that a few juveniles wandered in from upstream does not provide a strong enough basis to upgrade the stream to Trout Production. If any portion of the stream is upgraded to Trout Production, the extent should stop upstream of Valley Brook Farm. (115)

**RESPONSE TO COMMENTS 66 THROUGH 70:** The Division of Fish and Wildlife is responsible for conducting surveys to identify streams that are capable of supporting trout maintenance and trout production as explained in the Summary of the proposal. These surveys are conducted during summer time every year. The number of times a stream is sampled for the

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purposes of classification is dependent on the information collected during the initial fisheries survey as well as overall habitat within the stream. An initial location is selected and sampled, if the data collected would result in a change in classification. Then additional locations are selected and sampled to determine the extent of the stretch that would be recommended for an upgrade in classification. In the case of the South Branch Rockaway Creek, young-of-the-year trout were found to be present on August 22, 2002 at the Kullman Industries Campus Drive. The Mountain Road site was then selected to determine the extent of the reproduction downstream of this site. Since no young-of-the-year were collected at the Mountain Road site on August 30, 2002, additional sites were selected to both upstream and downstream of the Kullman Industries site to determine the extent to which natural reproduction was occurring. Young-of-the-year and various year classes of juveniles were found to be present at five of the locations sampled in the South Branch Rockaway Creek.

The Department acknowledges that it may be difficult to locate in the field, sampling locations based upon its historical description. The Department is now using GPS coordinates to describe sampling locations in an effort to alleviate this problem.

Trout stocked by the Division of Fish and Wildlife are 18 months of age, and average 10.5 inches in size. Trout are sorted several times over the course of the 18 months and sizes of fish are very consistent. At no time during stocking or within the hatchery are small fingerlings mixed with the production fish. Prior to fingerling being moved to the outdoor raceways, fingerlings are housed in an indoor facility until the raceways are cleared, drained, steam cleaned and re-filled. The trout stocking points for the South Branch Rockaway Creek have been the same since 1999. In addition, the bridge to the Windy Acres property is not a designated stocking location.

The Department did not include the incidence of occurrence information as part of this rulemaking proposal because the recommended reclassification of the indicated stretch of the South Branch Rockaway Creek is from trout maintenance to trout production, based on data concerning the presence of young-of-the-year trout. This stretch of the South Branch Rockaway

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Creek was already classified as trout maintenance through previous rulemakings. It should be noted that the 2002 sampling resulted in a wide range of sizes of captured fish, indicating more than one year of reproduction. The 2002 sampling took place during a severe drought and young-of-the-year trout were found in the brook even under these extreme conditions.

The Department is obligated to identify existing uses in its Surface Water Quality Standards and to protect existing uses. The upgrade to trout production use acknowledges the existing use observed in the South Branch Rockaway Creek. A trout production use is present, when any of the trout species whether native or as a result of reproducing stocked trout is found to be reproducing in the stream. While brown trout can tolerate slightly higher temperatures, their maximum optimum temperature is 68° Fahrenheit. This is slightly higher than what the brook and rainbow trout prefer. Stresses to fish populations are not always obvious associated with mortality but greatly affect growth, reproductive success, and ability to fight disease. The Surface Water Quality Standards provide an opportunity to develop site-specific criteria to protect the existing uses.

### ***State Plan / Smart Growth***

**COMMENT 71:** The statement “. . . overdevelopment and sprawl that threatens to destroy both the water supplies and the quality of life should be stopped” (35 N.J.R. 4949) is provided by the Department as supporting the proposed amendments. The commenter objects to the sensational nature of this statement particularly as it applies to the development proposal of the property within the Brass Castle Creek Watershed. Brass Castle Creek is a tributary to the Pohatcong Creek. The commenter is taking great pains to ensure that this development proposal is consistent with the environmental attributes of the watershed within which it is located. Furthermore, given the location of the project within a State Plan designated Center, it can hardly qualify as overdevelopment and sprawl. In this context, the proposed amendments are ill conceived, and their adoption would contradict their intended purpose, i.e., they would prevent a development project attempting to be protective of the environment and consistent with the State Plan. (179, 209)

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**COMMENT 72:** The Department should maintain the current Category Two antidegradation designation for the Pohatcong Creek. Should the proposed Category One antidegradation designation be adopted, the commenter believes that it would substantially and detrimentally impact the ability to develop property that has received local preliminary subdivision approval, located in a designated “Town Center” pursuant to the State Development and Redevelopment Plan. (186)

**COMMENT 73:** The Brass Castle property is located in both a State designated "Town Center" and a State-endorsed sewer service area. The property is included within the Township's 1997 Wastewater Management Plan, and obtained preliminary subdivision approval for a 250-lot residential subdivision. The Department proposed a Category One antidegradation designation of the Brass Castle Creek watershed. This action would be in direct conflict with the goals and objectives of the State Plan, which are designed to encourage, not thwart, development within designated center areas where sanitary sewer service is envisioned. It must be emphasized that the proposed stream reclassification would run counter to the State agency/governmental coordination goals of the State Plan as well as the Department's Administrative Order No. 1996-06, whereby the agency's actions are intended to support the goals and objectives of the State Plan. (186)

**COMMENT 74:** The New Jersey State Planning Commission granted the Town Center designation in May 1999 to joint petitioners, the Borough of Washington and the Township of Washington. With this designation, the State of New Jersey has not only endorsed a local and county growth strategy, but also formalized this area as a priority for accepting future growth and infrastructure assistance. As part of the designation process, Washington Township recognized the Town Center as an area to be served by public wastewater, and included the subject property within its sewer service area pursuant to a Wastewater Management Plan adopted locally and approved by the Department. Oddly enough, the Department cites in its proposal the “Water Quality Management Planning rules” as part of the rationale for implementation of the upgraded stream standards. The commenter questions that such an action would be in direct conflict with

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another DEP sanctioned effort (approval of the local WW Management Plan) and contrary to other State agency actions (Center designation).

The Department should not adopt a regulatory action that will frustrate (and possibly eliminate) an option for serving this area with suitable wastewater treatment capabilities. Such actions are in direct conflict with the State agency/governmental coordination goals of the State Development and Redevelopment Plan as well as the New Jersey State Planning Act. The commenter believes that State agencies are obligated to encourage, not eliminate, compact development opportunities in Centers. (186)

**COMMENT 75:** The commenter indicates that the effort to undermine the State/local agreement to promote growth in a designated Town Center is in direct conflict with the Department's own Administrative Order No. 1996-06. This Order which became effective on September 16, 1996, directs the Department to "support the goals and objectives of the New Jersey State Plan" and was further designed to "insure that all policies and regulations (of the Department) are applied to be made consistent and compatible with the New Jersey State Plan". The commenter questions the Department's justification regarding the proposed actions based on this Administrative Order. In addition, the Department supports the so-called "smart growth" and, at the same time, adopts regulatory actions that clearly frustrate those efforts. (186)

**COMMENT 76:** The Department should not redesignate the Metedeconk River and its tributaries in the Township of Lakewood as a Category One, as this would be contrary to the State Development and Redevelopment Plan, contrary to efforts to promote "Smart Growth" and redevelopment in urban and municipalities, and is unnecessary to protect water quality. (518)

**COMMENT 77:** The antidegradation designation proposed for the Tenakill Brook will unduly prevent or limit the full use of lands within the Cresskill Borough. The Borough has a duty and an obligation to provide community, educational, recreational and public works services for its residents and taxpayers and it must use Borough-owned lands for such purposes. Moreover, inevitable economic growth and population expansion will force the Borough to intensify the use

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of its lands to provide such necessary services. Unfortunately, however, the proposed antidegradation upgrade will likely limit the use of public lands to provide such public benefits and thereby impose a hardship on the Borough and its residents while providing, at best, only de minimis improvements in water quality. Similarly, the proposed upgrade will constrain the use of private lands within the Borough to provide housing and other essential services consistent with Borough's designation under the State Plan. (393)

**COMMENT 78:** The proposed surface water quality standards rule, when considered in conjunction with other proposed rules, would be counterproductive to the putative objective of protecting water quality. The rule should not be adopted. (510)

**COMMENT 79:** The proposed amendment will not promote smart growth, as stated in the public notice, but it will simply limit growth of any kind. The proposed amendment has failed to balance natural resources, reasonable use of these natural resources by the public, and economic impact on the society. The proposed amendment should not be adopted without a proper in-depth economic and social impact study. (185)

**COMMENT 80:** The Department's Smart Growth impact assessment at 35 N.J.R. 4961 is flawed. The Department claims that the proposed amendments are consistent with the New Jersey State Development and Redevelopment Plan. The proposed amendments are clearly not consistent with the State Plan's Center designation for Washington Borough. Furthermore, the Department claims that the proposed amendments ". . . are consistent with Smart Growth and will ensure that development can occur without compromising critical environmental resources." This proposal will not allow development to occur in this watershed. It will stop development in this watershed. Furthermore, it is not clear that this proposal will actually improve water quality as noted above in these comments. (179, 209)

**RESPONSE TO COMMENTS 71 THROUGH 80:** Smart Growth is the term used in the New Jersey State Development and Redevelopment Plan (State Plan or SDRP), N.J.S.A. 52:18A-196 et seq. to describe well-planned, well-managed growth that adds new homes and creates new

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jobs, while preserving open space, farmland, and environmental resources. Smart Growth supports livable neighborhoods with a variety of housing types, price ranges and multi-modal forms of transportation. Smart Growth is an approach to land-use planning that targets the State's resources and funding in ways that enhance the quality of life for residents in New Jersey.

The Department's action is consistent with and supports the SDRP. The State Planning Goals are derived from the State Planning Act. The Category One designation implements State Planning Goal 2 by conserving the State's natural resources, namely, its surface waters and associated biota. The actions also implement State Planning Goal 4 by providing a clean, safe and attractive environment 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 assure a sustainable economy. To implement the State Planning Goals, nineteen Statewide Policies were designed to improved planning and coordination among all levels of government. There is a Statewide Policy for Water Resources. This policy is intended to protect and enhance water resources through coordinated planning efforts aimed at reducing sources of pollution and other adverse effects of development, encouraging designs in hazard-free areas that will protect the natural function of stream and wetland systems, and optimizing sustainable resource use. Consistent with the SDRP, the Department is designating waters that provide a sustainable supply of water, and support unique flora/fauna and other selected water resources for additional protections such as exceptional ecological significance or exceptional water supply significance. Smart Growth principles recognize that development must take into account and accommodate these critical environmental resources. The same surface water quality criteria apply in Category One and Category Two streams. The additional protection provided by the Category One designation prevents degradation of existing water quality. While Category Two does provide water quality protection, the Department has made a determination that healthy waterbodies that represent a natural or undisturbed state deserve a higher level of protection to ensure that the ecological integrity of the waterbody is maintained through the designation as Category One. The State's water supplies also deserve this level of protection to ensure that potable water supplies, and therefore, drinking water, are as pollutant-free as possible.



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As indicated in the Smart Growth Impact statement of the Summary of the proposal (35 N.J.R. 4949(a)), the Department believes that the upgraded antidegradation designations are consistent with State Planning Goals. As indicated in Response to Comments 40 through 44, existing permitted wastewater treatment plants are not subject to the Category One designation unless an expansion is proposed. The designation of a stream as Category One does not stop development or preclude a new or expanded discharge to surface water. The applicant may need to redesign the project to meet the performance standards required by the Stormwater Management rules adopted on February 2, 2004 (36 N.J.R. 670(a)), and may also need to evaluate the technology and costs associated with a variety of wastewater disposal options such as community on-site wastewater treatment with a discharge to groundwater, connection to a regional wastewater treatment plant, wastewater reuse, and individual on-site septic systems.

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.

***Economic Impact:***

**COMMENT 81:** The Department has identified thirteen (13) wastewater treatment plants discharging to four different river basins, including three plants discharging to Pohatcong Creek. No economic impact assessment is provided on these plants and the communities they are serving, other than if there is expansion (increase in the allocated flow) then it may have potential impact. Has the Department proposed any economic support, incentive and assistance to the effected treatment plant and/or communities? (185)

**COMMENT 82:** The Economic Impact analysis contained in the proposal is inadequate. Although the Department correctly notes that the economic impact of the rule on future development will occur though the implementation of the proposed storm water rules, it fails to investigate and analyze the specific economic impact of the designation of each stream segment proposed in light of any development proposed along those stream corridors. Because the new designations are location specific, it is incumbent upon the Department to consider specific

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economic impacts on proposed projects to be in compliance with the economic impact analysis of the rule change. (585)

**COMMENT 83:** The Department states that the economic impact will vary from no economic impact to potentially significant impact. Such a statement is quite vague. There does not appear to be any supporting document or data which addresses the economic impact of the proposed stream reclassification on the community, residents, commerce, general public, or economy. The document has not tried to address area-by-area economic impact on areas surrounding the seven streams. There appears to be no specific economic impact study other than a general statement favoring the reclassification. (185)

**RESPONSE TO COMMENTS 81 THROUGH 83:** The Department prepared its Economic Impact Statement in accordance with the Administrative Procedure Act, N.J.S.A. 52:14-B-1 *et seq.* In its economic impact statement the Department indicated that the costs could range from no impact to significant economic impact. The antidegradation provisions of the Surface Water Quality Standards are triggered when an applicant proposes an activity that has the potential to lower water quality.

As indicated in Response to Comments 40 through 44, the existing and permitted treatment plants would not be economically impacted by the upgraded antidegradation designation unless an expansion beyond the currently approved and permitted levels was sought. The area serviced by each wastewater treatment plant and the capacity needed to service the affected area is determined through wastewater management planning. These plans were developed based on local zoning and population projects on a twenty year planning horizon. These plants were designed and constructed to service the planned growth. Since the Department does not anticipate any economic impact for these wastewater treatment plants, no incentives were considered. The Department already provides financial assistance to municipalities to upgrade their wastewater treatment plants through the Environmental Infrastructure Trust.

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As discussed in the proposal at 35 N.J.R 119(a), January 6, 2003, the redesignation of waters as Category One may generate financial burdens on developers and municipalities seeking to build near affected waterbodies based upon the requirements imposed through the Stormwater Management Rule, N.J.A.C. 7:8. While the designation of a waterbody as Category One may impact the scope and extent of development potential for a parcel, it may also add value to the areas adjacent to the Category One waterbody.

**COMMENT 84:** The Department's economic impact assessment is incomplete. At 35 N.J.R. 4959, the Department states the following: "Where there are no existing discharges to a segment being proposed for reclassification, no economic impacts are anticipated." This statement is simply incorrect, and is indicative of the Department's failure to complete a thorough economic impact assessment. In fact, where there are no existing discharges, there is a maximum impact to undeveloped land value and all of the economic aspects associated with that land's potential for development. The Department has disregarded this very severe economic impact and needs to redo its economic impact assessment. (179, 209)

**RESPONSE TO COMMENT 84:** The Department was addressing the impact on existing wastewater plants in the statement, "Where there are no existing discharges to a segment being proposed for reclassification, no economic impacts are anticipated." The Department identified existing municipal wastewater treatment plants which have NJPDES permits. The Department recognized other types of economic impacts of the rule in the economic impact statement and rule summary.

### ***Social Impact***

**COMMENT 85:** The Department's social impact assessment is inadequate. To say that the Category One designation will "discourage development" is, at a minimum, an understatement. The Department knows that where a new wastewater discharge is necessary to accommodate new development, a Category One antidegradation designation is a most effective vehicle for stopping that development. Even where an expansion of an existing wastewater discharge is necessary to accommodate a new development, a Category One antidegradation designation will

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almost always stop development. Hence the social impact of the proposed amendments is a cessation of new development. (179, 209)

**RESPONSE TO COMMENT 85:** As indicated in Response to Comments 71 through 80, the designation of a stream as Category One does not stop development or preclude a new or expanded discharge to surface water. Rather, the applicant may need to redesign the project to meet the performance standards required by the Stormwater Management rules adopted on February 2, 2004 (36 N.J.R. 670(a)). The applicant may also need to evaluate the technology and costs associated with a variety of wastewater disposal options such as community on-site wastewater treatment with a discharge to groundwater, connection to a regional wastewater treatment plant, wastewater reuse, and individual on-site septic systems.

#### *Regulatory Flexibility Analysis*

**COMMENT 86:** The “Regulatory Flexibility Analysis” section of the proposed amendment, states that any new discharge even in Category Two waters (which may discharge into Category One waters) will be required to demonstrate no impact at the boundary of Category One waters. The Department should clarify this issue and provide guidelines for such a study. For example, how far upstream of Category One waters would such a study be required? Will there be any additional requirements for new users locating or discharging into impaired waters? The proposed amendment is not only impacting the seven selected reclassified streams, but also a wide range of water bodies connected to them. The Department should provide a detailed economic, social and job impact statement/study prior to adopting these far reaching amendments. (185)

**RESPONSE TO COMMENT 86:** In the Regulatory Flexibility Analysis section of the proposal, the Department is required to explain how small businesses would be impacted by the proposed amendments. As stated in the Regulatory Flexibility Analysis, small businesses would be treated no differently than other businesses. The requirement to demonstrate no measurable change at a Category One boundary condition has existed in the Surface Water Quality Standards and is implemented by the NJPDES permit program. The proposed rule does not add or change

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the need to make this demonstration. The determination on when such studies are necessary is based on factors such as size of the discharge, type of pollutants being discharged, relative percentage of wastewater in the receiving stream and distance from the Category One boundary.

### ***Environmental Impact***

**COMMENT 87:** The Department's environmental impact assessment is incomplete. While it is true that reclassification to Category One antidegradation designation seeks to maintain existing water quality, the Department has not considered whether maintaining the existing stream classification can actually result in an improvement in water quality above that which would be maintained with the Category One antidegradation designation. Maintaining existing water quality is not sufficient in a waterway that is impaired! To illustrate this, consider the following scenario. It is well documented that agricultural land use will contribute greater nutrient loads to waterways than planned development with best management practices for nonpoint source pollution control. Consequently, by imposing Category One antidegradation designation status and precluding such land use changes, the Department will have traded, for example, a slight "measurable" increase in a parameter like total dissolved solids (a parameter for which Pohatcong Creek is not presently impaired) for a dramatic decrease in other more significant parameters like phosphorus (a parameter for which Pohatcong Creek is presently impaired). Hence, adoption of a Category One antidegradation designation can actually be worse for water quality. The Department needs to complete a detailed analysis of these aspects analogous to that which it requires for Executive Order 109 analyses for WMP amendments. (179, 209)

**RESPONSE TO COMMENT 87:** The goal of the Surface Water Quality Standards program is to maintain water quality that is better than criteria and to restore water quality where the criteria are not attained. The commenter is correct that the actual pollutant loading estimates from residential development is lower than from agriculture land for some pollutants. However, the Category One designation will apply to new activities which may lower water quality. The new Stormwater Management rules establish design and performance standards for new development including groundwater recharge, runoff quantity controls, runoff quality controls and 300-foot buffers for Category One streams. These new design and performance standards will result in

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significant improvements in water quality. Existing water quality impairments resulting from all sources including point sources and nonpoint sources will be addressed through the TMDL process.

### ***Jobs Impact***

**COMMENT 88:** The Department's jobs impact assessment is inadequate. By stopping development, the Department has obviated all of the jobs associated with that industry's activity in this watershed. This impact has not been considered. Furthermore, the cursory and speculative nature of the jobs impact assessment presented at 35 N.J.R. 4960 does not allow anyone to come to a substantive conclusion about this impact. (179, 209)

**RESPONSE TO COMMENT 88:** The commenter incorrectly presumes that Category One precludes all development. The Category One designation does not preclude a wastewater discharge to surface water and a surface water discharge is not the only means of wastewater disposal. An applicant proposing a surface water discharge to a Category One waterbody is free to evaluate the technology and costs associated with a variety of wastewater disposal options such as community on-site wastewater treatment with a discharge to groundwater, connection to a regional wastewater treatment plant, wastewater reuse, and individual on-site septic systems. In addition, the applicant could compare these options to the treatment technology required to meet effluent limitations associated with discharges to Category One waters.

### ***Additional Nominations***

**COMMENT 89:** The Department should adopt more Category One waterways in a more timely fashion in order to stop sprawl. (1-6, 8-11, 14-15, 17-19, 21-24, 26-27, 29, 31-34, 36, 38, 40-41, 43-47, 49-50, 52-53, 56-57, 60-63, 65-70, 72-75, 77, 80, 82, 85-86, 88, 90-95, 97, 99-100, 102-105, 108-109, 111, 113, 116-118, 120-121, 123-124, 126, 128-129, 133, 135-137, 139-142, 145-147, 149, 152-153, 157-1161, 163-167, 169-170, 174-176, 178, 180, 182, 184, 187-190, 192, 194, 198-200, 203-208, 210, 212, 214-215, 217-226, 229, 231-232, 235, 237-238, 240, 243-249, 251-253, 256, 258, 263-264, 274-283, 285-286, 289, 295-297, 300, 302-322, 324, 326-328, 331-332, 334-341, 343-347, 349, 351-361, 364-365, 367-369, 371-382, 385-386, 388-392, 395-398,

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402, 404-405, 407412, 415-418, 420, 430-432, 434-436, 438, 440-444, 446-449, 451-456, 458-459, 461, 463-465, 467-469, 471-476, 478, 480-483, 485-486, 488-490, 497-499, 501-502, 504-505, 507-509, 512-516, 521-522, 524-526, 528, 530-538, 540-541, 543-553, 555-559, 561-565, 567-568, 570-576, 578-579, 582-584, 586, 589, 593, 595-597, 599, 601, 603-605, 607-613, 616-620, 623-624, 627-628, 630, 632-636)

**COMMENT 90:** The waters in Sourland Mountain Region including the Moore's Creek, Rock Brook, Roaring Brook, Back Brook, and Crusier Brook should be considered for Category One antidegradation designation.

Increase the protections for all Sourland Mountain Region's surface and ground waters. (71, 539, 569, 621)

**COMMENT 91:** The Department should take a proactive role in the Highlands of stopping existing planned developments until a full water quality impact assessment is made. The Department should protect other Highlands waterways from further degradation. (68, 212, 247, 252, 343, 421-429, 441, 474)

**COMMENT 92:** All of the tributaries to the Manasquan River should be protected instead of just certain segments. (3, 12-13, 16, 20, 25, 28, 30, 35, 37, 39, 42, 51-52, 55, 58-59, 68, 76, 78-79, 81-84, 87, 96, 98, 101, 106-107, 109-110, 112, 114, 122, 125, 132, 134, 138, 143-144, 148, 156, 162, 168, 171-173, 177, 181, 183, 191, 193, 195-197, 201-202, 211-213, 216, 227-228, 230, 233, 236, 239, 241-242, 247,250, 252, 254, 257, 259-262, 265-273, 282, 284, 287-288, 290-292, 294, 299, 301, 323, 325, 329-330, 333, 342-343, 348, 350, 362-363, 366, 383-384, 387, 394, 399, 400-401, 403, 413-414, 419, 421-429, 433, 437, 445, 450, 457, 459-460, 466, 470, 474, 477, 479, 484, 487, 491-496, 500, 503, 506, 517, 519-520, 529, 542, 560, 577, 580, 584, 588, 591-592, 594, 598, 600, 606, 614-615, 622, 625-626, 629, 631, 637)

**COMMENT 93:** Additional protections are necessary for the preservation of the Manasquan River water supply watershed. Water quality impairment, growth and development pressures, recreational interests, natural resource preservation and drinking water protection are important

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reasons for Category One antidegradation designation for the Manasquan River from the headwaters to the estuary. (577)

**COMMENT 94:** All surface waters in Howell Township should be designated as Category One as they all lead to public sources of drinking water. (119)

**COMMENT 95:** All tributaries of the Swimming River Reservoir should be upgraded to the Category One level of protection. (474)

**COMMENT 96:** The current proposal to classify the Manasquan and Metedeconk Rivers and associated tributaries and feeder streams as Category One streams is a strong start. However, much more work needs to be done to protect and restore our coastal water bodies so that they can provide the fish, shell fish and aquatic species habitat upon which so many New Jersey fishermen, families and communities depend, as well as protecting the fundamental ecology of the estuaries. Because of the importance of our coast for public recreation and broad-based conservation uses, improving the level of protection for coastal rivers, streams and estuaries is a crucial step to improving the State's commitment to the public trust.

The Department should propose Category One antidegradation designation for the following streams within Watershed Management Areas 12 and 13.

#### **WMA 12 – Monmouth**

Navesink River, at Red Bank and Monmouth Beach

The length of this critically important coastal water body should also be granted Category One protection due to the presence of exceptional shellfish and fisheries resource values

#### **WMA 13 – Barnegat Bay**

Barnegat Bay, South of confluence w/ Toms River, North to confluence w/ Metedeconk

The Barnegat Bay region is a thriving estuarine ecosystem with exceptional shellfish and fisheries resource values. Hard clams are found throughout this



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region at a full range of densities. The Environmental Protection Agency (EPA) has also proposed the Barnegat Bay as a 'no discharge' area for boating and watercraft, which will prevent additional disruption of habitat and breeding activity. Combined with a Bay-wide Category One designation, this very important ecological system stands a real chance to remain one of New Jersey's truly unique and productive coastal regions.

Cedar Creek

Exceptional value shellfish waters.

Cedar Run

Exceptional value shellfish waters.

Forked River

Exceptional value shellfish waters.

Oyster Creek

Exceptional value shellfish waters.

Toms River

Exceptional value shellfish waters

Tuckerton Creek

Exceptional value shellfish waters

Westecunk Creek

Exceptional value shellfish waters

Waretown Creek

Exceptional value shellfish waters

Beach Haven Inlet to Cape May Point, including

Atlantic City, Ocean City, 7 Mile Beach and Wildwood outfalls

Exceptional value shellfish and fisheries resource area

These streams provide essential shellfish habitat and are located within coastal watershed areas known to contain sensitive and exceptional ecological resources. Moreover, several of them were included in the list of recommended coastal Category One antidegradation upgrades

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submitted to the Department in the commenter's April 25 letter and reiterated above for this round of Water Quality Classification Amendments. (150)

**COMMENT 97:** The Cain's Run (AKA Warsaw Creek), Warford Creek, and all tributaries of the Delaware River (some unnamed) be upgraded to Category One antidegradation designation. (319)

**COMMENT 98:** The tributaries to the Arthur Kill and Lower Raritan Basin should be upgraded to Category One antidegradation designation. (370, 548)

**COMMENT 99:** The Matawan Brook in Monmouth County should be upgraded to Category One antidegradation designation. (7, 462)

**COMMENT 100:** The Department should continue to amend the New Jersey SWQS to protect more streams in New Jersey, particularly the streams and waterways that flow to the Delaware River, including the Delaware and Raritan Canal, as presented in our comments of January 8, February 27 and April 24, 2003. The comments submitted by the United States Fish and Wildlife Service dated December 5 and April 9, 2003 nominating the surface waters within the National Wildlife Refuges in New Jersey for Category One antidegradation designation are also supported since there is not adequate protection in place for these waterways. (89)

**RESPONSE TO COMMENTS 89 THROUGH 100:** The Department intends to review all waterbodies nominated by the public and the waterbodies nominated by the various programs within the Department. Not all waters may qualify under the definition of Category One at N.J.A.C. 7:9B-1.4. However, the Department believes that many waterbodies exhibit the characteristics necessary to meet this definition. At this time, the Department envisions a series of proposals as it completes the assessment process for groups of waterbodies. It has been and continues to be the Department's intention to identify all appropriate waters for Category One protection and to assure that the State's water resources are protected. The Department is

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required to propose these upgrades through rulemaking process. Therefore, no action is being taken on these additional nominations at this time.

### ***Beyond the Scope***

**COMMENT 101:** The Sourland Mountain Region should be identified as a Special Resource Area on the State Plan Policy Map of the New Jersey Development and Redevelopment Plan. The Department should continue allocation of Green Acres and State Agricultural Development Committee preservation dollars to preserve and protect the critical resource of the Sourlands. (71, 539, 621)

**COMMENT 102:** The Department should consider amendments to the Stormwater Management Rules and Freshwater Wetland Rules to mitigate the impact of a Category One designation on public access improvements. Three specific recommendations are as follows:

1. Exempt all public pedestrian accessways 10 feet or less in width, regardless of surface materials, from the Stormwater Management Rules.
2. Exempt all public recreation improvements that provide and support water access from the Stormwater Management Rules.
3. Minimize the impact of regulatory requirements triggered by a Category One designation by creating a distinction between Category One waters associated with site-specific threatened or endangered species habitats and those related to broader water supply protection objectives. (587)

**RESPONSE TO COMMENTS 101 THROUGH 102:** These comments are beyond the scope of the proposed surface water quality standards rule amendments. The Department will evaluate these comments to determine the type of rules and/or changes that might be appropriate for future proposals. The Department would have to consider any changes through formal rulemaking process.

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### **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.

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. The Water Quality Act of 1987 amended the CWA to require the adoption of criteria for toxic pollutants identified as causing or contributing to an impairment of a waterbody's designated use(s). 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 to 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.

The SWQS amendments being adopted are required by and are consistent with the Federal statutes, regulations and guidance.

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

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waterbody classification listing is a tool to identify these 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 to 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 changes in antidegradation designation for the waterbodies being adopted identify the level of protection and implementation procedures that must be followed. The antidegradation designations are consistent with and do not exceed Federal standards, therefore, no further analysis is required.

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**

(No Change from Proposal.)

Based on the 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 the adoption of these amendments. I hereby authorize this adoption.

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

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