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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

DIVISION OF WATER QUALITY

New Jersey Pollutant Discharge Elimination System

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

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

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

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

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

Proposed: March 17, 2008 at 40 N.J.R. 1478(a)

Adopted: by Mark N. Mauriello, Acting Commissioner, Department of
Environmental Protection

Filed: as **with substantive and technical changes** not requiring additional
public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq.,
58:11-64 et seq., 13:1D-1 et seq., 13:1D-29 et seq., 13:1E-1 et seq., 58:12A-1 et seq., 13:1B-3 et
seq., 26:2C-1 et seq., 40:55D-1 et seq., 58:11-23 et seq., and 26:3A2-21

DEP Docket Number: 01-08-01/555

Effective Date:

Expiration Date:

The New Jersey Department of Environmental Protection (Department) is readopting the
New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A with

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amendments. The five major areas of amendments are new rules for Reclaimed Water for Beneficial Reuse (RBWR) at N.J.A.C. 7:14A-2.15; a revised ground water fee method at N.J.A.C. 7:14A-3, Determination of Permit Fees; residual at N.J.A.C. 7:14A-20, Standards for the Use or Disposal of Residual; and effluent standards for whole effluent toxicity (WET) and phosphorous at N.J.A.C. 7:14A-5, Wastewater Discharge Requirements.

In addition to the readoption with amendments of N.J.A.C. 7:14A, the Department is also amending the Department Organization rules at N.J.A.C. 7:1-1.3(e); moving all provisions related to the Treatment Works Approval program into the NJPDES rules at N.J.A.C.7:14A-22 and repealing N.J.A.C. 7:1C; amending the Standards for Individual Subsurface Sewage Disposal Systems rules at N.J.A.C. 7:9A-2.1; and amending the Water Pollution Control Act rules at N.J.A.C. 7:14-8.2.

Summary of Hearing Officer Recommendation and Agency Response:

Public Hearings were held on April 21, 2008 at the Rutgers Labor Education Center in New Brunswick, and on May 8, 2008 at the Rutgers EcoComplex Environmental Research and Extension Center in Bordentown. Two people provided oral comments. Jeffrey T. Reading, Assistant Director of the Department's Division of Water Quality, served as the Hearing Officer. After reviewing the comments received during the public comment period, the Hearing Officer has recommended that the proposal be adopted with the changes described below in the Summary of Public Comments and Agency Responses and in the Summary of Agency-Initiated Changes. The Department accepts the Hearing Officer's recommendation.

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

Department of Environmental Protection

Office of Legal Affairs

ATTN: Docket No. 01-08-01/555

401 East State Street

PO Box 402

Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The following people submitted written comments and/or gave oral testimony on the proposal:

1. George B. Bakun, Principal Engineer, ConocoPhillips
2. David Byer, Esq., Water Policy Attorney, Clean Ocean Action
3. Greg W. Call, President, Casie Protank
4. Michael A. Dimino, P.E., Executive Director, Western Monmouth Utilities Authority
5. William G. Dressel, Jr., Executive Director, New Jersey State League of Municipalities
6. Michael Egenton, Vice President, Environment & Transportation, New Jersey State Chamber of Commerce
7. Russell J. Furnari, Environmental Policy Manager, Public Service Electric & Gas Company
8. Christine Gasparine, Industrial Pretreatment Operations Manager, Hanover Sewerage Authority

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9. Elizabeth George-Cheniara, Esq., Director of Environmental Affairs, New Jersey Builders

Association

10. Jeffrey Gratz, Chief, Clean Water Regulatory Branch, Division of Environmental Planning

& Protection, USEPA

11. Ellen Gulbinsky, Executive Director, Association of Environmental Authorities

12. May Johnson, Senior Environmental Consultant, Conectiv Atlantic Generation, L.L.C.

13. John Maxwell, New Jersey Petroleum Council

14. Dennis J. McChesney, Ph.D, MBA, Chief, Ground Water Compliance Section, Division of

Enforcement and Compliance Assistance, USEPA

15. William P. Minervini

16. Richard Nieuwenhuis, President, New Jersey Farm Bureau

17. Charles M. Norkis, P.E., Executive Director, Cape May County Municipal Utilities

Authority

18. Dennis W. Palmer, P.E., P.P., Executive Director/Chief Engineer, Landis Sewerage

Authority (LSA) and member of the Association of Environmental Authorities

19. Michael L. Pisauro, Jr., on behalf of the New Jersey Environmental Lobby, the New Jersey

Sierra Club and the New Jersey Environmental Federation

20. Monique Purcell, Director, New Jersey Department of Agriculture, Division of Agricultural

and Natural Resources

21. Anthony Russo, Director of Regulatory Affairs, Chemistry Council of New Jersey

22. Heather Saffert, Ph.D., Staff Scientist, Clean Ocean Action

23. Jennifer Samson, Ph.D, Prinipal Scientist, Clean Ocean Action

24. Andrew Shawl, Environmental Manager, RC Cape May Holdings, L.L.C.

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25. Douglas Mark Tomson, Director of Legislative Affairs, New Jersey Association of Realtors
26. James F. Wadon, Environmental Supervisor, ICL Performance Products LP
27. Edward Wengrowski, Wastewater Management Coordinator, Pinelands Commission
28. Bill Wolfe, Director, New Jersey Public Employees for Environmental Responsibility
29. Cindy Zipf, Executive Director, Clean Ocean Action

A summary of the timely submitted comments and the Department's responses follow.

The number(s) in parentheses after each comment corresponds to the commenter(s) listed above.

Impact Statements

1. COMMENT: The commenter supports the extensive analysis that the Department has provided in its "Impact analysis" section (see 40 N.J.R. 1507-51). The Department is encouraged to include such thorough analyses in all future rule proposals. Not only does this comply with the Administrative Procedure Act, this analysis enables the general public to more fully understand and be aware of the potential impacts of Department regulations. (9)

RESPONSE: The Department acknowledges the commenter's support.

2. COMMENT: There are conflicts in the Economic and Agricultural Industry Impact Statements and the Federal Standards Analysis regarding proposed amendments or readoption without change with regard to Concentrated Animal Feeding Operations and Animal Feeding

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Operations. At the Economic Impact, the Department states, “The rules proposed for readoption do include amendments specific to CAFO’s and AFOs.” The Federal Standards Analysis states, “The Department proposes to readopt...the NJPDES rules that specifically pertain to CAFOs without amendments.”(16)

RESPONSE: The Department proposed no amendments related to Concentrated Animal Feeding Operations or Animal Feeding Operations as part of this rulemaking effort.

3. COMMENT: The commenter is in agreement with the anticipated positive social and environmental impacts. (9)

RESPONSE: The Department acknowledges the commenter’s support.

4. COMMENT: In the Agricultural Impact Statement, the Department’s correlation between a USEPA study done in Yuma, Arizona, and New Jersey agriculture attempts to demonstrate a benefit to agriculture. These regions’ crops, climate, soil types and nutrient requirements differ significantly. While the use of residual may result in a decrease in fertilizer, herbicide and pesticide usage, the relative costs associated with meeting the land application requirements of the rule outweigh any economic gain achieved. (20)

RESPONSE: The Department acknowledges in the Economic Impact that there are significant costs associated with meeting the requirements of the rules. The bulk of these costs are borne by the person who prepares residual for land application (a treatment works), while the person who

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applies residual (possibly a farmer) can offset the costs of commercial soil additives except in the buffer zones. The Department presented the estimated economic impact found in the USEPA study done in Yuma, Arizona (EPA 832-R-94-009) as a measure of the cost of proposing increased buffer zones. The Agricultural Impact Statement states that the Department proposes to “increase the number of buffered acres for some farmland.” Buffer zones may not receive residual for fertilization; therefore, any economic benefit associated with the use of sewage sludge cannot be realized on buffered acres.

General Comments

5. COMMENT: It was requested that the Department extend the comment period on these all important and very comprehensive NJPDES rules. (5, 11)

RESPONSE: The Department determined that the scope of the rule proposal did not warrant an extension of the comment period, and that in order for the Department to be able to readopt the rules before their expiration, the comment period would close on May 16, 2008 as scheduled.

6. COMMENT: The way that the revisions were proposed the Department left the existing rule in place and the public has no way of even knowing that there’s an issue there. If you proposed the whole rule and just had revisions highlighted at least the public could see the existing rule, what it entails and then could be educated based upon what the existing rule is about. The philosophy of full disclosure to the public and the public’s right to know and have some

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discussion on these issues. There was none on that ground and that is a core element of the permit program. (28)

RESPONSE: The presentation of the proposed amendments and new rules in the New Jersey Register, and the choice not to reproduce the text of the existing rules, is dictated by the Office of Administrative Law's publication requirements, not by the Department. The Department identified at the beginning of the rule text section of the proposal (see 40 N.J.R. at 1551, March 17, 2008) that the full text of the readopted rules could be found in the New Jersey Administrative Code. This is consistent with readoption of rules throughout the State of New Jersey. The Department further makes an unofficial copy of its rules available on its website, www.nj.gov/dep.

7. COMMENT: The NJPDES permits for wastewater treatment plants located in the Highlands area should be modified to accurately reflect the carrying capacity of the area since the Highlands Act rolled back sewer service areas. Otherwise the additional capacity of the wastewater treatment facilities will have the unintended consequence of promoting inappropriate development. (19)

RESPONSE: In accordance with the Highlands Water Protection and Planning Act (Act), N.J.S.A. 13:20-1 et seq., designated sewer services areas in the Highlands preservation area for which wastewater collection systems had not yet been installed on the date of enactment were revoked. The Northeast, Sussex, Upper Delaware and Upper Raritan Water Quality Management Plans were amended to reflect this sewer service area revocation and modified

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wastewater service area digital mapping reflecting these changes was adopted on October 6, 2006 (see 38 N.J.R. 4757(a)). The recently amended Water Quality Management Planning rules, N.J.A.C. 7:15, require that counties assume the responsibility of regional wastewater management planning, and that updated County Wastewater Management Plans are due April 7, 2009.

Through the development of these wastewater management plans, sewer system wastewater build-out calculations are required to ensure capacity at the treatment plant can accommodate existing and planned communities. In the Highlands preservation area these build-out analyses are also required. However, any additional capacity at the wastewater treatment facilities will not promote inappropriate development because future development in the Highlands preservation area would only be for those projects that are either exempt from the Act or those that receive Highlands Preservation Area Approvals (HPAA). Capacity must be reserved for those projects that meet the Exemption or HPAA criteria.

8. COMMENT: How are pollution prevention requirements being implemented in the permit program? These requirements were supposed to deal with industrial users to reduce their toxic loading systems. The Pollution Prevention Act provides authority to the Department to modify permits and to set effluent limits or other permit requirements to implement pollution prevention plans, however this is not happening. This is not in the proposal anywhere. The Department should provide some conversation on adoption as to how the Department is implementing prevention in the permit program and how these rule changes have either positively changed the status quo or are not working, but some evaluation. (28)

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RESPONSE: The Pollution Prevention (P2) Act at N.J.S.A. 13:1D-43c authorizes the Department to require that new or renewing permits for a priority industrial facility include the P2 strategies set forth in the P2 Plan or P2 Plan summary. This section also authorizes the Department to require the owner or operator of a priority industrial facility to prepare a P2 Plan and to submit a P2 Plan summary to the Department as a condition of a Department issued permit. Furthermore, N.J.S.A. 13:1D-44c gives the Department similar authority with regard to a facility that is not a priority industrial facility.

In developing the P2 Program requirements at N.J.A.C. 7:1K, the Department has attempted to achieve a balance between providing incentives to encourage voluntary implementation of P2 and providing regulatory oversight. Nowhere in the P2 Act does it require that a facility must implement P2 or achieve their stated P2 goals. The Department believes that this flexible approach has been successful and will continue to focus on the voluntary aspects of the program as opposed to integrating mandatory P2 goals into single-media permits. The Department will continue to monitor the effectiveness of the voluntary approach.

Subchapter 1

Abbreviations, Acronyms, and Definitions

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

Definitions

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9. COMMENT: Clear regulatory definitions for categories of reuse, including restricted access reuse, public access reuse and potable water recharge should be referenced in the proposed definition of Reclaimed Water for Beneficial Reuse (RWBR) to remove any ambiguity and provide a consistent standard for all wastewater reuse projects to attain. (17)

RESPONSE: RWBR is defined at N.J.A.C. 7:14A-1.2 and restricted access and public access classifications are described at N.J.A.C. 7:14A-2:15(a)1 and 2, respectively. It is not necessary in the definition to describe the different types of reuse activities that constitute RWBR. There is a discussion of different reuse types and a number of associated activities that can utilize RWBR in the Department's "Technical Manual for Reclaimed Water for Beneficial Reuse" (RWBR Technical Manual). This document is available at www.state.nj.us/dep/dwq/techmans/reuseman.pdf. Potable water recharge is not covered under the Department's program at this time.

10. COMMENT: The definition of "non-significant categorical indirect user" is less stringent than Federal regulations at 40 CFR 403.3(v)(2)(i). The Department must add the condition that the indirect users' consistent compliance must be met "prior to the Control Authority's finding" that the user is a non-significant categorical industrial user. (10)

RESPONSE: The definition of "non-significant categorical indirect user" (NSCIU) at N.J.A.C. 7:14A-1.2 is consistent with the requirements under 40 CFR 403.3(v)(2)(i). Under the Federal rule, Control Authorities must complete an evaluation of a user to determine if the user meets the NSCIU criteria under Part 403. One requirement for being a NSCIU is that the user must have

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“consistently complied” with the applicable standards. The Control Authority must review the indirect user’s compliance status as part of this determination process. Therefore, the recommended phrase is not necessary.

11. COMMENT: The definition of “property” should be expanded to include a reference to “single” lot when describing contiguous lots and explain what is meant by “other substantial common interest” and whether this applies to phased development. (9)

RESPONSE: As described in the Summary at 40 N.J.R. 1480 and 1481, the definition of “property” was proposed to be amended, and a definition added for “common plan of development or sale” for the purposes of identifying the proper regulatory path for owners of new and existing onsite wastewater treatment systems and for consistency with Federal definitions. Combined, these terms include “phased development” on a common plan of development that has been approved by other regulatory agencies or is proposed by the property owner or an authorized agent acting on behalf of an interested party in developing the property. This is also consistent with Water Quality Management Planning rule requirements at N.J.A.C. 7:15, which require planning based on 20 year buildout projections for urbanized areas, or full buildout for all other areas. Therefore, the total design volume for any “phased” project is based on final buildout of the project, requiring the inclusion of all flows from all phases in that common plan of development or sale. “Other substantial interests” can include, but are not limited to, common ownership or ownership of adjacent lands by family owners or business partnerships, shared utilities (i.e., stormwater, sewerage, electrical), shared roads, egresses, entrances and parking amenities.

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The Department believes the adopted definition accomplishes the intent of the amendments without adding the word “single.” In the absence of any rationale to support the inclusion of the word “single” in this definition, the Department is declining to modify the definition on adoption.

12. COMMENT: The commenter supports the definition of the term “reclaimed water for beneficial reuse.” (7)

RESPONSE: The Department acknowledges the commenter’s support.

13. COMMENT: The definition of RWBR is not sufficiently broad to include all reuse projects proposed for development in New Jersey. The proposed definition would limit RWBR projects to non-potable water applications. Additionally, the definition does not specifically reference regulatory standards for treatment or application; it only references the requirements specified in the NJPDES permit for each such project. (11, 17)

RESPONSE: The Department does not intend RWBR to be used for drinking water purposes. RWBR is a resource that can be used for non-potable applications where potable water is currently being used in New Jersey. The commenter is correct that the definition limits RWBR projects to non-potable water applications at this time and that the definition does not contain standards for treatment or application. Due to the specific nature of each NJPDES permittee's treatment works and the various nature of potential RWBR projects, to put specific requirements

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for treatment or application in the definition for RWBR could unnecessarily restrict the use of reclaimed water. Specific standards for RWBR will be listed in the individual NJPDES permits. Because individual NJPDES permits are subject to public comment, the public will have an opportunity to comment on the RWBR requirements.

14. COMMENT: The RWBR Technical Manual should be updated to be consistent with the definition of Reuse Feasibility Study (RFS) and other new RWBR provisions in the NJPDES rules. For example, the definitions of “RWBR,” “Restricted Access and Non-Edible Crops RWBR,” and “Public Access RWBR” on page 27 in the RWBR Technical Manual should be updated to be consistent with the adopted definition of “RWBR” at N.J.A.C. 7:14A-1.2, and the adopted descriptions of “Restricted access RWBR” and “Public access RWBR” at N.J.A.C. 7:14A-2.15(a). (15)

RESPONSE: The RWBR Technical Manual is in the process of being revised and will reflect the adopted defined terms.

15. COMMENT: The commenter supports the use of the terms “no observed adverse effect concentration” (NOAEC) and the concentration of effluent that produces an inhibition of 25 percent from the monitored effect as compared to the control in a chronic whole effluent toxicity test (IC_{25}) as used in the definition of “serious violation” and defined at N.J.A.C. 7:14A-1.2. As the Department notes, these terms are already used at N.J.A.C 7:14A-13.14(a)1ii and 7:14A-1.2. (7)

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RESPONSE: The Department acknowledges the commenter's support.

16. COMMENT: To avoid unforeseen repercussions related to the use of dredged material as a resource, the Department should maintain in the definition of "solid waste" proposed at N.J.A.C. 7:14A-1.2 the exclusion of "materials approved or categorically approved for beneficial reuse" and of "dredged material" found in the Solid Waste Management Regulations at N.J.A.C. 7:26-1.6. (2, 22, 23, 29)

RESPONSE: The amendment to the NJPDES definition of solid waste at N.J.A.C. 7:14A-1.2 refers only to those materials regulated under the NJPDES program. The amended definition allows the Department to better address those materials currently regulated by the NJPDES program.

Although the amendments to the NJPDES rules will bring dredged materials under the definition of solid waste at N.J.A.C. 7:14A-1.2, the amendments do not alter the Solid Waste Management Regulation definition of solid waste or the dredged materials exemption found at N.J.A.C. 7:26-1.6. Also, existing N.J.A.C. 7:14A-2.5(a)2 specifically exempts discharges of dredged materials that are regulated under Section 404 of the Federal Clean Water Act, which establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands.

17. COMMENT: The definition of "stormwater discharge (or stormwater DSW) associated with industrial activity" should be amended to reference North American Industrial

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Classification System (NAICS) Code, rather than the Standard Industrial Classification (SIC)

Code, which was replaced five to six years ago. (9)

RESPONSE: The USEPA stormwater regulations at 40 CFR 122 continue to reference SIC codes for purposes of determining regulated facilities. This includes such provisions as 40 CFR 122.21(f)(3), which requires permit applications to include “up to four SIC codes which best reflect the principal products or services provided by the facility.” The Department is required to be consistent with Federal regulatory requirements to ensure that the Department’s rules are consistent with the Federal requirements. In order to maintain this consistency, it is not possible to amend this portion of the rule until such time that the USEPA makes changes to its rules to allow for the use of NAICS.

Subchapter 2

General Program Requirements

General

18. COMMENT: Electronic filing of rulemaking comments could be a significant plus for the Department as well as more efficient for participants in rulemaking proceedings. In that regard, for a number of years the Department has asked interested parties to submit comments in rulemaking proceedings in paper format as well as on a disk or CD. That process would appear to require parallel (duplicate) records, and electronic filing through the Department’s web portal would eliminate the burden associated with such duplicate records. Electronic filing would also

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allow interested parties to confirm receipt of comments without having to query Department staff. And in addition to expediting the process for submitting rulemaking comments, electronic filing would reduce the personnel requirements, paper and postage, etc., associated with responding to Open Public Records Act (OPRA) requests for rulemaking comments and other rulemaking documents. (12, 24)

RESPONSE: The Department has been aware of this issue for several years. The Department does not at this time have the capability to accept comments on a web-based form through the Department's web portal. Those comments that are submitted in electronic form are maintained in hard copy for purposes of archive and, at this time, are made available in hard copy in response to OPRA requests.

The Department is looking into the possibility of web-based submission of comments for the future.

N.J.A.C. 7:14A-2.7 Permit duration and renewal

19. COMMENT: The Department should extend the duration of NJPDES discharge permits from five to 10 years at N.J.A.C. 7:14A- 2.7. Further, if the conditions underlying the permit have not changed, the Department should reconsider requiring the renewal process, which unnecessarily entails the Department's time and expense. (9)

RESPONSE: In accordance with 40 CFR 122.41(b) and (f), 122.46(a) through (c), 144.36 and 144.51(b), USEPA has established a permit duration and renewal process. Since the Department

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is authorized by the USEPA to institute the permit program, the Department must demonstrate that its rules are no less stringent than the Federal standards that it is implementing. Therefore, NJPDES permits may not exceed five years in duration unless an extension is provided by Federal rule. Further, the New Jersey Water Pollution Control Act at N.J.S.A. 58:10A-1 et seq. limits permit durations to five years. To allow a permittee to avoid the renewal process entirely, even if the underlying conditions have not changed, would be to de facto extend the permit beyond five years.

N.J.A.C. 7:14A-16.3(h) provides for an expedited renewal process if the Department reviews the existing permit and determines that no change to the permit is needed other than changes that would constitute a minor modification.

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

20. COMMENT: The Department's initiative at N.J.A.C. 7:14A-2.11(b) to expand electronic filing is supported.

It is anticipated that the Department will exercise discretion when timely electronic filing is prevented due to Department related issues at its web portal and/or database system. This flexibility should be noted in the New Jersey Register at the time of rule adoption. (12, 24)

RESPONSE: The Department evaluates each untimely submittal on its own merits. If the Department determines that the permittee complied with the requirements of N.J.A.C. 7:14-8.9(e)4 and the late submittal was beyond the control of the permittee, then there will be no

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penalty action. The Department will impose a penalty only when it determines that a late submittal extends more than 10 days beyond receipt of a notice from the Department of a situation preventing electronic filing, or if the failure to timely submit was not inadvertent.

21. COMMENT: The Department's action at N.J.A.C. 7:14A-2.11(b) to provide for timely submittal of both permit applications and required reports in electronic format is supported.

Timely submittal of reports is a compliance requirement. If not presently provided within the design of the web portal, the Department should update this system to include the provision of a confirmation of receipt both immediately upon submittal and subsequently via e-mail. The regulations should also state this provision. (7)

RESPONSE: The Department's existing web portal provides immediate confirmation of an electronic submittal (that can be printed) and a follow up confirmation email. The practice is not something that needs to be in the rules.

22. COMMENT: Proposed new N.J.A.C. 7:14A-2.11(b) would allow applicants to electronically submit applications, reports and other information.

The Department should ensure that it has the necessary tools and capabilities in place to afford applicants this option in advance of the adoption of the rules. Experience has shown that the Department incorporates some new measures or manuals in its rulemaking, but neglects to make sure they are available for the regulated community.

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Further, discussion with the regulated community as to its experience in working with online reporting tools would have been beneficial to the Department in designing reporting tools. The Department should undertake such outreach. (9)

RESPONSE: The Department makes every effort to ensure that the necessary tools and capabilities are in place for electronic submission of applications, reports and other information are available by the time the rules are operative. It also expands the use of electronic submission when the capability becomes available.

The Department values ideas and suggestions from the regulated community. Approximately a dozen participants from the regulated community participated in the design and testing of the current system of electronic monitoring report form reporting. The Department will continue to solicit such input.

23. COMMENT: N.J.A.C. 7:14A-2.11(b), if adopted, will allow submittal of reports, other than discharge monitoring reports (DMRs) to be filed electronically. Will the electronic submissions of Sewer Use Ordinances or Rules and Regulations, CWEA annual reports, Grace Period annual reports and the 403 annual reports also be accepted by the Department? (8)

RESPONSE: The acceptance of electronic submittals/reports is not currently in design due to staff and budgetary constraints. However, the Department acknowledges the value of electronic

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submission in terms of cost and efficiency and will continue to work to expand electronic submission.

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

24. COMMENT: In general, there is support for having Work Plans approved before initiating data collection for studies as proposed at N.J.A.C. 7:14A-2.12(c), but the proposed rule does not specify time constraints for the Department's responses, approvals or conditional approvals for submitted Work/Quality Assurance Project Plans (Work/QAPPs). Without time constraints, a permittee may not be able to meet related permit requirements despite the permittee's best efforts. Where compliance with a permit condition or regulation requires that the plan be completed by a specific date and the plan has been submitted for review by the date, the Department should be required to accept the plan as submitted, accept the plan with specific revisions, and/or identify all deficiencies. Furthermore, if the Department fails to complete its review in accordance with the schedule provided in the permit or otherwise agreed to by the permittee and the Department, the plan should be deemed to be acceptable to the Department.

In addition, the issue of timelines is specifically a concern for any study that is proposed to be a permit renewal application requirement. Without being able to control or account for the timing for a Work/QAPP approval by the Department, a permittee may not be able to submit a timely and complete permit renewal application necessary to keep a permit effective after the permit expiration date. (1, 6, 7, 13, 21)

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RESPONSE: The Department acknowledges the commenter's support. The Department makes every effort to provide a timely response during the Work/QAPP approval process. Based on the applicable circumstances, Departmental response to the Work/QAPP may be in the form of acceptance/approval of the Work/QAPP, the identification of any deficiencies in the Work/QAPP, or conditional acceptance of the Work/QAPP provided that specific revisions to the document are made. The Department is willing to work with permittees in accommodating any issues regarding permit non-compliance or untimely submission of a complete permit renewal application that may be due to excessive delays by the Department during the Work/QAPP review process.

It is not appropriate for the Department to deem a Work/QAPP acceptable without appropriate review and endorsement. Pre-approval of a Work/QAPP is necessary to ensure that data collected are of sufficient quality for their intended use and can be relied upon by the agency when it makes permit decisions.

25. COMMENT: The proposed requirements at N.J.A.C. 7:14A-2.12(c) are not necessary, as the Department already has a well-established and comprehensive quality assurance program as outlined in the Department's FY2005-2006 Departmental Quality Management Plan, Doc. No. OQA-QAD-001-6/04 (Issued June 28, 2004) and FY2007-2010 Departmental Quality Management Plan, Doc. No. OQA-QAD-001-07/06 (issued December 2006). (12, 24)

RESPONSE: A well-established and comprehensive quality assurance program does exist and is outlined in the FY2005-2006 Departmental Quality Management Plan, Doc. No. OQA-QAD-

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001-6/04 (Issued June 28, 2004) and FY2007-2010 Departmental Quality Management Plan,

Doc. No. OQA-QAD-001-07/06 (issued December 2006). As part of this program, the

Department has historically required the submission and approval of Work/QAPPs prior to the initiation of studies conducted for the purposes of implementing the requirements of N.J.A.C.

7:14A. N.J.A.C. 7:14A-2.12(c) specifically notifies permittees of the requirement to submit such Work/QAPPs prior to study initiation. While the Department does have a comprehensive quality assurance management plan, the plan does not and cannot detail how the provisions of the management plan are applied to a specific project. That is the purpose of Work/QAPP and the reason both the FY2005-2006 Departmental Quality Management Plan and the Work/QAPP are necessary.

26. COMMENT: Proposed N.J.A.C. 7:14A-2.12(c) applies broadly to all “studies” that implement NJPDES requirements. However, the term “studies” is not defined in regulation. While it is unlikely that the Department intended to include routine monitoring conducted pursuant to established monitoring protocols within the meaning of “studies,” it would nevertheless be helpful for the Department to confirm that point. (12, 24)

RESPONSE: Routine monitoring established pursuant to existing NJPDES permit conditions or conducted solely for the use of the permittee do not qualify as a “study.” Therefore, such activities do not require the submission and approval of a Work/QAPP prior to sample initiation.

27. COMMENT: N.J.A.C. 7:14A-2.12(c) appears to be internally inconsistent. While identifying the four required minimum elements for a Work/QAPP, the rule also indicates that

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the Work/QAPP shall be consistent with the USEPA documents identified at N.J.A.C. 7:14A-2.12(c)2. Those documents would appear to require a Work/QAPP to address several elements in addition to the four specified as required minimum elements in N.J.A.C. 7:14A-2.12(c). To avoid confusion, the Department should modify the last sentence of N.J.A.C. 7:14A-2.12(c) to read as follows: “The Work/Quality Assurance Project Plan shall in other respects be consistent with guidance from the following documents.”

In the alternative, the Department should clarify N.J.A.C. 7:14A-2.12(c) to acknowledge that a Work/QAPP that satisfies the April 2004 Region II guidance will pass muster under N.J.A.C. 7:14A-2.12(c). This type of clarification is also important because the guidance documents identified at N.J.A.C. 7:14A-2.12(c)2 were not prepared for use by NPDES (National Pollutant Discharge Elimination System) permittees in fashioning QAPP requirements. In that regard, the basis for the applying the USEPA QAPP criteria to individual NJPDES permittees is not clear, since the various documents and regulations supporting the rule (i.e. USEPA Order 5360.1 A2, Policy and Program Requirements for the Mandatory Agency-Wide Quality System, as well as 48 CFR Part 46 and 40 CFR Parts 30, 31 and 35) apply to environmental programs performed by USEPA directly or for USEPA through USEPA-funded extramural agreements (e.g., contracts, research grants, etc.) or to USEPA contractors and grant recipients. (12, 24)

RESPONSE: As stated in N.J.A.C. 7:14A-2.12(c), the Work/QAPP must define, at minimum, the data quality objectives, the field sampling protocols, and the field survey and laboratory analytical methods and procedures implemented in the project. N.J.A.C. 7:14A-2.12(c)2

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identifies documents that provide detailed guidance on how to define these and other elements of the Work/QAPP.

With regard to the alternative suggestion, the guidance documents identified under N.J.A.C. 7:14A-2.12(c)2, which include the April 2004 Region II guidance, identify and detail the key elements that should be addressed in Work/QAPPs on a broad scale. Site-specific details on projects are not addressed within those guidance documents. Therefore, although a Work/QAPP may address the elements contained within the guidance documents identified under N.J.A.C. 7:14A-2.12(c)2, the Department will not approve a Work/QAPP if there are deficiencies in the project-specific details. As such, the suggested clarification cannot be reflected in the rule text.

The success of the NJPDES permitting program, authorized through the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (WPCA), depends in large part on the quality and reliability of the environmental data that is collected and used by the Department in its decision-making. The Department, therefore, has the responsibility to ensure that the environmental data is collected and reviewed under specific quality assurance/quality control (QA/QC) procedures. Consistent with Federal requirements, the Department established a structured program of quality assurance and quality control, which among other things, requires permittees to obtain Department approval of sampling plans, and establishes an audit program to ensure compliance with the plans. The Department's QA/QC procedures are summarized in the FY2007-2010 Departmental Quality Management Plan, Doc. No. OQA-QAD-001-07/06 (issued December 2006). Through pre-approval of Work/QAPPs, the Department is assured that the type and

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quality of environmental data collected are of sufficient quality for their intended use in technical decision-making under the NJPDES permit program. Such approval provides the public with confidence in these environmental decisions.

The Department's authority for N.J.A.C. 7:14A-2.12(c) is not limited to USEPA Order 5360.1 A2, Policy and Program Requirements for the Mandatory Agency-Wide Quality System, 48 CFR Part 46, and 40 CFR Parts 30, 31 and 35. The Department is requiring submission and approval of Work/QAPPs based also on its authority under the WPCA. N.J.S.A. 58:10A-4 grants the Department the broad authority to promulgate regulations to prevent, control or abate water pollution and to carry out the intent of the Act. Further, pursuant to N.J.S.A. 58:10A-9(a), the Department may require that applications for permits contain such information as the Department requires. See also, *SCMUA v. NJDEP*, Dkt. No. A-4723-05T2 (App. Div., June 27, 2007). The Department has determined that pre-approval of Work/QAPPs is necessary and is, therefore, applying Work/QAPP requirements to individual NJPDES permittees.

28. COMMENT: Proposed N.J.A.C. 7:14A-2.12(c) in many instances would apply to activities with the same objectives and analytical processes conducted on multiple sites by a number of permittees. In these circumstances, use of a generic Work/QAPP (prepared by a permittee or group of permittees), rather than preparation of a Work/QAPP for each affected facility, or in some cases for each discrete generating unit at the same facility, would avoid unnecessary effort and would also be consistent with USEPA guidance (see Guidance for Quality Assurance Project Plans, USEPA, QA/G-5, EPA/240/R-02-009, at 5, December 2002). (12, 24)

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RESPONSE: Under circumstances where activities with the same objectives and/or analytical process conducted on multiple sites by a number of permittees exist, there would be financial and operational benefits associated with the use of a generic Work/QAPP (prepared by a permittee or group of permittees), rather than preparation of a Work/QAPP for each affected facility or (in some cases) for each discrete generating unit at the same facility. N.J.A.C. 7:14A-2.12(c) does not preclude the submission of a Work/QAPP that addresses the concerns raised in the comment. Furthermore, the Department has historically accepted and approved Work/QAPPs that address sampling conducted for multiple facilities and/or permittees, and will do so in the future, where appropriate.

29. COMMENT: The proposal should have identified that water quality study work plan requirements of N.J.A.C. 7:14A-2.12(c) were proposed as part of the 1997 “Mega Rule.” There was an understanding that the Department would not promulgate specific requirements for the content of the water quality study. In addition, the substantive elements contained in the 1997 proposal, which provided information as to what constituted a water quality study, were not included in this proposal. There are no substantive requirements identified in the rule as to what constitutes a water policy study. (28)

RESPONSE: The 1997 “Mega Rule” proposal (28 N.J.R. 380(a), 408-416 and 581-591 (February 4, 1996)) included substantive elements specific to ambient studies and the requirement to submit QA/QC project work plans. However, as part of the 1997 “Mega Rule” adoption (29 N.J.R. 1704(a), 1758-1764 and 2003-2012 (May 5, 1997)), the Department decided not to adopt all of those requirements, electing only to adopt N.J.A.C. 7:14A-2.12(b), which is

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the general requirement that studies submitted to help determine permit limits and conditions include related QA/QC project plan requirements. At that time, the Department determined that further evaluation of the major issues associated with the specific proposals was necessary based on review of written comments, oral testimony at the public hearings, and discussions at the series of public meetings held during the extended comment period.

As explained in the Response to Comment 27 above, a Work/QAPP is critical in assuring that the type and quality of environmental data collected will be of sufficient quality for their intended use in technical decision-making under the NJPDES permit program. During the Work/QAPP development process for an ambient water quality study, the permittee is informed of the specific requirements that need to be addressed as part of the study. Often, the facts and substantive elements under which studies are conducted differ on a case-by-case basis. N.J.A.C. 7:14A-2.12(c) does not specify one set of prescriptive requirements for ambient water quality studies. Rather, it identifies the general requirements that all Work/QAPPs must include. The development and approval of a Work/QAPP, as provided for in the rule, will allow for flexibility in establishing the necessary requirements and conditions for conducting water quality studies on a site-specific basis, prior to the initiation of such study.

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

30. COMMENT: In order for the RWBR program to be successful, the Department should provide encouragement and assurance to industries that their investments would not be jeopardized once they choose the RWBR option. To do this, the Department should oversee and

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regulate the amount of fees charged by the facilities that provide the RWBR water to a user.

Similarly the Department should also oversee and regulate the amount of fees sewerage authorities charge for the treatment of RWBR water after it has been used for non-contact cooling water and must be returned for final processing prior to discharge. (7)

RESPONSE: The Department wants to encourage RWBR and understands that there are financial issues involved in implementing RWBR projects. The Department does not currently have the statutory authority to regulate RWBR fees. Although the Board of Public Utilities (BPU) regulates some water and sewer fees, like the Department, it also does not have the statutory authority to regulate fees for RWBR.

31. COMMENT: In the preamble to N.J.A.C. 7:14A-2.15 it is mentioned that the use of reclaimed water can be an economical alternative to potable water. This statement is contradicted by requiring generators of reuse water to meet the reuse treatment requirements in the RWBR Technical Manual. This manual requires stringent nitrate, total suspended solids and disinfection requirements that collectively will not allow reuse to be an economical option in most cases. Reuse treatment requirements should be a function of the environmental risks for public exposure. For example, treatment requirements should not be the same for users employing spray irrigation and users employing drip irrigation as the latter sharply limits public exposure by virtually eliminating aerosol spray conditions. Similarly, where irrigation is the intended use of reuse water strict nitrate removal requirements are inappropriate as nitrate will deliver much needed nitrogen for plants and lawns. Reuse water will have more marketable

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value for irrigation if it contains nutrients. The avoidance or minimization of chemical fertilizers will be cost effective and environmentally beneficial. (11)

RESPONSE: Instituting RWBR will have long term economic benefits. In establishing standards for reclaimed water the Department must ensure that the standards are protective of public health and the environment. However, the permittee is required to meet the most stringent standards for total suspended solids and disinfection only for public access applications, and the total nitrogen standard for land application of RWBR. Less stringent limitations are often imposed for restricted access and other RWBR applications that have a low probability of exposure to people or the environment.

The Department provides the nitrogen value of 10.0 mg/L in its technical guidance for those applications where the permittee does not want to provide additional data in order to gain approval for land application projects. The total nitrogen value of 10.0 mg/L complies with the Ground Water Quality Standards and Safe Drinking Water Standards.

However, the Department may impose a nitrogen limit greater than 10.0 mg/L when the permittee can demonstrate that a concentration greater than 10.0 mg/L is protective of the environment. Typically, a nutrient uptake study is conducted to demonstrate that the pollutant load's assimilative capacity within the soil-plant system will use the available nitrogen and reduce it to levels below the standard. Following that study, a fertilizer management program must be developed to ensure that the proper fertilizers are used to limit the amount of additional nitrogen during fertilizer applications. Even with a nitrogen limit in place, land application of

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reclaimed water typically results in the user's needing to apply less fertilizer, particularly where the reclaimed water originates from a sanitary wastewater treatment plant.

Nothing in the RWBR Technical Manual precludes the Department from applying a different standard for drip versus spray irrigation applications. The particular standards to be applied for drip and spray irrigation would be determined on a case-by-case basis and would depend, in part, on the details of the proposed RWBR project.

Requirements for RWBR will be imposed through permit conditions included in a NJPDES permit subject to public notice and public comment.

32. COMMENT: Although there is a task force that was created amongst various volunteers within the Department, there is no single point of contact, direction, management or control, that manages to provide or allocate resources for this program. The Department should never require permittees, applicants, or others that are regulated to perform a function, submit a plan or response to the regulatory, administrative or permit requirement, such as a Reuse Feasibility Study (RFS), where it does not have the resources to perform the function. Any rule proposal or adoption should never require the Department's personnel or function to perform a review, approval or action that requires more resources than exist at the time of the proposal. (18)

33. COMMENT: The present atmosphere in Trenton is to reduce State government by reducing administrative responsibilities. This begs the question of with whom and how will the Department undertake the review of the feasibility studies. Without staffing assigned to the

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reviews, the studies will languish and nothing productive will come from the ratepayers’

investment in the study. They will become like the wastewater management plans, which cost the ratepayers millions of dollars and were never properly reviewed and given timely edits so that they could be approved. (11)

RESPONSE TO COMMENTS 32 and 33: The Department has reassessed this initiative regarding the RWBR program and is modifying N.J.A.C. 7:14A-2.15 on adoption to remove the mandatory requirements to perform a RFS. However, the requirements to submit a RFS for new and expanding facilities remains in the newly adopted Water Quality Management Planning rules at N.J.A.C. 7:15. The Department has determined that it would achieve greater efficiency in managing this program if it first amends the New Jersey Water Supply Allocation Rules (N.J.A.C. 7:19) to prohibit consumptive water uses from confined aquifers. This change will better promote RWBR, as it will focus the Department’s efforts on projects where there are specific water supply needs. This approach is superior to requiring a broader number of permittees to perform a RFS, which may be more expensive and may not lead to permittees’ conducting a RWBR program. The Department anticipates that it will propose amendments to N.J.A.C. 7:19 in the future. Therefore, on adoption the proposed language requiring a RFS for existing facilities at the time of permit renewal contained at N.J.A.C. 7:14A-2.15(b) will be deleted and the remainder of the section will be modified to address this change.

Although submittal of a RFS will be voluntary, a permittee that is considering implementing a RWBR program is encouraged to perform a RFS. Performing a RFS will provide a facility with a comprehensive overview of where it could maximize the benefit of

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RWBR projects, and minimize costs. Those facilities that have a known beneficial reuse for their water, such as those who have been approached by large capacity end users, may not need to conduct a RFS. Accordingly, although encouraged, a RFS is not mandatory before implementation of a RWBR project.

The Department has also modified N.J.A.C. 7:14A-2.15(d) to remove the exemptions from performing a RFS as they are no longer applicable due to the removal of the mandatory requirement to perform a RFS.

34. COMMENT: The reuse program should be broadened to allow reuse of treated water that does not meet secondary treatment criteria. The Department's position is paradoxical in that water conservation is encouraged, but its purpose impeded in some cases due to rigid regulations which are not pertinent for many applications. In this regard, an application for reuse was denied for treated wastewater proposed to be sprayed on waste piles exceeding 15 feet in height for dust control where the water would not contact the ground or surface waters, and all contaminants except Biochemical Oxygen Demand (BOD₅) are within permitted concentration limits.

Spraying of this water would not impact the quality of the soil for subsequent off site disposal.

(3)

RESPONSE: Although the Department seeks to encourage reuse, it must ensure that the public health, safety and welfare and the environment are adequately protected at all times. The Department has taken a conservative approach at this time by requiring that all RWBR, even

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restricted access RWBR, must at a minimum meet either secondary treatment levels or the permit limitations in place for discharge.

35. COMMENT: The rules could be implemented in a manner that could further fuel inappropriate development as it would “free” up potable water so that additional development could occur that would not otherwise be viable due to water availability deficits. The Department’s assertion that RWBR reduces pollutant loading to surface water is questioned as there can be instances where RWBR could increase pollutant loading. (19)

RESPONSE: As stated in the proposal summary at 40 N.J.R. 1483, the institution of a RWBR program at a facility will not enable that facility to expand its sewer service area or capacity to accept wastewater. The Department encourages RWBR to ease some of the demand on water supply for drinking purposes. However, not all RWBR is a permanent diversion of the wastewater from the treatment works. Therefore, each facility implementing RWBR must account for a permitted mechanism to discharge 100 percent of the incoming flow to the collection system, including wastewater that is later used in a RWBR activity. If quantities of water used for RWBR were not considered to be flow, the treatment facility would be hydraulically overloaded when RWBR is not feasible, such as in the case of irrigation activities which are seasonal, or when a facility utilizing RWBR closes or otherwise reduces its need for RWBR. Therefore, RWBR is not and has never been considered by the Department as more flow capacity that would allow for additional development beyond the existing permitted capacity of a wastewater treatment facility. For purposes of clarity and to emphasize this point, the Department is modifying N.J.A.C. 7:14A-2.15(a) on adoption to state that “the

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implementation of a RWBR program at a facility will not be a basis for the Department to allow that facility to expand its sewer service area or capacity to accept additional wastewater.”

Although potable water will be conserved, as stated above, the implementation of a RWBR program at a facility will not enable that facility to expand its sewer service area or capacity to accept additional wastewater, thereby preventing inappropriate development and growth.

36. COMMENT: The rule text does not prohibit or restrict the treatment plants from expanding and taking in additional flow to offset the flow that would be redirected for RWBR. This language is in the basis and background but not in the rule text. The text should be placed in the rule. (28)

RESPONSE: As stated in the Response to Comment 35 above, the Department is modifying N.J.A.C. 7:14A-2.15(a) on adoption to emphasize that the implementation of a RWBR program at a facility, as stated in the proposal Summary, will not be a basis for the Department to allow that facility to expand its sewer service area or capacity to accept additional wastewater.

37. COMMENT: It seems that the treatment requirements for the classification schemes are technology based, which may not be fully appropriate for considering the environment and health impacts. (28)

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RESPONSE: The Department does not require particular kinds of treatment for particular classifications of RWBR, although the RWBR Technical Manual does provide guidance on the types of treatment that may be utilized to meet the specified RWBR standards. Additionally, the pollutant standards imposed for public access RWBR are among the most stringent required in reuse programs across the country. They are consistent with those recommended by the USEPA in its 2004 Guidelines for Water Reuse (EPA 625/R-04/108) and are modeled after those used by Florida in its reuse program, which has been in operation for over 30 years. The Department acted conservatively to establish these standards to ensure that the public health and the environment will be fully protected against any potential impacts. The Department requires that even reclaimed water that will be used for restricted access RWBR activities where it is unlikely the public will come into any contact at all with the water must meet the supplier's discharge permit limitations, at a minimum.

38. COMMENT: There is a statement either in the rule or in the guidance document that says that certain effluent would not be eligible for beneficial reuse where there is a lot of industrial influent, or a high fraction of certain components from certain industrial users. The Department is urged to review this sentence. (28)

RESPONSE: It is unclear to which statement the commenter is referring. The Department has not established any regulations or guidance specifically prohibiting the reuse of water where the wastewater treatment plant has a lot of industrial influent or a high fraction of components from certain industrial users. However, the Department would certainly consider these factors in reviewing such an application and might request additional data for the pollutants expected to be

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present from the industries using the wastewater treatment plant to ensure the quality of the RWBR.

39. COMMENT: The proposal does not discuss restrictions based on ecological impacts. If there were sensitive natural resources potentially impacted by the application of RWBR, how would this be evaluated? Similarly, how are potential health impacts of the application of RWBR addressed? On golf courses, there are little signs that state “Pesticide Treated Area.” Would similar signs be placed on golf courses to notify golfers that they could be exposed to trace levels of contaminants in the RWBR where reclaimed water is used for golf course irrigation? (28)

RESPONSE: The Department, in approving a particular application of RWBR, does conduct a review to ensure that no sensitive natural resources will be impacted, as well as to assess potential health impacts. For example, the Department reviews each RWBR proposal to determine if the removal of any wastewater flows to the receiving surface water would result in unsatisfactory passing flows.

Regarding the use of signs, as stated in the RWBR Technical Manual the public shall be notified of the use of RWBR, which shall be accomplished by posting advisory signs designating the nature of the reuse project area. The manual further explains that notes could be included on score cards and advisory signs posted at the entrance to the park or golf course and, in the case of the golf course, at periodic tees. The manual recommends the use of purple as a prominent color on advisory signs.

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40. COMMENT: Are there adequate restrictions on the use of RWBR on food crops, and how does that work? If one field is not used for food crops, but yet runoff would impact adjacent fields that do have food crops, is that considered? Is that considered somehow in the proposal and is it shared? Regarding disinfection, are we 100 percent certain that we are not having any potential food crop exposure problems? (28)

RESPONSE: While there are currently no RWBR activities involving food crop irrigation in New Jersey, the Department has determined that irrigation of food crops would be an appropriate public access application of reclaimed water. As indicated in the RWBR Technical Manual, the highest level of treatment would be required for this application. Reclaimed water is currently used to irrigate food crops under the reuse programs established in both Florida and California. In addition, the Department requires that any surficial application of RWBR be done in a manner that prohibits sheet flow, runoff conditions or persistent ponded water on the ground surface. In addition, the hydraulic loading rate for RWBR for surficial irrigation may not exceed a maximum of two inches per week.

41. COMMENT: To attract interest in reuse, appropriate water allocation credits should be allowed where reuse water substitutes for potable water use. (11)

RESPONSE: The NJPDES rules do not regulate water allocation. This issue is more appropriately addressed under the upcoming amendments to the water supply rules, as noted in Response to Comments 32 and 33.

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42. COMMENT: The strict requirements for public access uses of reclaimed water often require the discharger to remove the nutrient value of the water, causing the user to need to apply fertilizer. This adds cost to both the treatment and user operation and thus discourages the project. (11)

RESPONSE: See Response to Comment 31 for a discussion of alternative methods of demonstrating nutrient reduction.

43. COMMENT: While RWBR is a positive policy overall, the Department is encouraged to clarify how this reuse program will be implemented and permitted. Would a treatment works approval (TWA) for a discharge permit be required? The compliance mechanism envisioned should be outlined. (9)

RESPONSE: The reuse program was developed in 1999 as a voluntary program for NJPDES permittees. Standard permit language has been developed and has been included in many NJPDES permits. These permit requirements include monitoring to determine compliance with the pollutant levels necessary to protect human health and the environment based on the specified type of reuse activity, as well as narrative conditions detailing such conditions as the posting of signs and the prohibition of cross connections, as well as submittal requirements for approval. The permittee is also required to discontinue reusing the water if it does not comply with the specified pollutant levels. Regarding compliance, as with any permit requirement, the permittee may be subject to penalties for any violations incurred.

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It is unclear what the commenter is asking regarding TWAs: a TWA is not a condition of a discharge permit. A discharge permit is, however, a condition of a TWA. A TWA is issued specifically for construction of treatment or conveyance. An applicant must obtain a discharge permit prior to seeking a TWA. For further clarification regarding TWA requirements for RWBR, please review readopted N.J.A.C. 7:14A-22.

44. COMMENT: The RWBR Technical Manual does not contain any limitations or conditions for several important contaminants such as metals and toxic chemicals, nor do USEPA's Guidelines for Water Reuse provide any specific guidelines for these parameters. However, the USEPA Guidelines do acknowledge the need for monitoring and treatment requirements for metals and toxic chemicals. (2, 22, 23, 29)

RESPONSE: The RWBR Technical Manual requires compliance with the minimum guidelines for treatment of metals and toxic chemicals established in USEPA's 2004 Guidelines for Water Reuse (EPA 625/R-04/108) for public access irrigation applications. This manual contains numeric guidelines for many metals and toxic pollutants on page 25 of the 2004 edition. Permittees are required to submit priority pollutant scan data for the most recent five years as part of the renewal application.

45. COMMENT: The RWBR Technical Manual includes minimum concentration limits for chlorine, but no maximum limits on the concentration for Chlorine Produced Oxidants (CPO) in effluent for any RWBR category. CPO is toxic to plants and aquatic organisms at very low

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concentrations and the USEPA guidelines recommend dechlorinating the effluent prior to reuse when flora or fauna will be exposed. The need for a CPO limit is supported by USEPA's guidelines, which raise specific concerns about the levels of CPO in reclaimed wastewater. The guidelines state that the extremely potent carcinogen, N-nitrosodimethylamine (NDMA) is present in sewage and is produced when municipal wastewater effluent is disinfected with chlorine or chloramines. These guidelines further state that in some situations, the concentration of NDMA present in reclaimed water exceeds action levels set for the protection of human health, even after reverse osmosis treatment. (2, 22, 23, 29)

RESPONSE: The majority of public access RWBR applications, which require chlorine levels to be at a minimum of 1.0 mg/L immediately prior to reuse, involve irrigation. Consequently, it is anticipated that much of the chlorine and its volatile by-products will quickly dissipate during irrigation. The Department does not typically allow the use of RWBR in applications that are directly injected to the subsurface. In those instances, if they should be proposed, dechlorination and ultraviolet (UV) treatment would be required. As specifically pointed out in USEPA's manual, "UV Treatment, considered an Advanced Oxidation Technology (AOT), is the only proven treatment to effectively reduce NDMA. The adsorption of ultraviolet light, even the UV portion of sunlight, by NDMA causes the molecule to disassociate into harmless fragments (Nagel et al., 2001)." Therefore, the Department does not believe that NDMA will be an issue with regard to the RWBR program.

Additionally, irrigation does not result in the RWBR's being directed to a surface water body after reuse, as discussed in Response to Comment 40. The Department requires that

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irrigating with RWBR be done in a manner that prohibits sheet flow, ponding or runoff

conditions. Also, the hydraulic loading rate for RWBR for surficial irrigation may not exceed a maximum of two inches per week, unless extensive engineering and analysis is performed to justify any higher rate of application in accordance with the RWBR Technical Manual.

46. COMMENT: The RWBR Technical Manual does not address limitations and/or conditions for emerging contaminants, such as pharmaceutical residue and endocrine disruptors. USEPA has provided information on monitoring and treatment methods currently available to reduce or eliminate some of these contaminants prior to reuse, stating that the specific endocrine-disrupting chemicals in reclaimed water can be quantified using modern analytical methods. USEPA also indicates, “Available data suggest that nitrification/denitrification and filtration can reduce the concentrations of hormones and detergent metabolites while reverse osmosis lowers concentrations to levels that are unlikely to cause endocrine disruption.”

USGS tested soil irrigated with reclaimed wastewater for 19 pharmaceuticals and found several, including erythromycin (an antibiotic), carbamazepine (an antidepressant), and diphenhydramine (a common non-prescription antihistamine). USEPA also found an increase in concentration during the study, suggesting retention and absorption of pharmaceuticals in soils.

New Jersey would not be the first to propose monitoring and treatment requirements for emerging contaminants. The California Department of Public Health has recently proposed new guidelines for reuse of wastewater for groundwater recharge that require providers to monitor the

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recycled water for pharmaceuticals, endocrine disrupting chemicals, and other indicators of the presence of municipal wastewater. (2, 22, 23, 29)

RESPONSE: Emerging contaminants are a concern the Department is facing with regard to all water issues. The Department is monitoring the USEPA and national discussions on this topic. However, evidence has shown these emerging contaminants are already present in drinking water supplies and surface waters due to, in part, wastewater discharges to the environment. Since RWBR is often treated to a higher level than wastewater effluent, the RWBR would be expected to contain lower levels of contaminants than the effluents already being discharged directly to surface waters, and some processes have been shown to be beneficial in removing these contaminants. However, research needs to be conducted with regard to the levels of these contaminants in the existing potable water supplies being used.

The Department's Division of Science, Research and Technology is involved in two water supply research projects to document the occurrence and concentration of synthetic organic contaminants in raw and finished water supplies and to evaluate the effectiveness of activated carbon in the treatment of these compounds. The Department will continue to monitor this research and the national level discussions to determine the appropriate methods to sample and analyze for these contaminants, the proper way to establish potable water and wastewater standards for those contaminants, as well as the appropriate methods to treat wastewater and potable water for these contaminants.

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47. COMMENT: The reference to the guidance specified in the Department's "Technical Manual for Reclaimed Water for Beneficial Reuse" (RWBR Technical Manual) at N.J.A.C. 7:14A-2.15(a), as well as all other references to the "Technical Manual" in section N.J.A.C. 7:14A-2.15 should be expanded to specify the "Technical Manual" dated January 2005, as supplemented or amended. (17)

RESPONSE: The Department is modifying N.J.A.C. 7:14A-2.15 on adoption to refer to the publication date of the Technical Manual, and to include supplements and amendments to the manual. Because the manual contains the Department's identification or stipulation of state of the art and control technologies, as set forth under N.J.S.A. 13:1D-111, it is appropriate that the rule refer to supplements and amendments to the manual.

48. COMMENT: The guidance specified in the Department's RWBR Technical Manual should be made available for public review and comment since compliance with the guidance is implied by proposed N.J.A.C. 7:14A-2.15. If the Department wishes to give the requirements contained in this RWBR Technical Manual the same power, reach or control as regulations, it should adopt it by the proper regulatory adoption process through the Administrative Procedure Act (APA). (7, 11, 16, 17, 18)

RESPONSE: Amendments or supplements to technical manuals adopted under the NJPDES permit program are subject to N.J.S.A. 13:1D-111, which provides that adoption of a technical manual, or of revisions thereto, are not subject to the notice and publication requirements of the APA, N.J.S.A. 52:14B-1 et seq. However, when the Department proposed these rules, it

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specifically advised commenters as stated in the proposed rule text where they could find the RWBR Technical Manual. The Department is responding to comments submitted regarding the RWBR Technical Manual during this rule making. If the Department determines that it is necessary to amend or supplement the RWBR Technical Manual, the Department will notify the public by posting a notice in the DEP Bulletin and posting the amended RWBR Technical Manual on the Department's website.

49. COMMENT: The Department has authority to implement the adopted program requirements through the use of technical manuals to assist permittees in understanding how the applicable regulatory requirements will be applied and reviewed by the Department. Technical manual use in that regard is supported; however, the manuals themselves are not supposed to establish new regulatory program requirements. Rulemaking must be undertaken for that to occur. As such, these referenced manuals and documents should not include new mandatory requirements, treatment requirements or standards if those standards are not already adopted in state law. To the extent the Department intends these manuals and guidance documents to be flexibly applied and advisory in fashion, the commenter has no concerns with the document's substantive provisions being absent in the proposed rule. If, however, the Department intends the substantive requirements of these documents to be binding on all affected parties, the Department's failure to include the requirements in the proposed rule is contrary to the requirements of the New Jersey's APA. Therefore, we request that the Department clarify how compliance with these technical manuals will be considered in the regulatory review process.

(11)

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RESPONSE: See Response to Comment 48 regarding the use of the RWBR Technical Manual as a guidance document when developing a RWBR program. The RWBR Technical Manual provides the regulated community a clear and concise protocol to follow for obtaining approval of a RWBR proposal. The guidelines included in the RWBR Technical Manual were derived from sources such as the USEPA Guidance Manual – Guidelines for Water Reuse. An applicant may propose an alternative to the guidance in the technical manual; however, review of the alternate proposal will be evaluated and may be approved only if it meets the applicable standards at N.J.A.C. 7:14A-2.15(a)1 and 2. The RWBR requirements will be incorporated into NJPDES permits as permit conditions subject to public notice and comment. In addition, participation in the RWBR program continues to be voluntary under the rules.

50. COMMENT: N.J.A.C. 7:14A-2.15(c) requires each reuse feasibility study submitted to the Department to be conducted in accordance with the Department's RWBR Technical Manual. This RWBR Technical Manual can be used for guidance, but not for strict implementation or word-by-word compliance. If the Department intends to utilize this manual for strict compliance, the manual should be adopted as a regulation; it can not be adopted just by reference. The Department's RWBR Technical Manual that has not undergone or will not undergo public review and comment is inappropriate. (7, 11)

RESPONSE: As discussed in Response to Comments 32 and 33, the Department is modifying the rules on adoption to make submittal of a RFS voluntary. For a discussion of the RWBR Technical Manual, see Responses to Comments 48 and 49.

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51. COMMENT: Proposed N.J.A.C. 7:14A-2.15(a) “requires persons that produce or propose to produce RWBR to refer to the Department’s RWBR Technical Manual for Reclaimed Water for Beneficial Reuse (RWBR Technical Manual or Manual) and comply with the Manual’s limitations and conditions in their NJPDES permits.”

To adequately protect human health and the environment, the proposed rules must include the minimum effluent limitations and conditions for both of the reuse categories, Public Access and Restricted Access. It is inappropriate and insufficient to simply refer to the limitations and conditions listed in the RWBR Technical Manual. The limitations and conditions must have the binding legal effect of regulations. In addition, this will ensure that changes to the limitations and conditions are subject to due process, including public notice and comment. (2, 22, 23, 29)

RESPONSE: The rule at N.J.A.C. 7:14A-2.15(a) states, “Any person producing or proposing to produce RWBR shall refer to the guidance for restricted access RWBR or public access RWBR specified in the Department’s ‘Technical Manual for Beneficial Reuse’ and shall comply with all RWBR limitations and conditions in the applicable NJPDES permit.” See Responses to Comments 48 and 49 for discussions regarding the adoption of technical manuals and how technical manuals assist applicants in the permitting process. Minimum standards for public and restricted access RWBR are included by reference in the rules and will be included in each permit issued that authorizes RWBR. All NJPDES permits are subject to public notice and comment. Therefore, RWBR limitations will be open to public review during the permit review process.

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52. COMMENT: The Department should elaborate on how it would determine that reuse will be feasible and the ramifications of such a determination. Where reuse is deemed feasible, RWBR should still remain as a voluntary program and not be a mandatory requirement imposed on certain facilities implemented through the NJPDES permitting process. These requirements are in addition to other NJPDES rule requirements and the cost for preparing and implementing the RFS could potentially range from \$30,000 to \$90,000. (9)

53. COMMENT: The Department should assist those NJPDES permit applicants or permittees who voluntarily seek to conduct a RFS, which is required for certain facilities at N.J.A.C. 7:14A-2.15(b). This would be in line with the Department's policy of encouraging recycling programs. (9)

54. COMMENT: The Department should explain why proposed new N.J.A.C. 7:14A-2.15(b) regulates facilities discharging to SE and SC waters, but does not regulate facilities discharging to mainstem Delaware River and Delaware Bay waters classified at N.J.A.C. 7:9B as Zones 4, 5, and 6. The salinity of these Delaware River and Delaware Bay waters is similar to the salinity of SE waters. (15)

55. COMMENT: Proposed N.J.A.C. 7:14A-2.15(b) and (c) requires a RFS for facilities discharging into a receiving waterbody classified as SE or SC waters and for facilities located in the critical water areas as delineated under the Areas of Critical Water Supply Concerns rules. The Department does not justify why only these special areas were targeted for reuse, beyond

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stating that these areas are the regions of New Jersey where the expected benefits of RWBR are projected to be the greatest. As RWBR is a positive program, it should be a voluntary program that could be implemented anywhere in the State. (9)

56. COMMENT: The requirement for each non-exempted permit renewal application to include a RFS for all facilities discharging to SE and SC receiving waters or located in critical water supply areas is onerous because it requires completion of a RFS with each permit renewal and for all new or expanded discharges, no matter how small. It is strongly recommended that the Department modify N.J.A.C. 7:14A-2.15(b) to require a RFS to be conducted on a one-time only basis and only for new or expanded discharges of more than 0.1 MGD. (17)

57. COMMENT: N.J.A.C. 7:14A-2.15 (b) and (c) require that all NJPDES Permits and renewal NJPDES discharge to surface water (DSW) and discharge to groundwater (DGW) Permits for facilities located in a critical water supply area delineated by the Department shall include a RFS. By its very definition, a DGW recharges the groundwater in its area, and by its nature is performing reuse. DGW permittees should not be required to perform a feasibility study for reuse as they are already performing that function. Gallonage associated with DGW should be counted in the Department's tabulation of beneficial reuse flows. (11)

58. COMMENT: In the last sentence of proposed N.J.A.C. 7:14A-2.15(b), the phrase "regulated under (c) below" seems unnecessary and confusing. Proposed N.J.A.C. 7:14A-2.15(c) sets forth how such a study must be conducted, signed, and sealed, but does not otherwise set forth whether or how such a discharge is "regulated." Moreover, the phrase

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“regulated under (c) below” appears to create a circular reference when read together with the reference in proposed new N.J.A.C. 7:14A-2.15(c) to “a study submitted to the Department under (b) above.” The following sentence from the rule proposal summary at 40 N.J.R. 1483 appears to say (if a reference to N.J.A.C. 7:15 is added) essentially what needs to be said: “For new or expanding discharges, the RFS must be submitted with the water quality management plan amendment request, where applicable.” (15)

59. COMMENT: Regarding RWBR, the Department notes that the cost could range between \$30,000 and \$90,000 depending on the scope of the reuse project associated with preparing and implementing a RFS as required at N.J.A.C. 7:14A-2.15(b). The Department is more than overly optimistic in that it believes that the publicly owned treatment works (POTWs) may sell reclaimed water and realize a revenue. Although the concept of beneficial reuse of effluent is good, New Jersey’s experiences to date have not shown that the private sector is sharing the cost of implementation of systems, and is certainly not paying for reused water. Recouping the cost of the feasibility study is unlikely.

Feasibility studies required at N.J.A.C. 7:14A-2.15(b) will likely reveal that the only viable and economically feasible uses for reclaimed water are restricted access uses such as sewer jetting and street sweeping. None of these uses have provided much of any economic compensation for the efforts that would be required in preparation of a RFS. (11, 18)

60. COMMENT: A RFS (N.J.A.C 7:14A-2.15(b)) should not be required for the renewal of a DSW permit when there are no changed circumstances from the prior issuance or renewal. The

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RFS requirement imposes an unjustified burden in time and cost on the permittee and the Department without any additional environmental benefit. (7)

RESPONSE TO COMMENTS 52 through 60: As stated in Response to Comment 49, implementation of a RWBR program by a permittee is voluntary. A permittee that desires to pursue a RWBR program is encouraged to conduct a RFS. As stated in Response to Comments 32 and 33, the Department is modifying the rule on adoption to not require a RFS prior to implementing a RWBR program, performing a RFS will help the permittee evaluate the cost of rising potable water and shortage of water supplies, versus the cost of implementing a RWBR program and evaluate potential users, which could result in partnerships to manage the State's water supply issues in an appropriate and diverse manner and help the permittee evaluate different RWBR activities that may be cost effective. The Department remains willing to assist any applicant that voluntarily seeks to implement a RWBR program and/or conduct a RFS to the extent that it is capable.

As stated in Response to Comments 32 and 33, since the language regarding mandatory RFS submittal and associated exemptions is being removed upon adoption, proposed N.J.A.C. 7:14A-2.15(c) has been modified on adoption to reflect the voluntary nature of the RFS, and renumbered as subsection (b).

The Department originally focused its efforts in requiring RFS for those facilities discharging to SE or SC waters, as effluent that is discharged to SE or SC waters of the State cannot be reused because the discharge becomes saline and no longer recoverable. Therefore,

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reuse of water that would otherwise discharge into SE or SC waters is of particular benefit. In the case of critical water supply areas, it would be extremely advantageous to reclaim the water and reuse it for applications for which potable water is not required, thereby relieving the critical water needs of the area.

The Department acknowledges that water associated with a DGW and, similarly, water associated with a DSW can potentially be reused by another entity downstream of the aquifer or receiving stream. However, the Department specifically defines the terms "RWBR" and "discharge" differently in the NJPDES rules to avoid confusion between reclaimed water projects and disposal activities from wastewater treatment facilities. This is necessary to allow the regulated community and interested parties to separate wastewater issues, such as those required for Water Quality Management Planning (WQMP), from the alternative water supply issues addressed through the implementation of RWBR. Additionally, each wastewater treatment facility regulated under the NJPDES program must account for a permitted mechanism to discharge 100 percent of the incoming flow to the collection system, including wastewater that is subsequently used in a RWBR activity. If quantities of water used for RWBR were not considered part of the discharge flow, the treatment facility would be hydraulically overloaded during times when RWBR is not feasible, such as in the case of irrigation activities, which are seasonal, or when a facility utilizing RWBR closes or otherwise reduces its need for RWBR source water.

61. COMMENT: Because approval of a work plan is required before the study can begin, and there are no proposed time constraints on the Department to approve a work plan, completion of

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a RFS in a timely manner is not fully under the control of the permittee. The RFS should only be required in applications for new permits. (1, 6, 13, 21)

RESPONSE: The Department is modifying N.J.A.C. 7:14A-2.12 on adoption to add new subsection (d), which provides that a RFS is exempt from N.J.A.C. 7:14A-2.12(c), which requires all studies under the chapter to be performed in accordance with a Department approved Work/QAPP. The purpose of a Work/QAPP is to define the data quality objectives and specify the field sampling protocols, field survey and analytical methods to be used in the studies defined at N.J.A.C. 7:14A-2.12. Since only limited analytical data is collected under a RFS, and that data are not used to determine compliance with any effluent limits, other permit conditions, or for determining compliance with treatment requirements for RWBR, the Department has determined that it is not necessary to require a Work/QAPP. See also Response to Comments 32 and 33, discussing removal of the mandatory RFS submittal requirements that were proposed at N.J.A.C. 7:14A-2.15(b).

62. COMMENT: A RFS should not be a NJPDES permit renewal requirement for existing permits, as required at proposed N.J.A.C 7:14A-2.15(b). Instead, the RFS should be incorporated into the permit as a permit condition, either through a permit modification or during the permit renewal process. The timing and requirements for a RFS are not well defined or totally controlled by the permittee, which could result in permits' lapsing. N.J.A.C. 7:14A-2.15(b) and (c) require certain permit applicants (existing, new, or expanding in coastal areas and areas with critical water supply concerns) to undertake a RFS to evaluate the feasibility of implementing RWBR. There are no substantive concerns with the decision to require this study,

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though the provision should not be interpreted to require a new study if one has already been conducted. However, there is concern with how this requirement will affect a given permittee's ability to file a timely permit application, because the rule requires that the study be completed before an application may be submitted. Specifically, because Department must first approve the work plan and the data collection involved in this study, this will require considerable time and resources; it could hinder a permittee's ability to submit a complete application on time. There is also concern over the length of time it will take Department to review the RFS analysis and the impact of such delays on the permit reissuance process. All parties would be better served if the RFS were, instead, mandated by a specific provision in an approved permit, rather than the proposed rule which requires the study to be performed as part of the application process.

(1,6,11,13,21)

RESPONSE: See Response to Comments 32 and 33, discussing modification to N.J.A.C. 7:14A-2.15(b) on adoption. See also Response to Comment 61, discussing the addition of N.J.A.C. 7:14A-2.12(d) on adoption, indicating that a RFS need not conform to a Department-approved work plan.

63. COMMENT: Proposed N.J.A.C 7:14A-2.15(b) should specifically exclude the Preservation Area District, Forest Areas, Agricultural Areas, Special Agricultural Areas and Rural Development from mandatory reuse feasibility studies where reclaimed water reuse would require the development of wastewater infrastructure in these Pinelands management areas unless centralized wastewater infrastructure currently exists on a parcel located in these management areas. (27)

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64. COMMENT: The list of facilities exempt from the requirement to complete a RFS at N.J.A.C. 7:14A-2.15(d) should include those steam electric generating facilities whose discharges consist primarily of non-contact cooling water. Water circulating for use in non-contact cooling systems is high volume flow that amounts to several hundreds of millions of gallons per day. This water is returned to the source waterbody and is not considered process wastewater. (7)

65. COMMENT: The exemptions under N.J.A.C. 7:14A-2.15(d) should be expanded to include existing regulated discharges with Total Dissolved Solids levels consistently exceeding the Surface Water Quality Standard criterion of 500 mg/L at N.J.A.C. 7:9B. Advanced wastewater treatment such as reverse osmosis would be required for brackish or saline discharges, and this would not be economical for reuse applications. (1, 6, 13, 21)

66. COMMENT: The exemptions for a RFS at N.J.A.C. 7:14A-2.15(d) should be expanded to include water reuse activities that do not involve water used for domestic sanitary waste and do not expose the general public to the reuse activity. Department review and/or approval should not be required if there is no potential exposure to pathogens or risk to the general public. (1, 6, 13, 21)

67. COMMENT: Proposed N.J.A.C. 7:14A-2.15(d) exempts certain facilities from the required RFS. One proposed exempt category includes “facilities with monthly average flow of less than 0.1 MGD.” The summary explains that “reduced economics of scale make including these

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facilities impractical.” The Department should provide the basis for using this value of 0.1 MGD in place of another value such as 0.25 MGD. (9)

68. COMMENT: The commenter supports exemptions from performing a RFS for Concentrated Animal Feeding Operations (CAFOs) and agriculture facilities with irrigation return flows at N.J.A.C. 7:14A-2.15(d). (16, 20)

RESPONSE TO COMMENTS 63 through 68: As stated in Response to Comments 32 and 33, the Department is modifying N.J.A.C. 7:14A-2.15 on adoption to remove the mandatory requirement to perform a RFS under this rule. Due to this change, N.J.A.C. 7:14A-2.15(d) has been modified on adoption to remove the exemptions stated therein, as they are no longer applicable.

The Department believes that there are potential RWBR applications for non-contact cooling water, although it recognizes that this water may have limited applicability for public access RWBR projects due to potential buildup of solids in recirculating cooling towers. Likewise, there are many reclaimed water activities that could effectively use water supplies with Total Dissolved Solids levels greater than 500 mg/L. Advances in treatment technologies may expand the possibilities for RWBR for these dischargers. The use of Reverse Osmosis (RO) technology is economically feasible for reuse applications. Not only is the technology being used for reuse projects in other countries and other states, but RO technology is already in use at drinking water treatment facilities in New Jersey, and the Department is currently reviewing other proposals for its use. Additionally, there are many other types of RWBR projects, such as

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street sweeping, fire protection, sewer jetting and industrial applications, that have the potential for implementation without additional treatment. Likewise, there are many reclaimed water activities that could effectively use water supplies with Total Dissolved Solids levels greater than 500 mg/L. However, since submittal of a RFS is voluntary, exemptions are no longer applicable.

Activities that do not involve water used for domestic sanitary waste and do not expose the general public to the reuse activity do fall under the purview of the RWBR program because the RWBR activity must be authorized under a NJPDES permit.

As described in the Department's summary for proposed new N.J.A.C. 7:14A-2.15 (40 N.J.R. at 1483), the 0.1 MGD threshold used for exempting permittees from conducting a RFS was based on economies of scale for implementing RWBR projects and the level that requires a water allocation permit. In addition, the licensed operator level requirements for 0.1 MGD facilities require 24 hour a day oversight, which makes these facilities better equipped to deal with the continuous monitoring requirements for advanced types of RWBR projects. It is also important to keep in mind that this exemption applied to monthly average flows and not permitted maximum flows due to the necessity to maintain reliable flows to the RWBR end user. This exemption did not preclude smaller facilities from conducting a RFS or implementing RWBR projects on a voluntary basis. However, as mentioned above, a RFS is now voluntary and, therefore, the exemptions originally outlined at N.J.A.C. 7:14A-2.15(d) are no longer necessary and have been removed.

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69. COMMENT: The Department should consider revising proposed new N.J.A.C. 7:14A-2.15(d)4 to similarly provide more detail by using some of the language in proposed N.J.A.C. 7:15-3.5(b)4viii(2) with regard to exemptions related to “unsatisfactory passing flows.” (15)

RESPONSE: As stated in Response to Comments 32 and 33, since submittal of a RFS for any facility is now voluntary, the exemptions to the mandatory RFS submittal have also been removed upon adoption.

70. COMMENT: Discharge to groundwater supports local aquifers and surrounding plant and animal species and should be counted in the Department’s tabulation of beneficial reuse flows.

By the very essence of a groundwater discharge, local aquifers are recharged and this action should be considered re-use. It is recommended that all DGW permittees be exempted at N.J.A.C. 7:14A-2.15(d) from the requirement to perform a RFS as they are already performing that function. By its very definition, a DGW recharges the groundwater in its area and by its nature is performing reuse. (18)

RESPONSE: See Response to Comment 32 and 33 for issues related to the Department’s removing the requirement to conduct a RFS in accordance with this rule. Also, see Response to Comments 52 through 60, which explains that disposal activities are not counted as RWBR activities under any circumstance.

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71. COMMENT: At N.J.A.C. 7:14A-2.15(e) the Department appears to be requiring that an engineering report and user-supplier agreements be submitted with each NJPDES permit renewal application. An engineering report should only be required for new or expanded reuse projects and only new or substantially modified user supplier agreements should be required to be submitted with the permit renewal. (17)

RESPONSE: See Response to Comments 32 and 33, explaining that the submittal of a RFS is now voluntary. The submittal of engineering reports and/or user-supplier agreements are required with applications for new or expanded RWBR projects. The Department will allow incorporation of those documents by reference in subsequent permit renewals, provided the Department has the original documents on file. However, any user-supplier agreement must be submitted when newly executed.

72. COMMENT: N.J.A.C 7:14A-2.15(e)4 should be amended to require that public outreach and education be documented whenever public or restricted access reuse is proposed. Importantly, public education and outreach effort must include written notice of all property owners within 200 feet of the proposed RWBR activity. (27)

RESPONSE: The Department agrees that public outreach is a necessary component for a RWBR project. As a result, the Department has required, and will continue to require, specific public outreach as part of the NJPDES permitting process based on the type of RWBR project proposed. For example, the Department currently requires a permittee to conduct public

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outreach for all public access reuse projects during the application process. This outreach has included permittees' holding public meetings on the proposed project. The Department intends to revise its RWBR Technical Manual and will require permittees to conduct specific outreach activities for proposed public access RWBR projects prior to applying for NJPDES permit actions to authorize those activities.

However, where there is an extremely limited potential for public exposure, as in restricted access RWBR, the Department does not agree with the commenter that specific notice of property owners is warranted. In instances involving restricted access RWBR, the Department believes that the notice and opportunity to comment provided on all NJPDES permits is sufficient to inform the public and solicit public comment on the proposal.

73. COMMENT: Facilities should still be permitted to discharge to sewers, regardless of the outcome of a RFS. (9)

RESPONSE: The result of a RFS plays a part in determining whether or not reclaiming wastewater is a viable part of resolving water supply issues. The discharging of wastewater to sanitary sewers is not a factor in a RFS or the RWBR program. The ability to discharge to sewers is influenced by a number of factors including, but not limited to, the Water Quality Management Planning rules (N.J.A.C. 7:15), the mapping of sewer service areas, the sewerage utility authority and sewer bans established in accordance with N.J.A.C.7:14A-22.

74. COMMENT: The Department's increased emphasis on the use of waste derived resources should include a thorough assessment of the presence and concentration of emerging

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contaminants in the reclaimed products and an assessment of the potential for these compounds to adversely impact ecologically sensitive environments or provide exposure pathways to humans. (27)

RESPONSE: See Response to Comment 46 regarding pharmaceuticals and emerging contaminants in RWBR.

Subchapter 3 Determination of Permit Fees

General

75. COMMENT: A facility's NJPDES permit can contain a discharge to surface water and stormwater component (for example a "consolidated" permit). For a consolidated permit, the Department assesses a fee for discharge to surface water and another fee for storm water. Consolidated permits involve some efficiencies in permit development and compliance monitoring that are not presently reflected in the total NJPDES permit fee assessment. Some reduction is warranted, and it is recommended that the storm water component of a consolidated discharge to surface water permit be assessed an annual NJPDES permit fee that is similar to that for a general storm water permit, as follows:

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The Environmental Impact value for any type of discharge to surface water regulated under a general permit or as a stormwater component of a consolidated individual permit shall be zero.

(6, 13, 21, 26)

RESPONSE: The Department disagrees. The minimum fee for “Industrial Stormwater - Individual Permit” in Table III is appropriate for an individual stormwater permit, whether or not it is part of a consolidated permit. Any efficiencies for being included in a consolidated permit are minor. It is the Department’s experience that all individual permits (including those that are part of a consolidated permit) require more Departmental time for development and oversight (for example, more terms and conditions for compliance evaluation and monitoring) and therefore warrant higher fees than does a general storm water permit authorization as suggested by the commenter. The commenter is correct that the environmental impact portion of the fee for an individual stormwater permit, whether issued as part of a consolidated permit or by itself, is zero. However, the minimum fee in Table III still applies.

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

76. COMMENT: Because of severe budgetary constraints, the Department is urged to re-think the way of calculating the basis for fees and expand a component that deals with the full spectrum of technical support such as the standards, monitoring and natural resources programs. These costs should be picked up because layoffs and reductions in the work force/workweek compromise the environment. (28)

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RESPONSE: The Department takes into account all the technical support for the NJPDES permitting program when calculating permit fees.

Under N.J.A.C. 7:14A-3.1(b), the Department prepares an Annual Fee Schedule Report (Fee Report). The Fee Report includes, in part, a detailed financial statement of the anticipated cost of the NJPDES program. When preparing the Fee Report, the Department determines and calculates the amount of time (expressed as “man years”) expended by other Departmental programs in support of the NJPDES program. A monetary figure, or budget, is then calculated based upon those figures.

For example, the latest Fee Report (Fiscal Year 2008) listed the following NJPDES supporting programs, work years and budgeted amount:

Supporting Program	Man Years	Budgeted Amount
Water Monitoring and Standards	10.00	\$706,950
Science, Research and Technology	3.00	\$212,085
Watershed Management	4.00	\$282,780
Information Resources Management	5.00	\$353,475

77. COMMENT: Given the tight budgetary constraints, the proposed fees at N.J.A.C. 7:14A-3.1(a)9 do not appear to adequately compensate the Department for the time and resources expended for the review of these permits. Permit applicants should be required to fully compensate the Department for the expenditures. (19)

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RESPONSE: It is not clear whether the commenter is referring to the cost of new permit applications or administering existing permits. In either case, the Department assesses fees that are fully compensatory for the time and cost expended.

The Department does not charge an “up front” permit application fee. Permittees are assessed an annual fee in accordance with N.J.A.C. 7:14A-3.1(a)1 after a permit is issued. Part of the annual fee assessment involves the calculation of a minimum fee in accordance with existing N.J.A.C. 7:14A-3.1(a)9iii. When calculating a minimum fee, the Department factors in the hours spent on “permit issuance” (for example, permit application review).

The fee for administering existing permits also includes calculations in accordance with N.J.A.C. 7:14A-3.1(a)9iii. The Department factors in such items as the total hours allocated on permit issuance, inspection and data management, and personnel cost per hour, including fringe and indirect costs.

See also Response to Comment 76, which details the technical support the Department factors in when calculating permit fees.

78. COMMENT: The Department’s current practice of using a 12-month average value for the calculation of Total Pollutant Load should be clearly stated in the rule at N.J.A.C. 7:14A-3.1(c)1i, as follows:

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Total Pollutant Load is the sum of all limited pollutants (in kilograms per day, and averaged for the selected 12 month monitoring period) multiplied by their associated risk factors as listed in Table 1 below. (6, 13, 21, 26)

RESPONSE: The Department agrees with the commenter that the calculation of total pollutant load at N.J.A.C. 7:14A-3.1(c)1i should be more clearly stated, and is modifying the rule upon adoption. However, the Department does not believe that the commenter's suggested language is adequate. Since each of the risk factors in Table 1 are pollutant specific, the word "each" is being added before "limited pollutants." A cross reference to N.J.A.C. 7:14A-3.1(a)7 is also being added to indicate that the averaging is for the selected 12 month period. In order to obtain a load from 12 months of data, it is customary to average the data for the 12 month period. The addition of "average loading" expresses that practice. The Department's modified rule states, "Total Pollutant Load is the sum of each limited pollutant's average loading (in kilograms per day) for the selected 12 month period, as determined in accordance with N.J.A.C. 7:14A-3.1(a)7, multiplied by its associated risk factors as listed in Table 1 below." The Department is making the same modification at subparagraph 3.1(g)1i.

79. COMMENT: The cleanest-discharging facilities are assessed a higher-than-actual 12-month average loading under the Department's calculation method at N.J.A.C. 7:14A-3.1(c)1i(1), thereby reducing the annual NJPDES permit fees paid by higher-polluting facilities. To encourage pollution prevention, and to calculate the NJPDES permit fee by the same method for all facilities, the following rule revision is recommended:

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Net loadings will be used if a net limit has been established in the NJPDES permit. If a permittee's 12- month average pollutant load is less than zero, then a zero will be used in its place to calculate the Total Pollutant Load.

The point in the NJPDES permit fee calculation at which a zero is substituted for any negative net values is critical to achieving an equitable fee assessment. A zero should not take the place of actual monitoring data, and should only be entered in the final calculation of the Total Pollutant Load for the permit fee. If negative pollutant loads create a Facility Environmental Value of zero, the Year-Specific Annual NJPDES Permit Fee calculation will reduce to the facility paying the minimum fee (as is appropriate for minimal pollutant load). (6, 13, 21, 26)

RESPONSE: The Department does not agree that the use of a zero value should be limited to calculating the final annual average loading. The existing calculation methodology, adopted in 1991 (see 23 N.J.R. 1151(a), 1155 (April 15, 1991)), sets negative reported values to zero before the calculation of the annual average loading. For example, if the value calculated for the purposes of reporting on a monitoring report form is a negative value then a zero is reported on that monitoring report form.

The NJPDES fee system is designed to utilize pollutant loading from a facility in assessing fees based on the "polluter pays" concept. Net limits are imposed for cooling water discharges where stream water is pumped into the plant for cooling purposes then discharged back to the stream. A negative net loading occurs when the loading of a particular pollutant in

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the stream water pumped into the facility is higher than the loading for that pollutant contributed by the facility as the cooling water passes through the facility.

The purpose of net limits is not to hold the facility responsible for the loading coming from the stream for limits purposes. The commenter, having received the intended benefit of not being responsible for the stream loading for limits purposes, is asking for the benefit of the stream loading in its fee calculation. The Department disagrees. Negative net loading is a result of the loading in the stream, not the loading from the facility. Using a negative net loading when calculating fees would unfairly and inappropriately give the facility a lower fee, not because that facility has lowered its loading, but because of the higher loading from the stream.

80. COMMENT: In N.J.A.C. 7:14A-3.1(d)1vi it is recommended that a new category be created with a point value of either 10 or 15. This would be designated as “Designed for discharge to ground water (sanitary wastewater with advanced wastewater treatment including nutrient removal or multi-media filtration) 10 points.” (11, 18)

RESPONSE: The commenter suggests an intermediary level of treatment to account for sanitary wastewater with advanced wastewater treatment including nutrient removal or multi-media filtration and with a point value of 10 or 15 points. The Department believes that this additional scenario is not necessary because the scenario designated as “Designed for discharge to the ground (sanitary wastewater with at least secondary treatment)” encompasses nutrient removal by virtue of secondary treatment. Therefore, the Department will not make the change as suggested by the commenter.

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81. COMMENT: The proposal states that the fee formula would “generate a higher environmental impact per facility, which would result in a higher total overall environmental impact value for ground water facilities” and that this change “would further reduce the sensitivity of slight facility changes on the fee calculation.

In revising the fee formula at N.J.A.C. 7:14A-3.1(d)1, the Department should clarify the impact on fees, specifically whether this would generate a higher fee upfront. Assuming that fees would increase, at least initially due to a higher environmental impact, the Department should provide further justification for this increase apart from the need for “stability” and “predictability” in the fee calculation. The regulated community would be directly affected by such fee increases. (9)

RESPONSE: As has always been the case with fees for DGW facilities, the budget for the category is determined by the Department’s costs for the program. The purpose of the fee formulas is to allocate those costs among the DGW permittees. Under the existing formula if, hypothetically, the Department’s costs for the program remained constant from one year to the next, the fees would still likely change due to changes in facilities’ Environmental Impact. The fees for individual facilities would either increase or decrease based on the potential of the discharge to impact the ground water. In that hypothetical example, the increase in fees for some facilities would be offset by a decrease in fees for other facilities, since in the example the budget did not change.

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With the adopted amendments, the budget for the DGW category is still determined by the Department's costs for the program. However, the formulas that allocate those costs among the discharge to ground water permittees have changed. This will not result in an up front increase in fees across the board. Some facilities may experience an increase and some may experience a decrease. As a result of the change in formulas, fees will either increase or decrease based on the potential of the discharge to impact the ground water. However, the sum of the fees remains the budget for the DGW category. The Department believes that the revised formulas will result in more predictability in ground water fees from year to year and make the fee calculations less sensitive to slight facility changes.

82. COMMENT: The New Jersey Department of Agriculture concurs with the concept of a two-tiered system for the stormwater construction general permit at N.J.A.C. 7:14A-3.1(j). (20)

RESPONSE: The Department acknowledges the commenter's support.

83. COMMENT: The Department is proposing at N.J.A.C. 7:14A-3.1(j) to include a fee for projects under five acres, and also to increase the fee for projects five acres and above to cover the cost of administering the program. The supporting rationale provided by the Department in the summary does not adequately support the increase in fees proposed, and permittees should not be forced to pay increased fees in order to support the administrative costs of both the Department and the Soil Conservation Districts (SCDs). (7)

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RESPONSE: The Department administers the “construction activity” stormwater general permit through local SCD offices that issue individual authorizations under the permit, but the Department issues the general permit and amends it, as required, and is responsible for enforcement. By administering the general permit in this fashion, the Department is minimizing costs to the permittees by providing services through existing agencies with specialized expertise. Local SCD offices have the expertise in reviewing the applications for compliance with this general permit.

If the Department were responsible for all aspects of administering the general permit, the Department would require additional personnel, which would lead to increased cost to the permittee. Moreover, because all permit-related matters would go through the Department, rather than the several local SCD offices, it would likely take longer for applicants to obtain authorization under the general permit.

The increased fees associated with the general permit are, in part, the result of the Department’s making the permit accessible through the New Jersey Environmental Management System (NJEMS), as discussed in the proposal Summary at 50 N.J.R. 1485. Furthermore, due to the implementation of the Federal Phase II stormwater requirements, the number of applicants has increased four-fold over the past four years, requiring additional oversight and cost to the program. Most of these costs are associated with enforcement of permit conditions. The fee for this general permit is among the lowest in the NJPDES program.

84. COMMENT: The Department is urged to consider increased costs to the housing market as a result of proposed N.J.A.C. 7:14A-24.10 and the fees associated with the stormwater permits

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that will be passed along to those purchasing properties that require permits issued for stormwater discharges associated with construction activity. (25)

RESPONSE: The Department proposed no amendments to the requirements for stormwater discharges associated with construction activity at N.J.A.C. 7:14A-24.10. The requirements of this section maintain the minimum Federal standards required by the USEPA stormwater regulations. However, the Department proposed amendments to the fees for the construction general permit at N.J.A.C. 7:14A-3.1(j), which have been in place since 1992.

The Department did consider the cost of housing when it proposed the increased fees; however, fees must be sufficient to cover the cost of the program. Any impact to the housing market is limited to fees related to new construction. To the extent the fees are associated with a housing development, they would likely be passed to each purchaser, rather than borne by a single homeowner. The increase of \$150.00 or \$300.00 in fees is not likely to have any appreciable impact on the housing market. Due to USEPA's Phase II stormwater requirements that lowered the threshold of regulation from five acres to one acre in 2004, the Department has incurred a substantial increase in the cost to implement the program. The Department will continue to work with the local SCD offices to use the existing process to minimize costs and eliminate duplication; however, increased enforcement is necessary to respond to the substantial increase in the number of complaints received by the Department regarding construction practices that violate the requirements of the general permit at regulated sites.

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Subchapter 4

Permit Application Requirements

N.J.A.C. 7:14A-4.3

Application information requirements

85. COMMENT: Where reuse is deemed feasible, RWBR should still remain as a voluntary program and not be a mandatory requirement imposed on certain facilities implemented through the NJPDES permitting process. (9)

RESPONSE: See Responses to Comments 49 and 52 through 60 for a discussion of the voluntary nature of RWBR projects and the modification on adoption of requirements for submittal of Reuse Feasibility Studies.

86. COMMENT: N.J.A.C. 7:14A-4.3(a)26 requires the submittal of RWBR information, which is based on a Department guidance manual that has not been reviewed and commented on by the public. (7)

RESPONSE: See Response to Comment 48 regarding the use of the RWBR Technical Manual as a guidance document when developing a RWBR program.

N.J.A.C. 7:14A-4.4

Additional application requirements for discharges to surface

water

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87. COMMENT: At N.J.A.C. 7:14A-4.4(b)3v, “fecal coliform” must be replaced with the term “bacterial indicator” to become consistent with the new Surface Water Quality Standards at N.J.A.C. 7:9B. (2)

RESPONSE: To be consistent with N.J.A.C. 7:9B, the Department is modifying N.J.A.C. 7:14A-4.4(b)3v to replace the term “fecal coliform” with “bacterial indicators.” Consistent with N.J.A.C. 7:9B, the bacterial indicators include fecal coliform, enterococci and E. coli.

In accordance with N.J.A.C. 7:14A-13, the discharge to surface water permits shall contain water quality based limitations based on the determination that the discharge has the reasonable potential to cause or contribute to an excursion above the Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B. The term “Surface Water Quality Standards” is defined at N.J.A.C. 7:14A-1.2. Although the SWQS at N.J.A.C. 7:9B do not define bacterial indicators, N.J.A.C. 7:9B-1.5(c)7 references bacterial indicators at N.J.A.C. 7:9B-1.14(d)1ii and iii, which lists the indicators as fecal coliform, E. coli and enterococci.

88. COMMENT: The Department should clarify whether permit applications already deemed complete awaiting permit renewal action by the Department would be deemed incomplete if the proposed amendments to permit application requirements are finalized as proposed (1, 6, 13, 21)

RESPONSE: The permit applications already deemed complete and awaiting permit renewal by the Department will not be deemed incomplete once the rule is adopted. However, as authorized

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by N.J.A.C. 7:14A-6.2(a)14, the Department may request any information necessary to process a permit action.

89. COMMENT: There are some serious discrepancies between required sampling methods for some volatile compounds found in the NJPDES regulations, compared to USEPA methods and Clean Water Act regulations, and they need to be resolved during this rulemaking opportunity. In order to ensure that volatile organics are being sampled in a way that will maintain integrity and provide accurate results, the Department is strongly encouraged to review USEPA's list of volatile organic compounds. Assigning the proper sample collection techniques are a source of confusion even within the Clean Water Act, which allows 24-hr composite samples for certain toxins, such as PAHs, PCBs, and mercury, but restricts volatile organics (which includes some of these toxins) from being composited. It is recommended that the Department review the USEPA's list of volatile organic compounds and current sampling requirements to ensure sample integrity will not be compromised for any analytes.

N.J.A.C. 7:14-4.4(b)2ii provides an example of the above expressed concern. The current NJPDES regulations allow a 24-hour composite sample for ammonia, mercury and other toxins (including some that are volatile but are not included in the volatiles list in N.J.A.C. 7:14A-4 App.A, Tables II). In fact, the utilization of this sampling method may compromise the integrity of the sample results. Approved USEPA methods for analyzing ammonia require that "samples must be preserved with H₂SO₄ to a pH<2 and cooled to 4°C at the time of collection. Samples should be analyzed as soon as possible after collection." Thus, allowing a 24 hour composite sample is not appropriate for ammonia. And according to 40 CFR 136, App. A, Table

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II, n.2, “if a composite measurement is required but a composite sample would compromise sample integrity, individual grab samples must be collected at prescribed time intervals (e.g., 4 samples over the course of a day, at 6-hour intervals).”

Therefore, N.J.A.C. 7:14A-4.4(b)2ii needs to be amended to clarify that in order to obtain a 24-hour composite sample according to the Clean Water Act, four samples must be collected and analyzed over a 24-hour period. This particular example supports the need for the Department to thoroughly review all required sampling methods for other volatile compounds found in the NJPDES regulations and compared to USEPA methods. (2, 22, 23, 29)

RESPONSE: The Department is aware that there are some discrepancies between required sampling requirements for VOCs in the NJPDES regulations compared to USEPA regulations. The Federal rule at 40 CFR 122.21 states that grab samples must be used for pH, temperature, cyanide, and total fecal coliform. For all other pollutants, a 24-hour composite sample must be used. This allows samples for VOCs to be collected as composite in the Federal rules. However, the NJPDES regulations at N.J.A.C. 7:14A-4.4(b)2 ii require samples for VOCs be collected as grab samples. The Department has been requiring grab samples for VOC based on the recommendations of the Department’s Office of Quality Assurance (Memorandum dated February 19, 1993 from Joseph Aiello, Manager, Office of Quality Assurance). The memorandum also states that collection of composite samples for VOCs is refuted by many sources, including 40 CFR Part 136. In 40 CFR Part 136, methods 601 and 624 mandate that grab samples be used for VOC analysis.

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The Department is aware of the modified approach to composite sampling as stated in 40 CFR Part 136 Appendix A, Table II, n.2. Note that N.J.A.C. 7:14A-4.4(b)2 requires that the applicant shall continue to collect an effluent sample and analyze it for pollutants in accordance with 40 CFR Part 136 or N.J.A.C. 7:18. This applies to any and all pollutants required to be sampled under this subchapter. Therefore, the Department is not modifying this N.J.A.C. 7:14A-4.4 on adoption.

90. COMMENT: The Department should amend N.J.A.C. 7:14A-4.4(b)3i to include monitoring requirement for dissolved oxygen, since the New Jersey coast is listed as impaired due to low dissolved oxygen concentrations. (2, 22, 23, 24)

RESPONSE: The Department is modifying N.J.A.C. 7:14A-4.4(b)3i on adoption to include a monitoring requirement for dissolved oxygen at N.J.A.C. 7:14A-4.4(b)3i(8), since there is an adopted criteria in the Surface Water Quality Standards at N.J.A.C. 7:9B.

For a discussion of the interaction between the SWQS and the NJPDES rules, see Response to Comment 87.

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

91. COMMENT: The commenter objects to the Department's proposal to expand monitoring requirements for additional pollutants under Tables II and III at N.J.A.C. 7:14A-4, Appendix A, since these requirements will only add monitoring costs without any real achievable water

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quality improvement objective. This proposal will increase the monitoring costs at a time when sewer utilities are suffering from dramatic increases in energy costs and energy related cost increases of chemicals. Unless there is some specific water quality objective, the Department is urged to limit the monitoring requirements to a specific timeframe of one per permit cycle since these requirements tend to stay in permits from one permit cycle to another. (11)

RESPONSE: The Department has been including monitoring requirements for these additional parameters in NJPDES/DSW permits since the Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B were amended to include these parameters. The Department is updating the pollutant list in this subchapter as part of this rule making. For a discussion of the interaction of the SWQS and the NJPDES rules, see Response to Comment 87.

The requirement to monitor and report parameters under N.J.A.C. 7:14A-4 is part of the application process. If the applicant is monitoring for these parameters under an existing NJPDES/DSW permit, the sampling results used for reporting on monitoring report forms may be used for the renewal application form, and no additional monitoring needs to be conducted for this purpose. If the applicant is not already monitoring for these parameters under a NJPDES/DSW permit, the applicant is required to monitor only once for the purpose of reporting the results on the application form.

92. COMMENT: The Department should amend N.J.A.C. 7:14A-4 Appendix A, Tables II and IV to include total nitrogen (for marine waters) and emerging contaminants (including

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pharmaceuticals and endocrine disruptors such as Polybrominated diphenylethers (PBDEs)). (2, 22, 23, 24)

RESPONSE: N.J.A.C. 7:14A-4 Appendix A, Table IV includes total nitrogen. Therefore, it is not necessary to amend Table II to include nitrogen. See Response to Comments 109, 110 and 112 for additional information on nitrogen and other emerging contaminants.

93. COMMENT: Please clarify how chromium should be reported. The Department's Office of Quality Assurance advises that the chromium requirement must either be reported as total chromium or hexavalent chromium and not total hexavalent chromium. (11)

RESPONSE: The regulations at N.J.A.C. 7:14A-4, Appendix A, Table III currently include a monitoring requirement for Total Chromium. In addition, the Department proposed new monitoring requirements for Chromium ⁺³, Total (Trivalent) and Chromium ⁺⁶, Total (Hexavalent). However, based on the approved analytical method for hexavalent chromium listed in 40 CFR Part 136, which inherently measures only its dissolved form, the Department is replacing Chromium ⁺⁶, Total (Hexavalent) with Chromium ⁺⁶(Hexavalent) Dissolved at N.J.A.C. 7:14A-4, Appendix A, Table III on adoption. This is also consistent with the requirement at N.J.A.C. 7:14A-13.14(b)3, which requires all effluent limitations, effluent standards, or prohibitions for a metal to be expressed in terms of total dissolved metal, unless approved analytical methods for the metal inherently measure only its dissolved form. The rule expressly provides hexavalent chromium as an example of this exception.

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Subchapter 6

Conditions Applicable to All NJPDES Permits

General

94. COMMENT: The Department is urged to investigate the use of rapid methods for the detection of enterococci, thus enabling facilities to identify and resolve problems with disinfection systems in a timely manner. (2, 22, 23, 29)

RESPONSE: The current USEPA approved testing methods for enterococci are 1106.1 and 1600. Further information on these methods can be found at www.epa.gov/waterscience/methods/method/biological. Additional testing methods can be required by the Department only after USEPA has approved the method. However, permittees may conduct supplemental monitoring for their own use with other testing methodologies, such as when identifying treatment system problems. At such time as the USEPA adopts the use of rapid methods the Department will consider imposing this requirement for the detection of enterococci.

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

Monitoring

95. COMMENT: As proposed, N.J.A.C. 7:14A-6.5 is not consistent with the current regulations at N.J.A.C. 7:9B and 40 CFR Part 136 as it seeks to maintain limitations for fecal coliforms and the monitor only requirement for enterococci. The Department's original decision to require

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monitoring only for enterococci was based on concerns regarding analytical methods, including single sample variability and false positives. However, the Department determined that all of these concerns were addressed with the adoption of the SWQS and availability of approved USEPA methods. The USEPA has stated since 1986 that fecal coliforms are not appropriate indicators and should be replaced by enterococci in marine waters and E. coli in fresh waters because fecal coliforms are not correlated with health effects. The Department should not continue to utilize an outdated and inappropriate bacterial indicator as the sole limit for bacteria in wastewater effluent.

In addition, without an enterococcus limit the Department will not be able to develop total maximum daily loads (TMDLs) and to regulate discharges in accordance with SWQ criteria. Therefore, the Department must replace the monitor only condition with limitations based on the new SWQS for bacteria so as not to put the environment or the public at risk. It is the NJPDES permittee's responsibility to meet the SWQS for both bacteria and Chlorine Produced Oxidants (CPO) even if the effluent has to be dechlorinated prior to discharge or an alternative disinfection method utilized that doesn't produce toxic chlorine residuals. (2, 22, 23, 29)

RESPONSE: The Department is developing an implementation plan for the recently adopted surface water quality criteria (N.J.A.C. 7:9B) for E. coli in fresh waters and enterococci in marine waters. At this time, however, the Department is maintaining the fecal coliform effluent standard, while it transitions toward WQBELs. With respect to bacterial indicators, the Department is taking a conservative approach due to the critical nature of maintaining healthy

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waters in light of their use as potable water supplies, for bathing, boating, and other primary contact uses. At this time, dischargers are complying with the fecal coliform effluent standard. Because these are new criteria, it is not yet known what, if any, disinfection regime changes permittees would need to undertake in order to comply.

In order to avoid over treating (which could be toxic to the receiving water) or under treating (which could result in contaminated waters) the Department is requiring dischargers to monitor and report for E. coli and/or enterococci. Because neither the Department nor the dischargers have appropriate data regarding E. coli or enterococci levels present in the effluent using the new USPEA methods, the Department will use the data from this monitoring requirement to establish a database. At such time as the Department has collected sufficient data to evaluate plant performance and impacts on the receiving waters the Department will determine the appropriate effluent requirements for the applicable bacterial indicator.

In regard to the establishment of TMDLs, TMDLs are developed based upon the Impaired Waters List, which the Department submits to USEPA every two years, in accordance with Section 303(d) of the Federal Clean Water Act, 33 U.S.C. § 1313(d). The Department's assessment of impairment is based upon ambient data, not effluent data. Therefore, the presence or absence of an enterococci effluent limit does not influence the need or development of a TMDL.

96. COMMENT: Fecal coliforms, E. coli and enterococci are all indicators of fecal contamination and associated pathogenic organisms. These indicators are commonly found in

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sewage and are not necessarily pathogenic. Therefore, N.J.A.C. 7:14A-6.5(b)2ii should include the term E. coli. (2, 22, 23, 29)

RESPONSE: The Department proposed and is adopting the addition of E. coli to N.J.A.C. 7:14A-6.5(b)2ii. The change was discussed in the proposal Summary at 40 N.J.R. 1487.

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

97. COMMENT: Proposed new N.J.A.C. 7:14A-6.8(d)3 begins “The permittee agrees to submit a monitoring report reform or paper” The words “reform or” make no sense in this context. The Department probably intended that this paragraph to begin with the following (or similar) language: “The permittee agrees to submit a monitoring report “form on” paper” (15)

RESPONSE: The Department’s intention was for this condition to say “form on” and not “reform or.” The Department is modifying this condition on adoption to correct this grammatical error.

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

98. COMMENT: A discharge of RWBR should not be considered a noncompliance. The Department considers RWBR as clean water and there are no reporting requirements associated with the release of the RWBR water. This includes the RWBR water that has been further

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enhanced and disinfected in order to meet the specifications for non-contact cooling purposes.

(7)

RESPONSE: Authorized RWBR activities are not considered discharges by the Department and should not result in any noncompliance, provided that the requirements of the NJPDES permit are met. Water intended as RWBR that does not meet RWBR requirements is returned to the treatment plant for further treatment. Application of RWBR, such as in irrigation activities, are also required to follow certain practices to properly manage the water resource including, but not limited to, the elimination of runoff and erosion concerns.

There are reporting requirements incorporated into the permittee's NJPDES permit associated with the use of reclaimed water. As stated above, if the commenter is referring to RWBR after it has been used in the specified reuse application and is subsequently returned to a treatment works, the water would have to meet the effluent discharge limits prior to being discharged at a permitted outfall, not the RWBR standards.

N.J.A.C. 7:14A-6.13 General permits

99. COMMENT: The table in N.J.A.C. 7:14A-6.13(c) should be updated to reflect recent general permit actions, such as issuance of NJPDES general permits listed on the Department's Division of Water Quality website for Dental Facilities Onsite Wastewater Treatment System and Wood Recyclers. (15)

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101. COMMENT: The Department should authorize the discharge of ground water pumped out from construction dewatering activities back into the ground with the use of a Class V Well Permit by Rule in N.J.A.C. 7:14A-8.5 or similar less extensive permitting process. There is no environmental benefit to treating the ground water when this water is to be discharged back into the same aquifer. (7)

RESPONSE: The Department provides at N.J.A.C. 7:14A-8.5(b)11 a permit by rule for all underground injection wells used during remediation of contaminated sites, which includes construction dewatering for many of those related activities, since Department oversight is provided in these circumstances. In most other cases where dewatering discharges occur, the Department has determined, and published in its Technical Manual for NJPDES Discharge to Ground Water Permits dated June 2002 (which can be found at <http://www.state.nj.us/dep/dwq/pdf/gwtechman.pdf>) that a permit is not required at this time. Although the inclusion of a permit-by-rule for injection of dewatering of construction sites is a good suggestion for future rulemaking, modification of the permit-by-rule provisions would be too substantial a change to make on adoption without notice and comment. It is the Department's intent to propose amendments in the future to expand the list of permit-by-rule categories. Meanwhile, construction dewatering discharges that meet the requirements identified in the technical manual are not required to obtain NJPDES permits.

102. COMMENT: The Federal rules at 40 CFR 144.26 and 144.83 require that all owner/operators of injection wells are required to submit inventory for their wells. Owner/operators that fail to submit inventory lose authorization to inject into the wells. NJAC

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7:14A-8.5(c), proposed for readoption, does not require an owner/operator to submit inventory information unless the Department provides notification. The proposal Summary at 40 N.J.R. 1547 acknowledges this, and states, “most of the many small businesses that have a UIC permit-by-rule for a Class V injection well are not required to submit inventory information about that injection well to the Department, unless the Department provides notification under N.J.A.C. 7:14A-8.5(c).”

In order to have a program at least as stringent as the Federal program, New Jersey must require that all owner/operators of injection wells submit inventory information required by 40 CFR 144.26 and 144.83. (14)

RESPONSE: In order that the NJPDES rules are consistent with the Federal rules, the Department is modifying N.J.A.C. 7:14A-8.5(c) on adoption to require all owner/operators of injection wells to submit inventory information within 90 days of the installation of those wells to qualify for a permit-by-rule. No longer is submittal of inventory information contingent on Department notification. The Department issued a public notice to notify all existing UIC owner/operators to submit inventory information pursuant to the existing N.J.A.C. 7:14A-8.5(c) prior to the operative date of the amendment to N.J.A.C. 7:14A-8.5(c).

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

103. COMMENT: The Department should justify its use of the words “or safety” at the end of proposed N.J.A.C. 7:14A-8.12(d)1 and at the end of the second sentence of proposed N.J.A.C.

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7:14A-8.16(d)1. “Safety” is not mentioned in the proposal Summary of N.J.A.C. 7:14A-8.12 (40 N.J.R. 1489), or in 40 CFR 144.12(a) and 144.82 (the two related USEPA regulations cited in the proposal Summary of N.J.A.C. 7:14A-8.12 and 8.16 (40 N.J.R. 1489-1490). (15)

RESPONSE: The Department believes that the addition of the words “or safety” reinforce the protections afforded in the Water Pollution Control Act (N.J.S.A. 58:10A-6), as well as maintain consistency with the Federal regulation.

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

104. COMMENT: Proposed new N.J.A.C. 7:14A-8.16(d)1iii begins, “Other Class V wells, not otherwise included in (a)1 or 2 above, shall be plugged and abandoned ...” The reference to “(a)1 or 2 above” (which does not exist in current or proposed N.J.A.C. 7:14A-8.16) should be replaced by a reference to “(d)1i or ii above.” (15)

RESPONSE: The Department acknowledges the error and is modifying the rule on adoption to correct the cross reference.

105. COMMENT: N.J.A.C. 7:14A-8.16(d)1iii should be modified to include a requirement to remove material where necessary to prevent fluid movement that may adversely affect human health. In the event that injection wells other than motor vehicle waste disposal wells received industrial wastes that could affect human health, the regulations should require that those wells

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be cleaned out as necessary to prevent the endangerment to human health as required in 40 CFR

§144.12(a). (14)

RESPONSE: N.J.A.C. 7:14A-8.16(d)1iii requires the owner/operator to empty all materials from certain Class V wells and otherwise properly abandon them. These requirements prevent fluid movement that may adversely affect human health, since all pollutants have been removed and the void space has been filled with appropriate material. In addition, N.J.A.C. 7:14A-8.16(d)1 requires the wells to be closed in a manner that prevents fluid movement that may cause a violation of the State primary drinking water rules. However, to make it clear that material must be removed in order to prevent fluid movement, the Department is modifying N.J.A.C. 7:14A-8.16(d)1iii on adoption consistent with the commenter's suggestion. The Department is adding new N.J.A.C. 7:14A-8.16(d)1iii(3), and renumbering proposed (3) as (4).

**N.J.A.C. 7:14A-8.18 Specific operating criteria and construction standards
applicable to permit by rule authorizations for underground injection into seepage pits**

106. COMMENT: N.J.A.C. 7:14A-8.18(a) should be revised by changing “a permit-by-rule pursuant to N.J.A.C. 7:14A-8.5(b)5” to “a permit-by-rule pursuant to N.J.A.C. 7:14A-8.5(b)4 or 5.” A reference to N.J.A.C. 7:14A-8.5(b)4 is needed here because of the proposed expansion of N.J.A.C. 7:14A-8.5(b)4 to include air conditioning or non-contact cooling water return flow injection wells that are constructed in accordance with “all applicable seepage pit construction requirements of N.J.A.C. 7:14A-8.18.” (15)

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RESPONSE: The Department acknowledges this oversight at N.J.A.C. 7:14A-8.18(a) and is making the correction on adoption to change the cross reference to N.J.A.C. 7:14A-8.5(b)4 or 5, to match the amendment to paragraph 8.5(b)4.

Subchapter 11

Procedures and Conditions Applicable to NJPDES-DSW

Permits

General

107. COMMENT: The Department recently adopted, in lieu of wildlife criteria, amendments that require permittees to monitor for polychlorinated biphenyls (PCBs). What is the Department finding and is it triggering any permits based on that monitoring? These should be the things reconsidered in rulemaking. The Department eliminated the wildlife criteria even though the commenter believes they are required by Federal law, so the public should at least be told what the Department is getting back in monitoring results and how the Department is addressing the data it is getting.

Does the Department have an adequate data set to determine whether or not effluent limits will be proposed? The numbers that were proposed, are they adequately protective for wildlife? This is of concern now, as it was when that proposal was made several years ago. (28)

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RESPONSE: In November 2002, the Department proposed amendments to the Surface Water Quality Standards at N.J.A.C. 7:9B containing New Jersey specific wildlife criteria for PCBs to address concerns expressed by the United State Fish and Wildlife Service. However, these criteria were not adopted by the Department due to issues raised during the public comment period regarding the lack of available treatment to meet the criteria. Pollution prevention was found to be a potentially more cost effective strategy and could produce gains towards achieving standards without imposing the cost of unproven end-of-pipe technologies.

Therefore, on January 16, 2007, the Department published new provisions in the NJPDES rules at N.J.A.C. 7:14A-11.13 and 14.4 requiring monitoring and appropriate Pollution Minimization Plans (PMPs) for major NJPDES/DSW permits where the permittee is discharging to PCB impaired receiving waters. The Department's intention is to identify sources of PCBs and begin to develop avenues for possible PCB reduction. Requiring investigation to locate the source of PCBs (trackdown) and development of PMPs as a first phase will ensure that action towards PCB reduction will begin to take place in a timely manner. Major modifications were made to NJPDES/DSW permits to incorporate these conditions on October 19, 2007 with an effective date of December 1, 2007. The permits require the permittees to sample for PCBs during a two year time period and submit data within 30 months from the effective date of the permit modification (May 31, 2010). Upon review of this data the Department will require PMPs for PCBs as appropriate. Permittees will be required to demonstrate PCB reduction over time by removing sources of PCBs and will be required to submit annual reports documenting such.

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N.J.A.C. 7:14A-11.2

Establishing DSW permit conditions

108. COMMENT: The Department should amend N.J.A.C. 7:14A-11.2 to include a statement that notes that weather conditions prevalent during a particular 24 month period in concert with the specific requirements listed in subparagraph 2ii could result in the inability of the permittee to collect the required number of samples within the prescribed timeframe. (7)

RESPONSE: N.J.A.C. 7:14A-11.2(a)2ii refers to the volume of effluent discharged from each outfall. However, the commenter refers to the required number of samples within the prescribed timeframe. The commenter is requesting that the Department alter the monitoring requirement found at N.J.A.C. 7:14A-11.2(a)2ii. This condition, as written, is consistent with USEPA rules at 40 CFR 122.44(i)1(i). The Department cannot make the monitoring requirement less stringent than required by USEPA, which the suggested modification would do. Therefore, the Department is not modifying this condition on adoption.

Subchapter 12

Effluent Standards Applicable to Direct Discharges to Surface

Water and Indirect Discharges to Domestic Treatment Works

General

109. COMMENT: There is no discussion or provision for the monitoring, removal, control of, or permitting for the discharge of pharmaceuticals into the State's waters. The existence of drugs

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in the waters has been known for several years and has received wide media attention recently.

As pharmaceuticals are a pollutant as defined in the Water Pollution Control Act (WPCA) at N.J.S.A. 58:10A-1 et seq. and in the Clean Water Act at 33 U.S.C.A. §1362, the Department is required to promulgate standards and require permits for the discharge of these chemicals pursuant to N.J.S.A. 58:10A-6. Some of these pollutants may be toxic pollutants under the statute as many pharmaceuticals can have side effects which can cause “death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation.” (19)

110. COMMENT: There has been a lot of focus on concerns with trace levels of pharmaceuticals in certain water supply sources. The Department should put out an interested party review or some form of public conversation about developing new monitoring either in ambient receiving waters or in effluent for these new parameters of concern. There’s also endocrine disrupters, a whole set of toxics not being looked at. The proposal eliminates a piece of the whole effluent toxicity (WET) methodology because the methodology is old and not scientific, therefore no longer valid. The Department should replace it with something that does look at cumulative impacts of multi-pollutants on biological systems. (28)

RESPONSE TO COMMENTS 109 AND 110: The Department is monitoring the USEPA and national discussions on emerging contaminants. Evidence has shown these emerging contaminants to be already present in the State’s drinking water supplies and surface waters due, in part, to wastewater discharges to the environment. Some processes have been shown to be

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beneficial in removing these contaminants. However, research needs to be conducted with regard to the levels of these contaminants in the existing potable water supplies being used.

The Department's Division of Science, Research and Technology is involved in two water supply research projects to document the occurrence and concentration of synthetic organic contaminants in raw and finished water supplies, and to evaluate the effectiveness of activated carbon in the treatment of these compounds. The Department will continue to monitor this research and the national level discussions to determine the appropriate methods to sample and analyze for these contaminants, the proper way to establish potable water and wastewater standards for these contaminants, as well as the appropriate methods to treat wastewater and potable water for these contaminants.

111. COMMENT: It is recommended that the Department start an initiative for nitrogen very similar to what the Department did for phosphorus in 2002. Nitrogen limits should specifically be considered upstream of water supply intakes and where there are adverse estuarine impacts, understanding that nitrogen is the limiting nutrient in those systems and understanding that there are no effluent limits based upon those water quality impacts. (28)

RESPONSE: Although there is currently no SWQS for total nitrogen, nitrogen is limited in the forms of nitrate and ammonia if appropriate in accordance with the SWQS at N.J.A.C. 7:9B. The SWQS for nitrate is 10,000 µg/L. The SWQS for ammonia is determined based on site specific inputs including pH, temperature and season, to address ecological impacts.

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As part of the NJPDES permitting process, sanitary discharges are evaluated for water quality impacts from both nitrate and ammonia. Although the majority of sanitary discharge permits contain limits for ammonia, it is uncommon for nitrate to cause or have the reasonable potential to cause an excursion of the SWQS; therefore, limits for nitrate are not usually necessary, but will be imposed if needed to protect the water supply designated use.

The Department agrees that nitrogen can be the limiting nutrient in marine waters. Some sanitary dischargers are required to monitor for nitrate, and almost all are required to monitor for ammonia. Every sanitary discharge is evaluated for the need for nitrate and/or ammonia WQBELs. The majority of these discharges are limited for ammonia. Few are limited for nitrate, although monitoring may be required. This evaluation is completed by doing a WQBEL analysis either with site specific nitrate data or, in the absence of data, a default average value expected to be representative of sanitary effluent (20 mg/L) is used in the analysis. If the analysis shows cause or reasonable potential to cause an excursion of the SWQS at N.J.A.C. 7:9B, nitrate may be limited via a WQBEL or monitoring required. In addition, dissolved oxygen water quality criteria can address nitrogen related impairments. The Department is participating in the New York/New Jersey Harbor TMDL process, which is developing a TMDL for nitrogen, to address specific impairments related to dissolved oxygen. That is the only TMDL process at present, where known dissolved oxygen impairments have been identified related to nitrogen (and carbon).

112. COMMENT: N.J.A.C. 7:14A-12 should be amended to include a Total Nitrogen effluent standard for brackish and marine water as nitrogen is the primary limiting nutrient in marine

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waters. The discharge of nitrogen from wastewater treatment facilities contributes to increased algal biomass and reduced dissolved oxygen (DO) concentrations due to the decay of associated organic matter. To address the impairment of New Jersey waters, it is necessary to identify the contribution of nitrogen to coastal waters by point sources. (2, 22, 23, 29)

RESPONSE: Due to the watershed specific nature of possible impairments related to nitrogen, the Department does not agree that a nitrogen effluent standard is necessary or appropriate. Any such impairments should be addressed through water quality based approaches, such as TMDLs, not effluent standards. See Response to Comment 111 for a detailed discussion regarding regulation of nitrogen.

113. COMMENT: The Department should prepare a standard for nitrate based on ecological and health based impacts to surface water, which should include non-point loads and anti-degradation standards for ground water or 1 mg/L, whichever is less. (19)

RESPONSE: The criteria for regulated pollutants, including nitrate, are contained in the SWQS; accordingly, the development of such standards is more appropriately addressed as part of the SWQS rules. The Department can incorporate non-point discharges into a SWQS for nitrate only through development of a Total Maximum Daily Load for nitrate, where a loading allocation would be proposed for each discharger in the affected watershed.

N.J.A.C. 7:14A-12.2 Secondary treatment effluent standards

N.J.A.C. 7:14A-12.3 Secondary treatment special considerations

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114. COMMENT: N.J.A.C. 14A-12.2 should be amended to require effluent to maintain a minimum dissolved oxygen (DO) concentration. The Department must also add DO to N.J.A.C. 7:14A-12.3 where appropriate. (2, 22, 23, 29)

RESPONSE: When evaluating permit conditions and limitations for NJPDES/DSW permits, the Department must consider all appropriate regulations including but not limited to secondary treatment standards, other State effluent standards, SWQS and Federal Effluent Limitation Guidelines. Although the secondary treatment standards and conditions at N.J.A.C. 7:14A-12.2 and 12.3 do not include a minimum dissolved oxygen level, the SWQS at N.J.A.C. 7:9B contain minimum criteria for dissolved oxygen. Through the NJPDES/DW program, the Department applies the appropriate criteria either directly as a limitation or indirectly through limitations for biological oxygen demand (BOD), biochemical oxygen demand (CBOD) or chemical oxygen demand (COD). Therefore, since dissolved oxygen is regulated through the SWQS, the Department does not believe it is necessary to amend the secondary treatment standards at N.J.A.C. 7:14A-12.2 or 12.3.

N.J.A.C. 7:14A-12.5 Disinfection

115. COMMENT: N.J.A.C. 7:14A-12.5 needs to be amended to include effluent standards for E. coli in freshwater and enterococci in saltwater to comply with the State SWQS. N.J.A.C. 7:14A-12.5(a) must be reworded to include the new indicator for fresh water E. coli. N.J.A.C.

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7:14A-12.5(b) must be amended to include effluent standards for E. coli and enterococci. (2, 22, 23, 29)

RESPONSE: The SWQS at N.J.A.C. 7:9B contain water quality based criteria for both E. coli in Category FW2 receiving waters and for enterococci in Category SE1 and SC receiving waters.

The Department is proceeding toward implementing a plan to move away from the use of the fecal coliform effluent standard and toward the use of the E. coli and/or enterococci WQBEL.

An effluent standard is often technology-based, and applied equally regardless of the category of the receiving water. A SWQS-based criteria is applied on a site specific basis and is, therefore, generally more protective. See Response to Comment 95 for additional information as to when and how the Department intends to incorporate WQBELs for pathogens.

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

116. COMMENT: It is disappointing that the Department is not seeking to revise and strengthen the phosphorus rules at N.J.A.C. 7:14A-12.7 as 65 percent of the State's streams are impaired for phosphorus. How does the Department propose to address this contaminant? NJPDES limits for all wastewater treatment facilities discharging to impaired waters should be required to meet the USEPA recommended standard of 0.2 mg/L. (19)

RESPONSE: Although the Department did not propose amendments to the phosphorus effluent standards at N.J.A.C. 7:14A-12.7, the Department is not without controls on discharges of phosphorous into the State's surface water. The criteria for phosphorus in the SWQS (N.J.A.C.

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7:9B) are applicable. These criteria are an average of 0.05 mg/L in lakes and 0.1 mg/L in streams. When a reasonable potential analysis shows that there is cause or reasonable potential to cause an excursion of these criteria, a WQBEL is incorporated into the permit. The SWQS are often applied directly as limitations when the receiving water is on the Federal 303(d) List of Impaired Waterbodies for phosphorus impairment, or when there is no dilution in the receiving stream. In such instances an end-of-pipe limitation of 0.1 mg/L is applied, pending the development and adoption of a TMDL.

N.J.A.C. 7:14A-12 Appendix B: Effluent Standards for Site Remediation Projects
Appendix C: Effluent Standards for New Sources, New
Discharges or Expanded Direct discharges

117. COMMENT: N.J.A.C. 7:14A-12 Appendices B and C should be amended to include monitoring and reporting for some of the most critical emerging contaminants so the Department can begin to develop WQBELs and assess whether additional treatment of the effluent is required in the near future. It is imperative that the rules incorporate these requirements for emerging contaminants so the State does not allow another 10 years to pass without knowing what is being discharged into New Jersey waters from treated wastewater. (2, 22, 23, 29)

RESPONSE: For a discussion of issues related to emerging contaminants, see Response to Comments 109 and 110.

Subchapter 13 Effluent Limitations for DSW Permits

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General

118. COMMENT: The proposed regulations do not fully comply with the anti-backsliding provisions of the Clean Water Act. The NJPDES permits do not account for the addition of non-point source pollution in calculating pollution loads. (19)

RESPONSE: Federal and State anti-backsliding regulations are applicable to permit effluent limitations that are in effect. The NJPDES/DSW program is a point source regulatory tool. Non-point source loads are regulated through the issuance of a TMDL, which is then implemented through the NJPDES permit.

119. COMMENT: Regarding the reasonable potential determination, which is the trigger for how WQBELs are determined, there is a major concern with how the methodology actually works. At issue is whether the assumptions that were imbedded in the methodology dealing with background water quality, such as background pollutants being set at zero, are based against triggering WQBELs at the end of pipe and how this interacted with the drinking zone policy to essentially undermine clean water and relax the stringency of the effluent limits in permits. Also of concern is the effect of multiple sources on an individual source and whether an individual source actually has a reasonable potential to exceed a criterion. (28)

RESPONSE: The commenter's reference to the effect of multiple sources on an individual source and interaction with the drinking zone policy is not clear. The Department evaluates the

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need for a WQBEL in accordance with N.J.A.C. 7:14A-13.5 and 13.6 and the procedures outlined in the USEPA Technical Support Document for Water Quality-based Toxics Control (TSD) (EPA-505/2-90-001). When appropriate data for instream ambient water quality for a specific pollutant are available, these data are used as the level of the background pollutant in a reasonable potential analysis. At this time, data are not available for every pollutant regulated in New Jersey at every facility in New Jersey, so background levels are frequently assumed to be zero due to a lack of information. Each facility is evaluated separately using a WQBEL reasonable potential analysis, which takes dilution into consideration in requiring dischargers to meet the instream SWQS at N.J.A.C. 7:9B. This procedure is outlined in the USEPA's TSD referenced above.

120. COMMENT: What has the Department's implementation experience with WQBELs been over the last 10-year period? How many permittees have WQBELs and for which parameters? For which receiving waters? If the Department is not going to mandate WQBELs through the TMDL process because that process is so resource intensive, then WQBELs should be imposed through the permit program. That appeared to be the philosophy of the previous commissioner of the Department in imposing phosphorus WQBELs without going through the TMDL process, to trigger site-specific WQBELs in accordance with the rules. (28)

RESPONSE: The Department is not in a position to conduct such a labor intensive analysis of the application of WQBELs in permits over the previous 10 years, as part of this rule adoption. The NJPDES/DSW permit program encompasses over 600 individual permits, each with various WQBEL parameters, and each having been renewed one or more times over this time frame.

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However, as required by both State and Federal rules the Department evaluates every permit for the need to impose WQBELs. Numerous permittees have received a variety of WQBELs in their permits over this time-frame. A few of the most common parameters that are limited through WQBELs include phosphorus, total recoverable copper and total recoverable zinc. Any parameter that is consistently detected in a facility's discharge at a level that would cause or show reasonable potential to cause an excursion of the SWQS at N.J.A.C. 7:9B is limited via a WQBEL. Site-specific WQBELs are imposed when required. When and if the Department or USEPA develops a TMDL, then that TMDL limit will supercede the site-specific WQBEL.

121. COMMENT: Chlorine Produced Oxidants (CPO) are highly toxic to marine organisms even at very low concentrations, resulting in both acute and chronic effects and has been found to reduce filtration and reproduction in rotifers, lobsters and fish. The commenter has consistently objected to the use of mixing zones in the development of WQBELs because of the harm mixing zones present to marine life. This is never more apparent than for CPO, as chlorine residual can be acutely toxic within minutes of exposure to fish and other aquatic life. The Department is urged to reject the use of mixing zones for chlorine and require ocean dischargers to meet SWQS for CPO at the end-of-the-pipe. (2, 22, 23, 29)

RESPONSE: N.J.A.C. 7:14A-13.5(b) and N.J.A.C. 7:9B-1.5(h) provide for the use of regulatory mixing zones as part of the cause analysis and the development of WQBELs. The regulations also state that the SWQS must still be met at the edge of the regulatory mixing zone. Since the governing regulations provide for use of regulatory mixing zones and dilution factors in the cause analysis and the determination of WQBELs, the Department consistently utilizes these in

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accordance with the regulations for all NJPDES/DSW permits. The Department will continue to use mixing zones in NJPDES/DSW where appropriate, in accordance with the regulations.

N.J.A.C. 7:14A-13.6 Calculation of water quality based limitations

122. COMMENT: The new rule to allow the use of CPO demand adjustments at N.J.A.C. 7:14A-13.6 when determining WQBELs for CPO is good for the environment and New Jersey, and has the full support of the Association of Environmental Authorities, as well as every community along New Jersey's coastline south of Sandy Hook. The Department has applied due diligence to this issue by recognizing the science developed by others such as the New York Department of Environmental Conservation (NYDEC) and insisting on site specific local verification. (11)

RESPONSE: The Department acknowledges the commenter's support.

123. COMMENT: The Department at N.J.A.C. 7:14A-13.6 indicates that it will develop a technical manual for CPO, which would outline when CPO demand is applicable, how to perform a CPO demand study, and how the results of such a study would be utilized in NJPDES permits. The Department is strongly encouraged to make the technical manual available for public review and comment prior to adopting it. The regulated community should be involved in the manual's development as it will be used to justify the CPO demand adjustment to determine WQBEL. (9)

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RESPONSE: Technical manuals and amendments or supplements to them adopted under the NJPDES permit program are subject to N.J.S.A. 13:1D-111. N.J.S.A. 13:1D-111d provides that adoption of a technical manual, or of revisions thereto, are not subject to the notice and publication requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Although not mandated to do so, the Department will provide an opportunity for public input once the CPO Technical Manual is drafted by both posting it on the Department's web site and publishing a notice soliciting comments in the DEP Bulletin. The Department anticipates that the Technical Manual for CPO will be completed within one year of the rules' being adopted.

124. COMMENT: The proposed allowance for the use of a CPO Demand Factor at N.J.A.C. 7:14A-13.6 will substantially increase the allowable concentration of acutely toxic CPO in effluent at the point of discharge and throughout the regulatory mixing zone. In fact, the CPO Demand Factor currently accepted by the Department and included in NJPDES permits of members of the New Jersey Coastal Group Facilities is 90.9 percent. The two studies cited by the Department as support for the proposed allowance of a CPO Demand adjustment when determining WQBEL for CPO are inappropriate and insufficient. The New York Department of Environmental Conservation (NYDEC) study was limited to discharges into freshwater streams, which represent ambient conditions that are substantially different than marine waters. The New Jersey Coastal Group Facilities' CPO Demand Study consisted almost exclusively of samples collected during periods of relatively high ocean temperatures (when CPO Demand is at its maximum), with the exception of two sample dates in November. No sampling was conducted from December through April, when ocean water temperatures are at their lowest and CPO Demand rates have been shown to be substantially lower compared to summer months. It is also

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not clear from the Final Report of the CPO Demand Study whether laboratory tests were actually conducted at ambient ocean temperatures, or whether data such as pH, turbidity, and organic content were taken into account. All of these factors will impact the rate of CPO demand. The CPO Demand Factor equations generated by this study (and accepted for use by the Department) do not include any of these important variables. In addition, the CPO Demand Study did not appear to include any biological data to support the theory that CPO demand will eliminate toxicity of CPO. Without biological studies on the impacts of different CPO concentrations during different times of the year, it is impossible to determine whether the increased CPO Demand rates during summer months (as reported by the New Jersey Coastal Group Facilities) will be enough to eliminate the substantial metabolic impacts of high temperature and CPO exposure to aquatic organisms within the mixing zone. For all of the reasons listed above, and considering the significant toxicity of CPO to aquatic organisms, the Department's decision to allow ocean dischargers to utilize a CPO Demand Factor is inappropriate. (2, 22, 23, 29)

RESPONSE: The CPO Demand Factor that the commenter is referring to was applied only to three dischargers (the Northern, Central and Southern facilities of the Ocean County Utilities Authority (OCUA)). These facilities already had currently effective effluent limitations for CPO at the time the Department determined the need to provide an allowance for CPO Decay/Demand for ocean dischargers. The earlier method of developing a CPO Demand Factor was similar to the CPO Decay Factor applied in most ocean discharge permits. This method retained the existing WQBELs, but allowed adjustment of the measured value to account for CPO Demand, in addition to CPO Decay. The current calculation method utilized by the Department actually derives an appropriate WQBEL by taking into account CPO Demand.

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The CPO Demand factors in the final permit actions for the OCUA Southern (NJPDES permit NJ0026018) and Northern (NJPDES permit NJ0028142) facilities are 71.8 percent and 90.8 percent, respectively. The CPO Demand factor proposed in the draft permit action for OCUA Central (NJ0029408) was 73.0 percent. The Department assumes that the CPO Demand factor of 90.9 percent referenced by the commenter is that in the OCUA Northern permit (where a value of 90.9 percent is identified on page 11 of the fact sheet). However, the correct value that is identified in the final permit is 90.8 percent. With the current method of calculation, used in permits issued after the three noted permits, CPO Demand Factors are not represented as a percent, but as a series of equations that derive the appropriate dilution, immediate CPO demand, subsequent CPO demand, and the mass of CPO lost to subsequent CPO demand during a time interval. These equations are used to develop a wasteload allocation (WLA) that meets the CPO Surface Water Quality Criteria for ocean waters at the end of the mixing zone. That WLA then becomes the applicable limit in the permit.

The only adjustment that the permittee can perform to the sample value for CPO is done by way of a CPO Decay Factor, which allows adjustment of the sample for CPO decay in the effluent while it travels in a long outfall pipe. This is also not done as a percent, but by utilizing an equation that takes into account decay rate and time of travel through the outfall. Since the Department's current methodology utilizes the Surface Water Quality Criteria for the receiving water of the individual discharge, the fact that the receiving water is marine is automatically accounted for.

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The Department is still refining the procedures and study requirements to be utilized in the future regarding CPO Demand and Decay Factors and will evaluate the need for sampling during winter months, accounting for ambient ocean temperatures and pH, and accounting for turbidity levels during development of the CPO Technical Manual.

N.J.A.C. 7:14A-13.16 Point of compliance for effluent limitations

125. COMMENT: The Department should make the CPO Technical Manual available for public comment and review through the rule making process. (9)

RESPONSE: See Response to Comment 123 regarding technical manual development and issuance.

126. COMMENT: The SWQS at N.J.A.C. 7:9B-1.5(h)1 provide very specific requirements that must be met for the allowance of mixing zones, which include that significant mortality does not occur to free swimming or drifting organisms based on meeting an acute Whole Effluent Toxicity (WET) effluent value of LC 50 \geq 50 percent. In accordance with N.J.A.C. 7:14A-13.16(a)6, the Department has allowed NJPDES permittees that discharge into the Atlantic Ocean to collect effluent samples for WET testing at a location prior to chlorination. Therefore, these permittees cannot use these acute WET results to “assure that significant mortality does not occur to free swimming or drifting organisms” from exposure to CPO (N.J.A.C. 7:9B-1.5(h)1). What, if any, bioassays or other relevant organismal-based studies have these ocean dischargers conducted to make the determination that their mixing zone for CPO does not cause significant

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mortality to free swimming or drifting organisms? The Department must require dischargers that want to utilize a CPO Demand Factor to first conduct bioassays or other relevant organismal-based studies on the actual end-of-pipe effluent, in order to assure that no significant mortality to free swimming or drifting organisms is occurring. (2, 22, 23, 29)

RESPONSE: For several reasons, there is no practical method to accurately depict the toxicity of chlorine within the effluent at its point of discharge. Due to the extreme length of these outfalls and the ephemeral nature of chlorine, concentrations of such are expected to be greatly reduced before reaching the mixing zone. WET tests conducted on post-chlorinated effluent would not accurately represent the toxicity of the effluent that is being discharged. In addition, it would be impossible to obtain accurate effluent samples from outfalls that fall under this scenario, as pipes are submerged and samples would be contaminated with ambient ocean water. Furthermore, the Department believes that pre-chlorination WET tests in conjunction with Water Quality Based Effluent limitations on chlorine produced oxidants are sufficient to protect the receiving waters within the mixing zone, and no significant mortality will occur.

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

127. COMMENT: The Department's proposed repeal of N.J.A.C. 7:14A-5 in its entirety and change from a WET effluent limitation (e.g., LC50 \geq 50 percent effluent) to an action level at N.J.A.C. 7:14A-13.18 is appropriate, will not further degrade receiving waters of the State and will provide clarity to permit requirements. (7)

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RESPONSE: The Department acknowledges the commenter's support.

128. COMMENT: The Department's proposal to impose the LC50 \geq 50 percent effluent standard as an action level triggering the need for toxicity reduction, rather than as an effluent limitation is supported. In repealing the WET standard of LC50 \geq 50 percent and instead imposing this value as a trigger (action level) at N.J.A.C. 7:14A-13.18 to determine the need for toxicity reduction, the Department is recognizing that water quality based WET effluent limitations are protective of water quality. Point estimates such as the LC50 \geq 50 percent criterion are not well suited for use as enforceable permit limits. As stated by USEPA, the proper use of point estimates is to gauge effluent variability and to determine the need for and properly evaluate permit limits for toxicity, rather than directly as limits since, under various circumstances, the confidence interval associated with such point estimation techniques can not be produced or is unreliable. The Department's decision to repeal N.J.A.C. 7:14A-5.3(a) is quite sound and well justified. (12, 24)

RESPONSE: The Department acknowledges the commenter's support.

129. COMMENT: The proposed amendments to N.J.A.C. 7:14A-5.3(a) and 13.18(f) are in clear violation of the antibacksliding rule at N.J.A.C. 7:14A-13.19. Proposed N.J.A.C. 7:14A-13.18(f)i and ii will allow for the elimination of effluent limitations when a permit is modified, renewed, or reissued. An action level of LC50 \geq 50 percent is clearly not as stringent as an effluent limitation of LC 50 \geq 50 percent and in fact, changing to an action level would eliminate the limitation altogether. Similarly, this rule change is in direct violation of Federal law at 33

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U.S.C. § 1342(o). Therefore, to avoid violating State and Federal law, the limitation for acute WET of $LC50 \geq 50$ percent must remain. (2, 22, 23, 29)

RESPONSE: The Department disagrees that the proposed amendments to N.J.A.C. 7:14A-5.3(a) and 13.18(f) in any way violate the antibacksliding provisions at 33 U.S.C. 1342(o) of the Federal Clean Water Act or N.J.A.C. 7:14A-13.19. The antibacksliding provisions are applied during the development of a NJPDES permit, on a case-by-case basis. They do not apply to rule provisions. The acute whole effluent toxicity standard is a State minimum treatment requirement that was established in the early 1980s to address the occurrence of whole effluent toxicity before the regulatory framework was established to calculate site-specific water quality based limitations for whole effluent toxicity.

When developing a NJPDES DSW permit the Department will determine, taking into account the particular circumstances applicable to that permit and its history, if there is cause or reasonable potential to impose an acute or chronic water quality based whole effluent toxicity limit (WET WQBEL). The action level of an $LC50 \geq 50$ percent under N.J.A.C. 7:14A-13.18(f) could be included in a permit in two circumstances: 1) if it is more stringent than the WET WQBEL, in which case both the WET WQBEL and the action level would be included in the permit; and 2) where there is no cause or reasonable potential to impose a WET WQBEL, in which case the action level but no WET WQBEL would be included in the permit.

The Department believes that an action level will be equally protective of water quality as an effluent limit in this circumstance, since the violation of either a WET WQBEL or the action level carries with it the same enforceable permit condition to conduct toxicity reduction evaluation (TRE) studies, in order to correct the source of the toxicity should the requirement be

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not crossed referenced in the NJPDES program requirements, to avoid confusion. The Chapter Table of Contents, which is not part of the rules but is provided as a courtesy by the publisher of the New Jersey Administrative Code, indicates that a request for an adjudicatory hearing for a permit is found at N.J.A.C. 7:14A-17.2 and a request for a hearing for a treatment works approval is found at N.J.A.C. 7:14A-22.24. Since the TWA Program requirements have always been found in a separate subchapter and contain their own provisions pertaining to hearing requests in N.J.A.C. 7:14A-22.24(a), no cross reference or caveat is needed at N.J.A.C. 7:14A-17.1(a).

Subchapter 19

Pretreatment Program Requirements for Local Agencies

General

131. COMMENT: Once a delegated local agency (DLA) has incorporated the optional Federal streamlining provisions into its Rules and Regulations, it may feel obligated to implement all of the Federally optional pretreatment streamlining changes adopted by New Jersey and may not feel that it can deny an industry the ability to reduce oversight, reduce sampling, or provide equivalent limits. Will the Department require the DLA to utilize those provisions? Once the provision has been utilized will the Department require that the provision be consistently applied to all indirect users?

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At N.J.A.C. 7:14A-19.3(e), the Department proposes to make the preceding Federally optional pretreatment streamlining changes mandatory for inclusion into control authorities' legal authority. Control authorities in New Jersey should have the option of choosing not to incorporate the streamlining changes into their pretreatment programs. (8, 10)

RESPONSE: As stated in the proposal Summary, 40 N.J.R. at 1494, specifying which of the non-mandatory streamlining rule changes need to be incorporated into a DLA's rules and regulations will help ensure that the pretreatment program is implemented in a consistent manner throughout the State. The proposal was developed with and reviewed by the Pretreatment Task Force, which is comprised of representatives from industries, delegated and non-delegated local agencies, environmental associations, and Department personnel. The Department is requiring that DLAs have the authority to implement these particular provisions at N.J.A.C. 7:14A-19.3(e).

Once incorporated into a DLA's rules and regulations, these provisions would apply to users that meet the specific criteria, and users would have to initiate the request to the control authority for action. For example, if a user seeks a sampling waiver, it must comply with the criteria under 40 CFR 403.12(e)(2)(i) through (vii), and send a letter to the control authority seeking to have the waiver applied. The control authority need not seek out users to which the criteria may apply. Each streamlining provision has specific criteria that must be met by the user before the DLA can apply that particular provision to the user. N.J.A.C. 7:14A-19.3(e) may not be applicable or appropriate to all indirect users and should be applied by a DLA only where the specified criteria are met.

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N.J.A.C. 7:14A-19.3

Industrial pretreatment program requirements for all local

agencies

132. COMMENT: Small programs may not have sufficient resources to review and provide oversight for some of the streamlining provisions, such as the use of equivalent mass limits. (10)

RESPONSE: USEPA noted in its final rule adoption that the effect of the streamlining regulations "...is to achieve better environmental results at a lower cost by allowing Control Authorities to better focus oversight resources where they will do the most good" (See 70 Fed. R. 60136, October 14, 2005), and that the final adoption action "...will reduce the regulatory burden on both Industrial Users and State and POTW Control Authorities without adversely affecting environmental protection and will allow Control Authorities to better focus oversight resources on Industrial Users with the greatest potential for affecting POTW operations or the environment." (See 70 Fed. R. 60134, October 14, 2005.) The streamlining regulations indicate that some of the regulatory changes will impose short-term increases in burden on POTWs that elect to exercise some of the streamlining flexibility. However, USEPA noted, "...when considered over a longer time period, these costs are outweighed by the expected benefits of the provisions." (See 70 Fed R. 60188, October 14, 2005). Implementation of equivalent mass limits is one provision of the streamlining regulations that USEPA noted will result in short-term burden. When other provisions are considered, however, the net result should be decreased costs and burden, as noted by USEPA.

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133. COMMENT: As required at 40 CFR 403.18, control authorities that make modifications to the industrial pretreatment programs must submit “a modified program description (see 40 CFR 403.9(b)).” In other words, pretreatment programs are not required to include only the changes to legal authority, but also to include any modifications to the program’s implementation procedures that may be necessitated by the changes. New Jersey’s rule change should be clearer in stating that programs must also provide the implementation mechanisms in proposing to adopt streamlining changes. (10)

RESPONSE: The Department did not specify in its proposal that changes completed in response to the streamlining regulations are substantial modifications in accordance with 40 CFR 403.18. In the streamlining adoption document, USEPA concluded that “all of the changes related to [the streamlining] rule may be treated as non-substantial if the changes to the POTW’s local ordinance to incorporate the changes directly reflect the Federal requirements.” (See 70 Fed. R. 60187). N.J.A.C. 7:14A-19.3(e) specifies that DLAs include the streamlining requirements into their rules and regulations consistent with specific provisions of 40 CFR Part 403. Because USEPA has deemed these changes non-substantial, the Department has determined that, in accordance with 40 CFR 403.18(c), submission of the modified sewer use ordinance or rules and regulations as required under N.J.A.C. 7:14A-19.3(f) is sufficient.

134. COMMENT: The Department should clarify N.J.A.C. 7:14A-19.3(e)5 with more specific references for the conditions for non-significant categorical indirect users. The section should be revised to note “...and oversight conditions consistent with 40 CFR 403.3(v), 403.8(f)(2)(v)(B), and 403.12(q).” (10)

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RESPONSE: The Department is modifying N.J.A.C. 7:14A-19.3(e)5 on adoption to include the more specific cross references from the Federal regulations, for further clarification.

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

135. COMMENT: N.J.A.C. 7:14A-19.6(j)2 could be interpreted to be less stringent than the Federal regulation at 40 C.F.R. 403.6(c)(5)(ii)(C). As worded, it is not clear that the trigger to require a reassessment of equivalent mass limits is the notification of a revised production rate since later on in the sentence it states that limits be recalculated as necessary. The sentence may be clarified by rewording as follows: “2. Shall reassess the equivalent mass limit upon notification of a revised production rate and recalculate the limit as necessary to reflect changed conditions.” (10)

RESPONSE: The Department is modifying N.J.A.C. 7:14A-19.6(j)2 on adoption to be consistent with 40 C.F.R. 403.6(c)(5)(ii)(C), as suggested by the commenter.

136. COMMENT: Proposed N.J.A.C. 7-14A-19.6(j)3ii appears to contain a reference error. The language states, “The actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to (d) above.” The reference to (d) includes provisions related to information required on the Clean Water Enforcement Act Annual Report, and thus appears incorrect. (8)

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RESPONSE: The Department agrees and is correcting the cross reference at N.J.A.C. 7:14A-19.6(j)3ii relative to the prohibition of the use of dilution as treatment.

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

137. COMMENT: Proposed N.J.A.C. 7:14A-2.12(c) requires that all studies conducted for the purposes of implementing the requirements under N.J.A.C. 7:14A be performed in accordance with a Department approved Work/QAPP that has been approved by the appropriate designated Office of Quality Assurance representative. N.J.A.C. 7:14A-19.7(b) requires a work plan to be submitted prior to local limits development. It is unclear whether the DLA is to submit the work plan to the Office of Quality Assurance or the Bureau of Pretreatment and Residuals or both. (8)

RESPONSE: Former N.J.A.C. 7:14A-19.7(b) is recodified as N.J.A.C. 7:14A-19.7(d), which requires that the work plan be submitted to the Department for review and approval. As stated in the summary of N.J.A.C. 7:14A-2.12, all studies conducted for purposes of implementing N.J.A.C. 7:14A must be performed in accordance with a Work/QAPP. With the exception of circumstances requiring immediate action, no projects involving environmental data collection activities can be performed by or for the Department until after a Work/QAPP covering those activities has been approved by the appropriate/designated Office of Quality Assurance. For purposes of complying with N.J.A.C. 7:14A-19.7(d), work plans must be submitted to the Bureau of Pretreatment and Residuals (BPR). The BPR will coordinate with the Office of Quality Assurance relative to review of those submittals.

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138. COMMENT: N.J.A.C. 7:14A-19.7(b) requires a work plan to be submitted prior to local limits development. Given that the work plan requires Department approval, the Department may want to consider revising the language to allow the local limit re-evaluation submittal, where a head works analysis is required, six months following Department approval of the plan. This will allow sufficient time for a revised plan to be submitted for approval, and for the work plan to be implemented should the Department require a revision to the initial submittal. (8)

RESPONSE: The requirement of N.J.A.C. 7:14A-19.7(d) (formerly N.J.A.C. 7:14A-19.7(b)) relative to local limit re-evaluation is different from those relative to local limit development. The local limit re-evaluation criteria under N.J.A.C. 7:14A-19.7(g) do not require additional sampling of the treatment plant and, therefore, would not necessitate the use or development of a work plan.

However, if the local limit evaluation finds that existing limits need modification or new limits need to be developed, then the DLA would need to proceed to the next step and develop local limits, as specified under N.J.A.C. 7:14A-19.7(a). This activity would require the development and submission of a work plan by the DLA. Rather than mandate a time frame through the regulations, the Department will work with the DLA on a case-by-case basis on the submission time frame for the local limits.

139. COMMENT: Proposed N.J.A.C. 7:14A-19.7(g)6 requires a statement from the local agency as to whether or not local limits need to be revised based on the information gathered under paragraphs (e)1 through 5. This citation should reference paragraphs (g)1 through 5. (8)

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RESPONSE: The Department agrees and is modifying N.J.A.C. 7:14A-19.7(g)6 on adoption to correct the cross reference.

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

140. COMMENT: The proposed modification at N.J.A.C. 7:14A-19.8(b)2 deletes a reference that must be retained. The reference to “(iii)” must remain since 40 CFR 403.8(f)(1)(iii) is the provision requiring that significant industrial users be issued permits. (10)

RESPONSE: The Department agrees and on adoption is modifying N.J.A.C. 7:14A-19.8(b)(2).

141. COMMENT: Proposed N.J.A.C. 7:14A-19.8(d)2i requires a DLA to include procedural requirements that are consistent with N.J.A.C. 7:14A-15.10 when issuing permits. Is it the Department’s intention to approve all public notices prior to publishing? Is it the Department’s intention to have the DLA mail a copy of the approved public notice to all of the agencies/persons listed at N.J.A.C. 7:14A-15.10(e)1? If the Department does not intend to require mailing to these entities, it should state the specific entities to which the DLA is to distribute copies of the public notice. (8)

142. COMMENT: Proposed N.J.A.C. 7:14A-19.8(d)2i requires a DLA to include procedural requirements that are consistent with N.J.A.C. 7:14A-15.10 when issuing permits. Is it the

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Department's intent that a DLA mail a copy of the permit fact sheet, statement of basis and, upon request, the permit application and the draft permit to the entities identified under N.J.A.C.

7:14A-15.10(e)1? Is it the Department's intent to require a DLA to publish in the DEP Bulletin all permit modifications using the criteria at N.J.A.C. 7:14A-15:10(e)3? (8)

143. COMMENT: Proposed N.J.A.C. 7:14A-19.8(d)3 requires a DLA to have in its Sewer Use Ordinance (SUO) or Rules and Regulations procedural requirements for modification, revocation and reissuance, renewal, suspension or revocation of an industrial pretreatment program permit consistent with N.J.A.C. 7:14A-16.3 through 16.6. Is it the Department's intention to have a DLA set up a procedure for an expedited permit renewal as indicated in N.J.A.C. 7:14A-16.3(h)? Is it the Department's intent to require DLA permit applications to show evidence of a Water Quality Management Plan approval or favorable consistency determination has been applied for and received in accordance with N.J.A.C. 7:14A-4.3(a)12? (8)

144. COMMENT: Proposed N.J.A.C. 7:14A-19.8(d)5 requires a DLA to have appeal procedures consistent with N.J.A.C. 7:14A-17. Will the DLA's decision regarding an adjudicatory hearing request or a request for a stay be considered a final agency action as in N.J.A.C. 7:14A-17.1(b)? If so, does the permittee or the person of record appeal to the Department using the same criteria or is the appeal to the Office of Administrative Law? (8)

RESPONSE TO COMMENTS 141 THROUGH 144: The Department is not adopting the amendments to N.J.A.C. 7:14A-19.8(d)2 and 19.8(d)3 as proposed. Existing N.J.A.C. 7:14A-

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19.8(d)2 and 19.8(d)3 is readopted and will continue to apply. Further, the Department is not adopting N.J.A.C. 7:14A-19.8(d)5 or 19.8(e).

On further consideration, the Department determined that the proposed new and amended rules included some cross-references that were overly broad, and would result in activities or mandates not originally intended to be placed upon a DLA. For example, under N.J.A.C. 7:14A-15.10(e), a DLA would be required to expand upon its public notification by mailing copies of permits to specific entities, regardless of whether those entities are impacted in any way by the issuance of that permit. Under N.J.A.C. 7:14A-16.3(h), a DLA would be required to establish procedures for an expedited permit renewal. The Department did not intend to require that such procedures be developed at the local level, nor do DLAs want or need to establish such procedures for the issuance of indirect user permits. DLAs do not have to follow the Department's permit and administrative procedures, provided that they develop their own procedures that comply with the relevant statutory and Federal regulatory requirements, as well as the industrial pretreatment program (IPP) as approved, and the requirements of N.J.A.C. 7:14A-19 and 21. It was not the Department's intention that those portions of the NJPDES rules that detail the Department's permit procedures would govern the actions of a DLA.

145. COMMENT: Proposed N.J.A.C. 7:14A-19.8(d)4 does not allow a DLA to relax effluent limits contained in a permit unless the permittee has complied with N.J.S.A. 58:10A-6k and the procedural requirements for a permit appeal. Where a DLA's Rules and Regulations allow an indirect user to apply for a variance limit for certain pollutants and the permittee requests a

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variance for said pollutant during the permit cycle as a modification, would the DLA be required to follow the permit appeal process specified in N.J.A.C. 7:14A-19.8(d)5? (8)

RESPONSE: A DLA is not required to follow the permit appeal process when issuing a variance. Such a variance would be a major permit modification and the DLA would follow N.J.A.C. 7:14A-19.10(e). N.J.A.C. 7:14A-19.8(d)4 specifies the criteria that must be met before a DLA can relax an effluent limit in an IPP permit. This provision requires, as specified under N.J.S.A. 58:10A-6k, that all permit fees, penalties, or fines be paid, or that the user agree to an established schedule to pay such fees, penalties or fines.

Proposed N.J.A.C. 7:14A-19.8(d)5 specified the procedural requirements for permit appeals. These are separate and distinct requirements. The Department is not adopting N.J.A.C. 7:14A-19.8(d)5; therefore, a DLA must allow for a permit appeal following the process it has established and specified in its Rules and Regulations or Sewer Use Ordinance. See the Response to Comments 141 through 144 above, which explains the Department's decision not to adopt N.J.A.C. 7:14A-19.8(d)5.

N.J.A.C. 7:14A-19

Appendix A, Enforcement Response Plan

146. COMMENT: In the Enforcement Response Plan in Appendix A of N.J.A.C. 7:14A-19, under the Discharge Limit Violation section, a notice of violation (NOV) for a Serious Violation is to be issued within six months. This is incorrect and instead should be 60 days. (8)

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RESPONSE: The Department agrees and is modifying the language on adoption under the Discharge Limit Violation section, in the time frame column. This time frame is now consistent with all NOV-issuance time frames noted elsewhere in the Enforcement Response Plan, specifying 60-days when the enforcement response requires issuance of an NOV.

Subchapter 20

Standards for the Use or Disposal of Residual

General

147. COMMENT: The Department should complement its efforts to promote the beneficial use of waste derived resources by funding studies to investigate the fate and transport of a more comprehensive list (not just select indicators) of waste related compounds in both reclaimed water for beneficial reuse (treated effluent) and residual. (27)

RESPONSE: The Department routinely reviews new information and periodically funds, supports or participates in studies to ensure that its regulations are protective of public health and the environment. In addition, the USEPA has a research program to develop and use new assays to test for and improve our understanding of hazards posed by new and emerging chemicals, and they are responding to emerging contaminants and hazards within this framework. For example, the Clean Water Act requires USEPA to review existing sewage sludge regulations every other year to identify additional toxic pollutants that might need regulation. In December 2003, the USEPA released a final action plan that included 14 projects encompassing regulatory and non-

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regulatory components. Examples include a Targeted National Sewage Sludge Survey of select chemical pollutants, and analyzing emerging contaminants (including flame-retardants, antibiotics, drugs, steroids and hormones).

Because the concentrations of emerging contaminants reported in residual and treated effluent are low, the risks to human and ecosystem health from their beneficial use are also expected to be very low. A 2005 literature review on the issue of trace contaminants concluded that “because of the capacity of land-based systems to buffer the potential effects of waste-associated organic contaminants and to contribute to their assimilation into the soil, the majority of studies conclude that they pose little or no risk to the environment when applied appropriately.” (Michael Overcash et al., *Beneficial Reuse and Sustainability: The Fate of Organic Compounds in Land Applied Waste*, 34 *J. Environmental Quality* 29, 30 (2005)). For further discussion of emerging contaminants see Response to Comment 155.

148. COMMENT: The Department should place no new agronomic restrictions on exceptional quality residual so that this material can effectively compete with other fertilizer products. (11, 17)

RESPONSE: The Department has adopted no new agronomic restrictions on exceptional quality residual. The definition of agronomic rate found at N.J.A.C. 7:14A-1.2 is readopted without amendment. The requirement at N.J.A.C. 7:14A-20.7(g) that bulk residual be applied at the agronomic rate is also readopted without amendment. N.J.A.C. 7:14A-20.7(h)1, which describes requirements applicable to exceptional quality residual, is readopted with no new agronomic

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restrictions. For a discussion of existing agronomic requirements related to EQ residual see

Responses to Comments 163 through 165.

149. COMMENT: The success of reusing residual depends a great deal on marketability. While the commenter appreciates the Department's intent to encourage the reuse of exceptional quality residual for land application, new rule caveats will jeopardize current ongoing reuses and future initiatives for residual reuse. (11)

RESPONSE: Except in the area of residual blending and distribution, the Department adopted few conditions in N.J.A.C. 7:14A-20 that could be construed as changing the status quo with regard to the marketing of exceptional quality (EQ) residual. Most importantly, at N.J.A.C. 7:14A-20.2(b) and (c) the Department maintained exemptions critical to marketing EQ materials. The Department did clarify at N.J.A.C. 7:14A-20.7(h)1iv that marketing literature must conform to the Department's applicable NJPDES Permit Technical Manual. The requirement to develop literature and the Technical Manual guidance are not new; however, the Department made it clear that marketing literature must conform to the Technical Manual.

The Department added N.J.A.C. 7:14A-20.7(j)3 to require preparers of EQ residual to keep daily records of bulk deliveries, but this does not inhibit access to markets. This requirement ensures that necessary information is available to prove responsible marketing of EQ residual and is consistent with permits currently issued by the Department. Permittees keep similar records as normal business practice in order to facilitate product transportation, delivery and billing.

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The most significant new requirement is new N.J.A.C. 7:14A-20.12, which requires permitting of residual blending and distribution operations that store EQ materials above specified quantities. This is necessary because large blending and distribution operations store EQ residual and blended products on the ground for long periods of time prior to offsite distribution, with a concomitant risk of nutrient loss and nuisance generation. Operators can avoid regulation under N.J.A.C. 7:14A-20.12 by maintaining stockpiles below the adopted thresholds or by maintaining all phases of handling, storing and blending in a completely enclosed setting. N.J.A.C. 7:14A-20.12 applies only to sites handling, storing or blending material for subsequent off-site distribution. Therefore, this section does not inhibit marketing to sites where EQ materials are stored or blended immediately prior to on-site land application. For a discussion of agronomic requirements which affect marketability of EQ residual see Responses to Comments 148 and 163 through 165. For further discussion of the new requirements for residual blending and distribution operations see Response to Comment 170.

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

150. COMMENT: At proposed N.J.A.C. 7:14A-20.1 it is unclear if blended or composted agricultural materials are considered “residual,” and thus subject to the requirements of this section. Clarifying language should be added to the definition of “residual” to distinguish between sanitary solid waste, sludge, and agricultural soil amendments that result from composting. (20)

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RESPONSE: The NJPDES definition of residual is readopted without amendment at N.J.A.C.

7:14A-1.2 and states that “residual” means:

a solid waste that consists of the accumulated solids and associated liquids which are by-products of a physical, chemical, biological, or mechanical process or any other process designed to treat wastewater or any other discharges subject to regulation under the State Act. For purposes of this chapter, residual includes, but is not limited to, marketable residual product, sludge and sewage sludge. Residual excludes screened vegetative waste and grit and screenings.

Blended or composted agricultural materials that do not include residual (as defined at N.J.A.C. 7:14A-1.2) are not subject to the requirements of N.J.A.C. 7:14A-20.

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

151. COMMENT: The Department proposes at N.J.A.C. 7:14A-20.6 and 20.9 that Phragmites reed bed residual generators conduct an environmental assessment of the site where the reed bed residual is disposed. If the disposal site is owned by an entity other than the generator, then the disposal site owner, which may include an out of State site owner, should be required to conduct the environmental assessment. (4)

RESPONSE: N.J.A.C. 7:14A-20.6 does not require reed bed residual generators to conduct an environmental assessment for a site where reed bed sludge is disposed, regardless of ownership.

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N.J.A.C. 7:14A-20.9 addresses, among other things, application requirements for a permit to operate a reed bed. One of these requirements is to comply with N.J.A.C. 7:14A-20.6 (Environmental Assessment) as it relates to construction and operation of the reed bed itself.

The owner of a proposed reed bed residual disposal site, by comparison, must comply with all permitting requirements associated with that proposed activity, which could include the requirement to submit an environmental assessment under N.J.A.C. 7:14A-20.6, if the proposed activity is regulated under N.J.A.C. 7:14A-20. For further discussion of Environmental Assessment requirements see Response to Comment 152.

152. COMMENT: Delete the environmental assessment waiver proposed at N.J.A.C. 7:14A-20.6(b), since continued review and understanding of a project's impacts, whether it is creating new infrastructure or not, is important for protecting the environment. (19)

RESPONSE: The Department disagrees. The purpose of the environmental assessment under N.J.A.C. 7:14A-20.6 is to evaluate the location where a residual will be processed. Processing of residual involves infrastructure and activity that require review against local land use plans. The installation and operation of processing equipment also has the potential for significant environmental impact if not properly controlled.

N.J.A.C. 7:14A-20.6(b)1 waives an environmental assessment at the site where residuals are land applied, since the environmental impact of land-applying residuals has already been addressed through USEPA risk assessments. The USEPA effort to develop 40 CFR Part 503, on

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which N.J.A.C. 7:14A-20 is based, is scientifically vigorous and conservative in its assumptions regarding transport and uptake of residual components. In addition, both EQ and non-EQ residual must be applied at the agronomic rate and, as such, are a substitute for commercial fertilizer or manure. The act of applying residual to land does not change the fundamental nature of the land to which it is applied. A farm fertilizing crops remains a farm, with or without the use of residual as a fertilizer, and does not require review against local land use plans. If the residual to be land applied is non-exceptional quality, then a Letter of Land Application Management Approval (LLAMA) must be obtained. The LLAMA process includes a review of the suitability of the proposed site, establishment of appropriate setbacks and other site controls, as necessary, and opportunity for local input.

N.J.A.C. 7:14A-20.6(b)2 waives the environmental assessment where no additional infrastructure is proposed. An example is an existing domestic treatment works that already has anaerobic digesters producing a high quality, Class B pathogen reduced sewage sludge. If the operator applies for a permit modification to land apply the residual being generated no changes would take place at the treatment works which could potentially impact the environment or conflict with local land uses. Therefore, an environmental assessment is unnecessary.

N.J.A.C. 7:14A-20.6(b)3 waives the environmental assessment for activities that qualify for authorization under a residual use or disposal general permit. The Department develops general permits for discharge categories that require similar operating and monitoring conditions and, in doing so, determines that facilities that operate in compliance with the conditions of a general permit are unlikely to cause negative environmental impact. Requiring operations that

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qualify for authorization under a general permit to prepare and submit an environmental assessment would not lead to more protective conditions since the conditions of the general permit apply uniformly to all that qualify for authorization. Facilities that exceed the design capacities and standards of a general permit are not eligible for general permit authorization and must, instead, apply for an individual permit where the requirement to submit an environmental assessment remains. Applicants for authorization under a general permit must still obtain all local approvals required for site development and construction related to the activity for which a general permit is sought.

153. COMMENT: N.J.A.C. 7:14A-20.6(b)3 makes reference to N.J.A.C. 7:14A-6.13; however Subchapter 6 appears to end at N.J.A.C. 7:14A-6.10(j). (20)

RESPONSE: No amendments were proposed to Subchapter 6 following N.J.A.C. 7:14A-6.10(j). The subchapter continues through N.J.A.C. 7:14A-6.17. The text of rules that the Department proposed to readopt without change were not reproduced in the New Jersey Register. Rather, as stated at 40 N.J.R.1551, the text of the rules proposed for readoption could be found at N.J.A.C. 7:14A.

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

154. COMMENT: As is required at N.J.A.C. 7:14A-22.8(a)11 for Treatment Works Approvals, the Department should amend proposed N.J.A.C. 7:14A-20.7(a) upon adoption to require the submission of a Pinelands Commission approval or Certificate of Filing with an application for a

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permit to prepare residual for land application in the Pinelands Area or for any activity involving the land application of sewage derived residual in quantities in excess of 100 cubic yards to any Pinelands Area parcel of land. (27)

RESPONSE: As required by N.J.A.C. 7:14A-6.2(a)7, a NJPDES permit shall not authorize any infringement of Federal, State or local law or regulations. This includes the requirements of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50) cited by the commenter. It would be imprudent for the Department to reiterate throughout NJPDES specific requirements of the Comprehensive Management Plan, which could be modified by the Pinelands Commission at a later date. It is also unnecessary since an applicant for a permit under N.J.A.C. 7:14A-20 must submit an administratively complete application, which is described in the Department's "Application Completeness Checklist/Discharge of Residuals." This checklist states that facilities located in the Pinelands Region must submit a Certificate of Filing for the activity or a determination from the Pinelands Commission that a Certificate of Filing is not required. This is a requirement for applicants seeking to prepare residual for land application and for sites where non-exceptional quality residual is proposed to be applied to the land.

Since material proven to be exceptional quality (EQ) residual may be distributed without further Departmental approval, no application is submitted to the Department for sites where it is proposed to be land applied. However, N.J.A.C. 7:14A-20.7(h)1iv requires that EQ residual shall be labeled or accompanied by instructional literature conforming to the Department's applicable NJPDES Permit Technical Manual and the labeling requirements established by the New Jersey Department of Agriculture. Pursuant to the Technical Manual for Residuals

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Management, such literature must state, “The use of this product in the Pinelands region of New Jersey may be regulated by N.J.A.C. 7:50. Contact the Pinelands Commission at (609) 894-9342 for more information.”

155. COMMENT: Proposed N.J.A.C. 7:14A-20.7(a)1ii adds Radium 226 and Radium 228 (and Water Extractable Phosphorus) to the list of chemical constituents to be tested for in residual proposed for land application. For the same reason, the Department should expand the list of analytes to include select waste indicator compounds which are representative of the hormones, flame retardants, pesticides, personal care products, endocrine disruptors, pharmaceutical and other chemicals (collectively known as emerging contaminants). (27)

RESPONSE: Sewage sludge generated or intended for land application in New Jersey is monitored for up to 132 metals, nutrients, volatile and semi-volatile organic compounds, acid extractables, pesticides and PCBs under the Sludge Quality Assurance Regulations (N.J.A.C. 7:14C). Analytes monitored under N.J.A.C. 7:14A-20.7(a) include pollutants for which sufficient information has already been gathered to conclude that standards for land application may be warranted in a permit. Radium 226 and Radium 228 were added to the monitoring requirements at N.J.A.C. 7:14A-20.7(a) after USEPA funded a several year study in which the Department collected data on naturally occurring radionuclides in sewage sludge. Radionuclides were also evaluated on a national level by the Interagency Steering Committee on Radiation Standards (ISCORS), Sewage Sludge Subcommittee, composed of representatives from the USEPA, Nuclear Regulatory Commission, Department of Energy, Department of Defense, State of New Jersey, the city of Cleveland and the County of Middlesex, New Jersey. Based on

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information obtained from these efforts, the Department concluded that sufficient data has been obtained to justify the requirement to test for Radium 226 and Radium 228 in order to determine whether a residual proposed to be land applied exhibits concentrations of radionuclides sufficient to trigger further regulation.

Emerging contaminants include a wide range of natural and man-made inorganic and organic chemicals, and other substances which, while sometimes detected, are not well understood in the environment. Ongoing assessment is required to better understand what exposure to these compounds means and if they do pose a risk. Detailed studies of the potential effects of emerging contaminants following land application of sewage sludge are generally not yet available. Until evidence exists that there is risk associated with a particular analyte at a level that can be reliably monitored in a sludge matrix using USEPA approved analytical methods, the Department has no basis for requiring monitoring. After sufficient data have been obtained, and when certified laboratory procedures are available for emerging compounds, the Department will determine if there is a need to propose amendments to the Sludge Quality Assurance Regulations and/or these rules to incorporate additional monitoring requirements.

For further discussion of emerging contaminants see Response to Comment 147.

156. COMMENT: The Department is proposing at N.J.A.C. 7:14A-20.7(a)1ii to require applicants for a NJPDES permit to prepare residual for land application to submit a dated analysis of the residual for water extractable phosphorus. However, the proposal does not appear

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to include any type of phosphorus calculations to enable this characterization to be prepared without completion of a nutrient management plan. (17)

RESPONSE: The Department is requiring a water extractable phosphorus (WEP) laboratory analysis on the residual product prepared for land application. (See N.J.A.C. 7:14A-20.7(a)1ii.) WEP analysis characterizes the water soluble fraction of phosphorus providing the Department with a residual product's potential for phosphorus loss in runoff. The WEP result will be used for development of a site specific nutrient management plan for sites where non-exceptional quality residual is proposed to be land applied (see N.J.A.C. 7:14A-20.7(a)3i(7) and 20.7(h)2vi) and as a component of instructional literature associated with the distribution of exceptional quality residual (see N.J.A.C. 7:14A-20.7(h)1iv).

157. COMMENT: It is unclear at proposed N.J.A.C. 7:14A-20.7(a)3i(7) whether the Department is requesting a copy of the farm's conservation plan when applying for a permit. (16)

RESPONSE: N.J.A.C. 7:14A-20.7(a)3i requires that applicants for a NJPDES permit to prepare non-exceptional quality residual apply for a Letter of Land Application Management Approval (LLAMA) for all potential land application sites identified at the time of NJPDES permit application. N.J.A.C. 7:14A-20.7(a)3i(7) requires that the LLAMA application include a copy of a conservation plan.

158. COMMENT: Conservation plans are confidential documents prepared by the Natural Resources Conservation District, Soil Conservation District or other technical service provider

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and should not be subject to submission to the Department as proposed at N.J.A.C. 7:14A-

20.7(a)3i(7). (16)

RESPONSE: The Department has required submission of conservations plans in association with its residual land application program for over 25 years. Any person intending to land apply non-exceptional quality residual to an agricultural site must be willing to provide this information. The person may assert a claim of confidentiality as allowed by and pursuant to N.J.A.C. 7:14A-2.11(g) and 18.3.

159. COMMENT: N.J.A.C. 7:14A-20.7(a)3i(7) should be modified to indicate that farm conservation plans approved by the local soil conservation district are not maintained at the district office, but are filed at the regional Natural Resources Conservation Service center. (20)

RESPONSE: The Department agrees. N.J.A.C. 7:14A-20.7(a)3i(7) is modified upon adoption to require submission of plans “certified by the County Soil Conservation District.”

Other modifications to N.J.A.C. 7:14A-20.7(a)3i(7) resulted from the Department's review of Comments 160 and 166.

160. COMMENT: Conservation plans prepared by Technical Service Providers meet Natural Resources Conservation Service (NRCS) standards and follow guidelines established by the NRCS for development of conservation plans de facto. Therefore, plans prepared by a person trained in nutrient management and conservation/erosion control planning should not be subject to the Department’s review or approval as proposed at N.J.A.C. 7:14A-20.7(a)3i(7). (16, 20)

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RESPONSE: The Department disagrees. In the adopted rule, the Department is allowing applicants the option to submit an equivalent conservation plan (developed by a person appropriately trained in such planning) directly to the Department for approval solely in relation to a request for a LLAMA. This option is provided in order to remove the existing reliance on the NRCS, since it is the Department's experience that the NRCS does not always have the resources to provide planning services for LLAMA applicants. N.J.A.C. 7:14A-20.7(a)3i(7) is modified upon adoption to clarify that such plans are approved by the Department solely for the purposes of N.J.A.C. 7:14A-20. See Responses to Comments 159 and 166 for a discussion of other modifications to N.J.A.C. 7:14A-20.7(a)3i(7) on adoption.

161. COMMENT: If, as proposed at N.J.A.C. 7:14A-20.7(a)3i(7), the Department were to establish the authority to approve conservation plans developed by persons trained in nutrient management and conservation/erosion control planning (other than the County Soil Conservation District or NRCS), then individuals would be reluctant to utilize such persons other than those in-house with NRCS or the soil conservation district. (16)

RESPONSE: The Department disagrees. Only a person seeking a LLAMA to land apply residual pursuant to N.J.A.C. 7:14A-20 is able to submit an equivalent conservation plan to the Department for approval, and then only for the purposes of N.J.A.C. 7:14A-20. In addition, the Department is allowing this as an option, not a requirement, since it is the Department's experience that the NRCS does not always have the resources to provide planning services for

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LLAMA applicants. For further discussion of equivalent conservation plan approval see

Response to Comment 160.

162. COMMENT: Proposed N.J.A.C. 7:14A-20.7(b)2ii(2) requires that the land application of residual not be made during or after periods of precipitation, on ground where water is ponded, where soils are saturated with water to within two feet of the ground surface, where soil depth is less than two feet over bedrock formations or on land which experiences seasonal flooding. Depth to saturation determinations require more than passive observations of the ground surface and typically require soil borings, piezometers, or other instrumentation. The rule should be amended to require that qualified personnel record field antecedent rainfall conditions and certify to the Department that these conditions are met at the time of each land application. (27)

RESPONSE: Pursuant to N.J.A.C. 7:14A-20.2(c), the management practices at N.J.A.C. 7:14A-20.7(b) are applicable only to residual that is not exceptional quality (EQ). Land application of non-EQ residual requires a LLAMA. An application for a LLAMA requires a site evaluation that includes Soil Conservation Service Soil Survey Interpretation Sheets for each soil series and a sufficient number of soil borings/test pits to determine soil characteristics. The soil profile of each boring/test pit must be described by horizon by a soil scientist, geologist, or other qualified person to a minimum depth of five feet. Each soil profile description must include: thickness of horizon; texture; color; estimated permeability; if encountered, restricting layers or fragipans; depth to, abundance, size and contrast of mottling; depth to seasonal high water table and depth at which water was encountered; and depth to bedrock. If a field is permitted to receive non-EQ residuals, then the permittee is required to submit a quarterly description of how the management

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practices in N.J.A.C. 7:14A-20.7(b) are met for each site on which residual is applied;

certification that the information collected to demonstrate compliance with N.J.A.C. 7:14A-

20.7(b) was prepared by a person qualified to properly gather and evaluate this information; and

a Daily Field Log of all activities including, but not limited to, irrigation and weather conditions.

163. COMMENT: The Department should not require at proposed N.J.A.C. 7:14A-20.7(g) that exceptional quality residual be applied at an agronomic rate and should not extend the definition of agronomic rate to include nutrients other than nitrogen. The Federal rules found at 40 CFR Part 503 do not require it, competing recycled and commercial products are not so regulated, and less than one percent of all nutrients applied to farmland in New Jersey is derived from residual; therefore, its impact is negligible. The Department has the authority to implement regulations which are more supportive of the beneficial reuse of exceptional quality residual within New Jersey while having no measurable negative environmental impact. (11, 17)

RESPONSE: Irrespective of the percentage of nutrient derived from residual that is applied to farmland, the Department has determined that it is not appropriate to distinguish between bulk EQ residual and non-EQ residual when considering agronomic rate. Residual is generated as the result of careful and expensive wastewater treatment, which prevents ground and surface water contamination and surface water oxygen depletion and eutrophication. The purpose of applying residual at the agronomic rate is to re-introduce it to the environment with minimal loss of nutrients back to the water cycle. The Department has limited application of both EQ and non-EQ residual to the agronomic rate since the early 1980s. In 1997 the Department adopted rules that included factors other than nitrogen when determining agronomic rate. This is necessary

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due to the range of EQ product types. For example, applying alkaline products at the nitrogen rate will cause over-liming of some soils. Over-liming renders some nutrients unavailable, leading to poor germination and crop loss. EQ product labeling or instructional literature is the mechanism used to comply with the EQ agronomic rate requirement. In addition, N.J.A.C. 7:14A-20.7(h)1iv and (g) provide flexibility by allowing the Department to approve EQ product or market specific application rates requested at the time of permit application and/or in instructional literature. Requests for rates that exceed agronomic rate can be based on recommendations from the Rutgers Cooperative Extension or other sources of agricultural expertise. For further discussion of agronomic requirements related to EQ residual see Responses to Comments 148, 164 and 165.

164. COMMENT: Singling out EQ residual for regulatory oversight at N.J.A.C. 7:14A-20.7(h)1 is not appropriate when alternative products in the marketplace are not required to comply with sampling, analysis, reporting and preparation of a nutrient management plan. (11, 17)

RESPONSE: Residual, including EQ residual, is a solid waste pursuant to N.J.A.C. 7:14A-1.2, for which recycling is regulated under N.J.A.C. 7:14A-20 and 40 CFR Part 503. The sampling, analytical and reporting requirements at N.J.A.C. 7:14A-20.7(h)1 are necessary to demonstrate that the treatment of residual meets EQ pollutant, pathogen reduction and vector attraction reduction criteria found in N.J.A.C. 7:14A-20 and Federal 40 CFR Part 503. There is no requirement in N.J.A.C. 7:14A-20.7(h)1 for preparation of a nutrient management plan for EQ residual. For further discussion of agronomic requirements related to EQ residual see Responses

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to Comments 148, 163 and 165. For a discussion of how these rules affect EQ residuals in the marketplace see Response to Comment 149.

165. COMMENT: All existing regulatory agronomic requirements for the land application of EQ residual should be eliminated or, at a minimum the Department should not regulate EQ residual with respect to agronomic conditions once such products have complied with the requirements of the New Jersey Department of Agriculture and have been registered as a fertilizer as required at proposed N.J.A.C 7:14A-20.7(h)1iii. (11, 17)

RESPONSE: The Department disagrees. The only agronomic requirement for bulk EQ residual in N.J.A.C. 7:14A-20 is that it be applied at the agronomic rate. N.J.A.C. 7:14A-20 does not impose burdensome conditions upon distribution of EQ residual relative to agronomic rate. The Department has determined that product literature, labeling and consumer awareness of common agronomic principles are adequate to protect human health and the environment and, at N.J.A.C. 7:14A-20.7(h)1iv, specifies only that EQ residual be labeled or accompanied by appropriate instructional literature upon distribution. For further discussion of agronomic requirements related to EQ residual see Response to Comments 148, 163 and 164.

166. COMMENT: Land application of residual not connected with an agricultural or horticultural activity may require submission and certification of a Soil Erosion and Sediment Control Plan in accordance with the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.). The proposed amendment of N.J.A.C. 7:14A-20.7(h)3 through 6 removes all references to the potential need for a soil erosion and sediment control plan. Appropriate language regarding

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the need to comply with the Soil Erosion and Sediment Control Act should be reinserted for consistency. (20)

RESPONSE: The Department agrees. The Department inadvertently omitted the existing requirement for submission of, and land application in accordance with, a Soil Erosion and Sediment Control Plan (SESCP) when it proposed new N.J.A.C. 7:14A-20.7(a)3i(7) and amended recodified subparagraph 20.7(h)2vi. The Department discussed the requirement for LLAMA applicants to submit either a conservation plan or a SESCO in the Economic Impact Statement and Federal Standards Analysis of the proposed readoption of N.J.A.C. 7:14A-20 with amendments (see 40 N.J.R. at 1514 and 1538), but failed to include appropriate language in the proposed rule text. A conservation plan is applicable to agricultural land application sites whereas a SESCO is applicable to land reclamation, construction and other similar sites requiring revegetation of disrupted land. Therefore, N.J.A.C. 7:14A-20.7(a)3i(7) and 20.7(h)2vi are modified upon adoption to restore the requirement for LLAMA applicants to submit, and land apply in accordance with, a SESCO when applicable. The Department is also modifying N.J.A.C. 7:14A-20.7(a)3i(7) in response to Comments 159 and 160.

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

167. COMMENT: N.J.A.C. 7:14A-20.9(c) proposes that Phragmites reed bed loading applications adhere to minimum 14 day intervals. This operational constraint is not necessary because of the other operational controls proposed by the Department. Phragmites reed bed operators should have the maximum amount of flexibility to operate their systems. (4)

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RESPONSE: The Department agrees with the commenter. N.J.A.C. 7:14A-20.9(a)2 requires that an applicant for a reed bed permit submit the proposed loading rate for the discharge of residual to the reed bed. Proposed N.J.A.C. 7:14A-20.9(c) fails to provide the flexibility to assure proper functioning of reed beds under varying rate scenarios that may be proposed and approved under N.J.A.C. 7:14A-20.9(a)2. Therefore, N.J.A.C. 7:14A-20.9(c) is modified upon adoption to state, “Residual shall be loaded onto a reed bed no more than once every 14 days after plants reach maturity, unless otherwise approved by the Department in a permit.”

168. COMMENT: Phragmites reeds can only practically propagate via rhizomes. It is virtually impossible for Phragmites to spread by seeds, considering the physical conditions necessary for seed propagation. The requirement at proposed N.J.A.C. 7:14A-20.9(h) to remove Phragmites rhizomes from reed bed residual prior to disposal is very difficult and costly. (4)

RESPONSE: Because Phragmites can only practically be spread through propagation of the rhizome system, N.J.A.C. 7:14A-20.9(h) requires the removal of rhizomes prior to transportation to a land application operation. For management of reed bed residual by means other than land application, the reed bed generator must comply with the permit requirements of the receiving site, which may not require rhizome removal.

169. COMMENT: The Department should consider designating and approving several sites in New Jersey for the disposal of Phragmites reed bed residual. (4)

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RESPONSE: The Department does not designate or select sludge management methods or sites.

However, the Department is willing to work with reed bed residual generators to develop other alternative solutions to reed bed use and/or disposal.

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

170. COMMENT: At N.J.A.C. 7:14A-20.12(b), the Department is proposing to prohibit the storage of bulk exceptional quality residual in excess of 100 cubic yards, or the storage of materials derived from exceptional quality residual in excess of 2,500 cubic yards, except in accordance with a NJPDES permit. There does not appear to be any technical reason for restricting the storage of bulk exceptional quality residual and its blended products to the 100/2,500 cubic yard limits proposed. This proposed limitation is overly restrictive in that alternative products, such as animal manures, leaves, grass and yard waste compost produced under Department recycling approvals, and manufactured chemical fertilizers, are not subject to such regulatory requirements. If adopted, this limitation will inhibit the ability to market exceptional quality residual. If the Department is compelled to require such limitations, then limits should be increased to in excess of 250 cubic yards for the storage of bulk exceptional quality residual and in excess of 5,000 cubic yards for the storage of blended residual products.

(11, 17)

RESPONSE: Blending and distribution operations often store EQ residual and blended products on the ground prior to offsite distribution, with a concomitant risk of nutrient loss and nuisance generation. Larger operations have, in the past, become the focus of local complaints, generated

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measurable off-site environmental impact, evolved into illegal surface disposal sites and been resolved only after Departmental enforcement action. The Department has expended significant resources to address such sites. The Department has not, however, identified significant problems with EQ residual blending and distribution sites that store below 100 cubic yards of residual or 2,500 cubic yards of blended residual products in conformance with generator supplied instructional literature. The Department intends, by adoption of N.J.A.C. 7:14A-20.12, to better regulate residual blending and distribution activities. These rules allow operation under de minimis thresholds and, for larger operations, direct regulation by the Department under the conditions of a NJPDES permit. The Department shared an early draft of proposed amended N.J.A.C. 7:14A-20.12 with interested parties prior to issuance of the formal rule proposal and, in response to comments received at the time, made several changes including an increase in the blended product threshold from 1000 cubic yards to 2500 cubic yards. In the Department's judgment, based on past experience, the threshold limits established at N.J.A.C. 7:14A-20.12 are reasonable and justified. For further discussion of EQ residual blending and distribution operations see Response to Comment 149.

Subchapter 21. Requirements for Indirect Users

General

171. COMMENT: In order for the RWBR program to be successful, the Department should provide encouragement and assurance to industries that their investments will not be jeopardized once they choose the RWBR option. One such encouragement is to restrict the control authority

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from imposing conditions that the unused portion of the RWBR water should be returned to it for final treatment and ultimate discharge. The user industry should have the option to either return the unused portion of the RWBR back to the treatment facility of the control authority or obtain its own NJPDES DSW permit from the Department. Having such restrictions imposed by the control authority will discourage users from investing in the infrastructure to use the RWBR water which will harm the program in the long run. This is particularly of issue due to the fact that the control authority will charge the RWBR user a fee to both use the RWBR and return it.

The current fee structure utilized by some control authorities unjustly penalizes the RWBR user industry for returning the RWBR water to control authority. The fee calculations are purposely biased to exclude the loadings of pollutants such as total suspended solids (TSS) and biological oxygen demand (BOD). With fee calculations based only on flows, this artificially increases the amount of fees assessed. In order for the RWBR program to be successful, the Department needs to regulate the amount of fees a control authority can charge for accepting the RWBR water for treatment. (7)

RESPONSE: The Department believes that minimizing its regulatory authority with regard to inter-business relationships of entities generating and using RWBR is in the best interest of promoting RWBR at this time. While the Department requires that parties establish a user-supplier agreement to establish the terms of responsibility of each entity involved in a RWBR project, the terms of that agreement are to be negotiated by those entities. The Department reviews the agreement only to make sure all permitted environmental and health based issues are addressed and that the document is executed. Discussions have occurred between the

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Department and the BPU to discuss fee rate structures regarding RWBR; however, no action has been taken due to the complex nature of statutory and regulatory changes that would be necessary to implement that type of program.

The Department does not preclude the option of the entity using RWBR from establishing its own wastewater discharge location for the disposal of any wastewater generated as part of their RWBR initiative. However, any such discharge would require separate permitting for the disposal of that wastewater, which would not be considered RWBR at that point. Therefore, compliance with all wastewater planning and permitting requirements would need to be fully complied with for the discharge of that wastewater.

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

172. COMMENT: The Department must modify proposed N.J.A.C. 7:14A 21.3(g)3 to include the phrase “and assure” in order to be at least as stringent as the Federal regulation at 40 CFR 403.12(g)(3). (10)

RESPONSE: The Department agrees and on adoption is modifying N.J.A.C. 7:14A 21.3(g)3 to include “and ensure” to meet the Federal requirements, as well as conform to proper grammar and usage.

173. COMMENT: At proposed N.J.A.C. 7:14A-21.3(g)4, the phrase “and assure” must be added to be at least as stringent as 40 CFR 403.12(g)(4). (10)

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RESPONSE: The Department agrees and on adoption is modifying N.J.A.C. 7:14A 21.3(g)4 to include “and ensure” to meet the Federal requirements, as well as conform to proper grammar and usage.

174. COMMENT: At proposed N.J.A.C. 7:14A-21.3(g)4, the phrase “where historical data demonstrates compliance” must be deleted. The issue regarding the use of historical analytical results in determining whether grab samples are appropriate for monitoring is not whether the facility is in compliance, but whether the analytical results from the historical sampling are representative of the current discharge. Lower minimum sampling may be approvable where historical sampling and analytical results are demonstrated to be representative. Please see the preamble to USEPA’s streamlining rule at 70 Fed. R. 60158-60159. (10)

RESPONSE: As noted in the comment, the preamble to USEPA’s streamlining rule at 70 Fed. R. 60158-60159 does discuss that historical data must be representative of the discharge to allow a reduction in the number of samples required. However, the Federal regulation at 40 CFR 403.12(g) does not specify that historical data must be representative of the current discharge. Further, 40 CFR 403.12(g)4 does not address whether grab samples are appropriate, but specifies that grab samples must be taken for particular pollutants and addresses the appropriate number of grab samples for specific pollutants that must be submitted with reports. N.J.A.C. 7:14A-21.3(g)4 is consistent with the Department’s policy for decreasing the monitoring frequency based on the compliance history of the facility. N.J.A.C. 7:14A-6.5(a) requires that monitoring be representative of the discharge.

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The Department is not deleting the phrase “where historical data demonstrates compliance.” The Department is modifying N.J.A.C. 7:14A-21.3(g)4 on adoption, consistent with N.J.A.C. 7:14A-6.5(a), to specify that the data must be representative of the current discharge.

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

175. COMMENT: At proposed N.J.A.C. 7:14A-21.4(b)2iii, the Department’s regulation is less stringent than Federal regulation at 40 CFR 403.6(c)(5)(ii)(C). The Federal regulation indicates that reassessment of equivalent mass limits will be performed as necessary to reflect changed conditions at the facility. The use of the word “will” is permissive rather than mandatory. The Federal regulation requires reassessment by the Control Authority upon notification of a revised production rate. The sentence must be revised to state “...the equivalent mass limit “shall” be performed by the control authority...” (10)

RESPONSE: N.J.A.C. 7:14A-21 specifies the requirements for indirect users, not control authorities. Specifically, N.J.A.C. 7:14A-21.4(b)2 is applicable to an indirect user subject to equivalent mass limits. The language of the rule providing that a reassessment and revision of the equivalent mass limit “will be performed by the control authority as necessary” is informative only, and is not an action an indirect user must initiate. The requirement under the Federal regulations at 40 CFR 403.6(c)(5)iiC to update the equivalent mass limits specified in a control document or permit is an action that a control authority must take. It is not necessary to

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amend the rules on adoption based on the comment because the Department, as the control authority, must administer the program in accordance with the Memorandum of Agreement (MOA), which requires that the Department administer the program consistent with Federal regulations. DLAs must comply with the Federal regulations under 40 CFR Part 403, as incorporated by reference at N.J.A.C. 7:14A-19.1(b).

176. COMMENT: Proposed N.J.A.C. 7:14A-21.4(d) is less stringent than Federal regulation at 40 CFR 403.6(c)(7). The regulation is missing the sentence, “The Control Authority must document how the equivalent limits were derived and make this information publicly available.” New Jersey must require documentation of equivalent limits. (10)

RESPONSE: N.J.A.C. 7:14A-21 specifies the requirements for indirect users; 40 CFR 403.6(c)7 pertains to the obligations of control authorities. The requirement that the control authority provide documentation on equivalent limits and make this information available to the public does not belong under this particular subchapter.

Consistent with 40 CFR 403.6(c)7, N.J.A.C. 7:14A-19.10(e) requires DLAs to provide public notice of all new permits and proposed permit modifications. Additionally, the Department must provide public notice of permits in accordance with N.J.A.C. 7:14A-15.10, and must make all materials used as part of the permit issuance process available to the public in accordance with N.J.A.C. 7:14A-15.17.

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N.J.A.C. 7:14A-21.9 Exemptions from the requirements for an individual NJPDES-

SIU permit from the Department

177. COMMENT: N.J.A.C. 7:14A-21.9(g)2 is less stringent than the Federal regulation at 40 C.F.R. 403.3(v)(2)(i), in that it does not specify that the indirect users consistent compliance must be met “prior to the Control Authority’s finding” that the user is a non-significant categorical industrial user. (10)

RESPONSE: The Department believes that its criteria for the non-significant categorical indirect user (NSCIU) are consistent with 40 CFR 403.3(v)(2)(i). Control Authorities must complete an evaluation of a user to determine if the user meets the NSCIU criteria under 40 CFR Part 403. One requirement for being a NSCIU is that the user must have “consistently complied” with the applicable standards, and the Control Authority must review the indirect user (IU) compliance status as part of this determination process. Therefore, the Department does not believe that this phrase “prior to the Control Authority’s finding” should be part of the industrial user criteria.

Subchapter 22 Treatment Works Approvals, Sewer Bans, Sewer Ban

Exemptions

General

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178. COMMENT: The commenter commends the Department's repeal of relevant subsections of N.J.A.C. 7:1C and supports the incorporation of all provisions related to the treatment works approval program into one subsection. This decision is appropriate and will help the permittee in responding to the Department's requirements. (7, 9)

RESPONSE: The Department acknowledges the commenter's support.

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

179. COMMENT: The proposed cross-reference to N.J.A.C. 7:9A-3.9 in N.J.A.C. 7:14A-22.3 to clarify septic rule requirements is logical and should be adopted. (9)

RESPONSE: The Department acknowledges the commenter's support.

180. COMMENT: N.J.A.C. 7:14A-22.3(a)7 should not mandate the authorization of RWBR projects under a NJPDES Discharge Permit of a RWBR provider facility "only" since a user facility is often solely responsible for these activities. (7)

RESPONSE: The Department recognizes that the user facility, which may be responsible for the construction and operation of RWBR conveyance and treatment systems, may not be the same entity as the RWBR provider facility. However, the Department will allow the authorization of only those RWBR projects that have been addressed under a NJPDES Discharge Permit of a RWBR provider facility.

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

181. COMMENT: Amended subsection N.J.A.C. 7:14A-22.4(a)3 includes the term “septic system.” This term should be corrected to “individual subsurface sewage disposal system.” If the term “septic system ” is used in the regulations, then “septic system” should be included at N.J.A.C. 7:14A-1.2. (9)

RESPONSE: The Department agrees with the comment that the existing term “septic system” should be corrected to “individual subsurface sewage disposal system” to be consistent with the definition in this rule and within N.J.A.C. 7:9A, Standards for Individual Subsurface Sewage Disposal Systems. In addition to the correction at N.J.A.C 7:14A-22.4(a)3, the Department has also corrected this term at N.J.A.C. 7:14A-22.3(a)5.

182. COMMENT: The Department should provide clarification as to how the “aggregate projected flow of the facility,” as referenced in N.J.A.C. 7:14A-22.4(a)3, would be calculated. (9)

RESPONSE: For the purposes of determining whether a Treatment Works Approval is required for individual subsurface sewage disposal systems, the Department does not use actual water use records, but uses the criteria established in N.J.A.C. 7:9A, Standards for Individual Subsurface Sewage Disposal Systems. The “aggregate projected flow of the facility” would, therefore, be

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determined by utilizing the criteria established in N.J.A.C. 7:9A-7.4 and calculating the sum of the projected flow of all existing and proposed uses on the property.

183. COMMENT: The rules at N.J.A.C. 7:14A-22.4 should be clarified to state that a RFS or TWA is not required to reuse industrial wastewater within the same industrial facility for industrial purposes consistent with industrial practices that prevent potable use of the water. (1, 6, 13, 21)

RESPONSE: N.J.A.C. 7:14A-22.4 addresses only exemptions for having to obtain a Treatment Works Approvals, and does not include exemptions for RFS requirements, which are found in N.J.A.C. 7:14A-2.15.

The Department has two Treatment Works Approval exemptions for the use of industrial wastewater at N.J.A.C.7:14A-22.4(b)3iv and vii. Pursuant to N.J.A.C. 7:14A-22.4(b)3iv, a treatment works approval or general industrial treatment works approval is not required for “recycling systems for industrial waste only, which do not discharge directly to the surface water or ground water.” Pursuant to N.J.A.C. 7:14A-22.4(b)3vii, a treatment works approval or general industrial treatment works approval is not required for “treatment units used for pretreatment of water for use in an on-going manufacturing process at the industrial facility.” Both of these exemptions allow the use of industrial wastewater within the manufacturing process. However, neither of these exemptions addresses RWBR. The exemption at N.J.A.C. 7:14A-22.4(b)6 is specific to RWBR as defined in these rules, and would apply to both domestic and industrial facilities.

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184. COMMENT: N.J.A.C. 7:14A-22.3(a)7 requires a TWA for building, installing, operating, or modifying any process unit, storage unit, or conveyance facility that treats and/or conveys RWBR. Projects utilizing RWBR shall be authorized under NJPDES discharge permit. The Department should make it easy and implementable. It is suggested that N.J.A.C. 7:14A-22.4(b)6 be amended to state that a TWA should not be required for treatment and conveyance of RWBR waters that are within the permittee's site or land under the permittee's control that is contiguous with its wastewater facility. (11, 18)

RESPONSE: Under N.J.A.C. 7:14A-22.4(b)6, the Department has exempted process units for the sole purpose of treating effluent to achieve a higher quality RWBR than what is required by the NJPDES permit and the onsite distribution system located at the facility where the RWBR is to be utilized. However, the Department will not exempt offsite conveyance systems from the NJPDES regulated wastewater treatment plant site. Since the NJPDES permit authorizes the end user or users, a TWA is required to achieve compliance with the technical requirements under the TWA program. This will ensure the proper construction and operation of such conveyance systems for its NJPDES approved usage.

In the scenario given by the commenters, land that is under the NJPDES permittee's control that is contiguous with its wastewater treatment facility site would not be considered part of the wastewater treatment plant site, and would be considered offsite.

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185. COMMENT: The Department is complimented on including an exemption under the Treatment Works Program at N.J.A.C. 7:14A-22.4(b)6. This condition exempts process units used for the sole purpose of treating effluent to achieve a higher quality RWBR than is required by a NJPDES permit. It also exempts onsite distribution equipment located at a facility where RWBR water is to be utilized. (11, 18)

RESPONSE: The Department acknowledges the commenter's support.

186. COMMENT: N.J.A.C. 7:14A-22.4(b)6 should be amended to state that a TWA should not be required for conveyance and distribution systems that are not located at the facility where RWBR is utilized. (7)

RESPONSE: Under N.J.A.C. 7:14A-22.4(b)6, the Department has exempted the onsite distribution system located at the facility where the RWBR is to be utilized. However, the Department will not exempt offsite conveyance systems from the NJPDES regulated wastewater treatment plant site as the RWBR, as discussed in the Response to Comment 184.

187. COMMENT: N.J.A.C. 7:14A-22.4 should exempt activities involving temporary treatment works for treating construction dewatering from the TWA requirements whether the treated effluent is discharged to the ground or surface water, as long as the discharge activity is authorized by the Department under permit-by-rule or a general permit. (7)

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RESPONSE: Pursuant to N.J.A.C.7:14A-22.4(b)4, a treatment works approval or general treatment works approval is not required for “mobile treatment works to be specifically utilized for the treatment of water in relation to a short-term pump test or dewatering associated with an underground storage tank project authorized under a NJPDES category B4B permit.” Typically, dewatering under this exemption is limited in scope to the removal/installation of underground storage tanks. However, due to the varying complexities of other construction dewatering activities that require a NJPDES general permit, the Department requires the submittal of a TWA application, which includes information on the design of the treatment works to meet the NJPDES permit limitations. In this case, the applicant can submit for a General Industrial TWA under N.J.A.C.7:14A-22.6, which is processed within 30 days of a complete submittal and is based in part upon a Professional Engineers certification.

188. COMMENT: N.J.A.C. 7:14A-22.4(b) should exempt temporary treatment units for pre-treating boiler cleaning wastewater discharged to the onsite wastewater treatment plant or reduce the timeframe to obtain such approvals. (7)

RESPONSE: The Department does not exempt this type of pretreatment due to many variables, including but not limited to volume, concentration, hydraulic capacity, duration and ultimate impacts to the onsite wastewater treatment plant. However, the approval can be processed as a General Industrial TWA. The timeframe to obtain a General Industrial TWA is 30 days from the submittal of a complete application, in contrast to the 90 day processing of a regular TWA.

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189. COMMENT: It has been the commenter's experience that a RWBR provider facility does not build, install, operate or modify the infrastructure needed to treat and convey RWBR water.

A RWBR user facility has the total ownership of the entire RWBR infrastructure. The user facility is also known to install process units for the sole purpose of treating effluent to achieve a higher quality RWBR than required by the NJPDES permit of the RWBR provider at the RWBR provider facility. In addition, the RWBR user is also responsible for the conveyance system to transport the higher quality RWBR and the distribution system located on the site of the facility where the RWBR is to be utilized. In cases where the used RWBR is returned to the sewerage treatment facility, the RWBR user is also responsible for the conveyance system from the RWBR user facility to the treatment plant. The Department should also exempt the treatment works approval requirements for all those systems described above in N.J.A.C. 7:14A-22.4(b)6.

(7)

RESPONSE: Under N.J.A.C. 7:14A-22.4(b)6, the Department has exempted process units for the sole purpose of treating effluent to achieve a higher quality RWBR than what is required by the NJPDES permit and the onsite distribution system located at the facility where the RWBR is to be utilized. However, the Department will not exempt offsite conveyance systems from the NJPDES regulated wastewater treatment plant site. Since the NJPDES permit authorizes the end user or users, a TWA is required to achieve compliance with the technical requirements under the TWA program. This will ensure the proper construction and operation of such conveyance systems for its NJPDES approved usage.

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The used RWBR being returned to the sewage treatment facility is considered industrial wastewater. The construction and operation of an industrial wastewater conveyance and/or pretreatment facility would require a TWA or General Industrial TWA, unless exempt under N.J.A.C. 7:14A-22.4.

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

190. COMMENT: Any guidance provided during a TWA preapplication conference in accordance with N.J.A.C. 7:14A-22.5(d) should be binding on the Department, to the extent that an applicant submits the information identified by the Department in its related Technical Manual, guidance documents or other form of communication. (9)

RESPONSE: Although the TWA preapplication conference may provide guidance to the applicant on a project, the conference does not constitute a commitment by the Department on the administrative or technical merits of a subsequent TWA application. Often there is incomplete information introduced at the preapplication conference and the applicant may not have a complete submittal. The Department will not make a binding decision based upon such a meeting. There are times that at such conference the applicant does have a complete TWA application to submit. If the application were submitted at that time, the Department would make an official determination on the administrative completeness of the application. The Department will base its decision on the final merits of an application at such time as a formal application has been submitted for review and has been processed.

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191. COMMENT: N.J.A.C. 7:14A-22.5(e)1ii should be revised to be “20 days after the applicant’s receipt of notice of the administrative status of the application.” (9)

RESPONSE: The Department reserves the right to deny the application without prejudice if the additional information required to make the application administratively complete has not been received by the Department within 20 days of the date of the notice of the administrative status of the application. This language has not created a problem for the public in the past, as the TWA program staff would normally reach out to applicants, their engineering consultants or agents via phone or additional letter if there were administrative deficiencies that were not addressed upon initial submission of the application.

The modification that the commenter recommends would require the Department to send the applicant a letter confirming receipt of the application, and advising of the administrative status of the application. This would place an unnecessary fiscal and workload burden upon the Department, and would potentially adversely affect the processing times of TWA applications.

192. COMMENT: The Department should be mandated to provide the applicant with any comments it receives pursuant to N.J.A.C. 7:14A-22.5(e)2. (9)

RESPONSE: The Department receives no comments on almost all of the TWA applications processed. However, comments received on a TWA application are considered by the Department in the application review process only if the comments pertain to the technical merits of the project. If issues are found on the technical merits of the application during the review of

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a TWA, such comments are shared with the applicant and a dialog between the Department, the applicant and the applicant's design engineer would occur, either by phone or in writing. If additional technical issues have been identified through comments received from the public, the Department will include such issues in this dialog and offer to provide the applicant with the written comments received. All comments received are part of the public record and are available for inspection.

193. COMMENT: The Department should ensure that applicants are not unjustly penalized for administrative oversights that may occur in conjunction with N.J.A.C. 7:14A-22.5(n) (i.e., receipt of a TWA application may inadvertently not be published in the DEP Bulletin and an objector may then assert that the permit is not valid). (9)

RESPONSE: Lack of publication in the DEP Bulletin, which is considered constructive notice of the receipt of a treatment works application and the Department's final action on the application, does not invalidate the TWA. As an example, pursuant to N.J.A.C. 7:14A-22.5(k), the Department has the ability to issue valid TWA approvals for emergency purposes without providing the initial constructive notice. Such notice is to make the public aware of permitting activities related to the TWA program, and does not act as a trigger for a comment period, as no comment period exists for the TWA program. The Department has incorporated automated measures through the use of its enterprise database (NJEMS) that ensure the timely publication of final actions in the DEP Bulletin, as publication of final actions is a trigger for appeals.

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194. COMMENT: The Department should compare N.J.A.C. 7:14A-22.5 with N.J.A.C. 7:1C for consistency in language. (9)

RESPONSE: As stated in the proposal Summary at 40 N.J.R. 1504, the Department readopted Subchapter 22 with amendments, the majority of which were associated with the Department's decision to move the requirements of the Ninety-Day Construction Permits rules at N.J.A.C. 7:1C et seq. for TWAs into this subchapter. The Department compared all of N.J.A.C. 7:14A-22 with N.J.A.C. 7:1C for consistency in language where appropriate and incorporated certain provisions that are similar to those outlined in N.J.A.C. 7:1C, but reflect the actual operating procedures of the Department's Division of Water Quality, which administers the TWA program. In addition, the Department did not incorporate those portions of N.J.A.C. 7:1C that are redundant, or do not pertain to TWAs.

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

195. COMMENT: For TWA applications that will introduce additional wastewater to a wastewater treatment plant, consent from the owner of the receiving wastewater treatment plant is required pursuant to N.J.A.C. 7:14A-22.8(a). Available capacity at the receiving treatment plant can not be dedicated for other uses until confirmation of the actual flow and available capacity is obtained from the Department. As a result, a negative economic and social impact is put on prospective users and on the wastewater treatment authority, which potentially results in litigation over the availability of sewer capacity. (9)

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RESPONSE: The TWA program does not allocate flow capacity for projects subject to TWA. This is the responsibility of the owner of the receiving wastewater treatment plant and owner/operator of the wastewater conveyance system into which the project will directly connect. Subject to meeting all other administrative and technical requirements, TWAs can be processed for approval, as long as the owner of the receiving wastewater treatment plant and owner/operator of the wastewater conveyance system into which the project will directly connect consent to the additional flow anticipated from the project. Such consent is one of the TWA administrative requirements found in N.J.A.C. 7:14A-22.8(a)3.

196. COMMENT: N.J.A.C. 7:14A-22.8(e) should better define when an application can be rejected, thereby eliminating varying and subjective standards from application to application.
(9)

RESPONSE: According to N.J.A.C. 7:14A-22.8(e), the Department can reject an application if the application contains inaccurate material that could affect the outcome of the TWA decision, or if there has been falsification of information in the application. This is intended to encompass any inaccurate material or falsification of information.

N.J.A.C. 7:14A-22.17 Sewer ban imposition

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197. COMMENT: Sewer bans should not be imposed for failure to comply with reporting requirements, and the Department should identify an alternative enforcement scheme to ensure reporting requirements are satisfied. (9)

RESPONSE: In accordance with N.J.A.C. 7:14A-22.17, sewer bans are imposed for inadequate conveyance capacity or for failing to meet NJPDES effluent limitations. The Department does not impose sewer bans for failure to comply with reporting requirements.

198. COMMENT: The commenter disagrees with the Department's analysis of the extent of the negative social impact as identified in the Social Impact statement (40 N.J.R. at 1507), and submits that sewer bans affect a larger segment of the general population than just the development community. The Department is ultimately prohibiting, not simply restricting, the provision of adequate workforce housing for the State's citizens. (9)

RESPONSE: Sewer connection bans are a regulatory tool used by the Department to prevent or further exacerbate existing sewage capacity issues, and if instituted, will help address potential public health concerns and ultimately enhance and maintain water quality. The adverse social impacts affect developers, builders and landowners by restricting development and new sewer connections during the sewer ban. The sewer ban does not affect existing housing stock or existing commercial usage. In fact, the rules also provide for certain exemptions to the sewer ban, primarily for single family dwellings, replacement flow, and public need. Once the issue for the sewer ban has been resolved, the restriction can be lifted and new development can occur.

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N.J.A.C. 7:14A-22.24

Requests for adjudicatory hearings

199. COMMENT: The wording in N.J.A.C. 7:14A-22.24(a) should be changed by replacing “of” with “and/or.” (9)

RESPONSE: The Department agrees, and is modifying N.J.A.C. 7:14A-22.24(a) on adoption to make the correction. The sentence did not make sense as proposed. The subchapter addresses the issuance or denial of a TWA, and also the approval or denial of a sewer ban exemption request. Accordingly, it is appropriate that the adjudicatory hearing provisions also apply to both. Thus, replacing “of” with “and/or” is correct.

200. COMMENT: N.J.A.C. 7:14A-22.24(c) should not mandate that “facts alleged in the Department’s notice or decision shall be deemed to have been admitted,” where the hearing request does not include a specific admission, denial or explanation of each fact alleged, or a statement that the person is without knowledge. (9)

RESPONSE: The language is not unique to the NJPDES rules. Throughout the Department's rules, a person requesting a hearing is required to submit a detailed response to the Department's findings. The same or similar language as adopted is found at N.J.A.C. 7:38-1.5, Highlands Water Protection and Planning Act Rules.

Although not all of the adjudicatory hearing provisions in the Department's rules expressly state that a finding is deemed admitted where the hearing request does not include a

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specific admission, denial or explanation of each fact alleged, or a statement that the person is without knowledge, the result is the same. Throughout its rules, the Department requires an admission or denial of the Department's findings. Where the person requesting the hearing denies the finding, he or she must provide clear and specific information to support the denial. (See Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C-10.9; Toxic Catastrophe Protection Act Program, N.J.A.C. 7:32-11.3.) A finding is not denied unless the person requesting the hearing provides detailed support for the denial, or states that he or she is without knowledge.

201. COMMENT: The commenter supports the proposed amendments at N.J.A.C. 7:14A-22.24(e) that would increase the appeal period to 30 days from when the decision or determination is published in the DEP Bulletin. (9)

RESPONSE: The Department acknowledges the commenter's support.

202. COMMENT: The Department should establish a 30-day timeframe at N.J.A.C. 7:14A-22.24(f) for the Department to notify the requestor of its determination on the suitability for mediation of the adjudicatory hearing. (9)

RESPONSE: It is not necessary for the NJPDES rules to contain a specific provision requiring the Department to notify the parties within a particular period of time whether a contested case is appropriate for mediation. The Office of Administrative Law's rules regarding cases submitted to the Department address mediation and notice to parties. (See N.J.A.C. 1:7A-8.1.)

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203. COMMENT: N.J.A.C. 7:14A-22.24(h) should be revised to include timeframes within which the Department must notify the requestor of its decision to grant or deny a request for an adjudicatory hearing and also forward the approved matter to the Office of Administrative Law.
(9)

RESPONSE: It is not necessary to include in the NJPDES rules language that requires the Department to transmit a hearing request to the Office of Administrative Law within a specific time period. The Office of Administrative Law's Uniform Administrative Procedure Rules at N.J.A.C. 1:1-8.1(a) and 1:7A-8.1 already contain such a requirement.

**Subchapter 23 Technical Requirements for Treatment Works Approval
Applications**

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

204. COMMENT: Safety factors, as referenced in N.J.A.C. 7:14A-23.3(a), grossly overestimate flows and also unnecessarily and arbitrarily create an inaccurate portrayal of actual available capacity at treatment facilities. This is unfair to developers who use far less actual flow than projections indicate. It also creates an unnecessary administrative burden on treatment plants that must submit to the Department actual flow accounting to demonstrate actual flow is less than elevated projected flows. (9)

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RESPONSE: The Department acknowledges that in certain cases the projected design flow criteria may be too conservative. The flow figures referenced in N.J.A.C. 7:14A-23.3 are for design purposes for wastewater conveyance and treatment infrastructure and, therefore, must include a safety factor, which in part takes into account the inevitable additional flows introduced by inflow and infiltration and variable usage within certain categories of establishments. However, the rules do provide at N.J.A.C. 7:14A-23.3 for consideration and approval of alternative projected flow criteria, if accompanied by adequate supporting data such as water use records for similar facilities. It is incumbent upon the design engineer to supply such information to the Department for consideration prior to or with the TWA application. It should be noted, however, that the Department requires that the facilities be capable of adequately conveying and treating peak flows irrespective of daily or seasonal variations. Although there are times that flows are reduced during the summer and holidays, capacity for peak times must be provided.

The design flow figures are also used for the Capacity Assurance Program (CAP), in accordance with N.J.A.C. 7:14A-22.16. When the committed flow (actual flows and anticipated flows) to a wastewater treatment plant reaches 80 percent of permitted capacity, a CAP is instituted. Once a project becomes operational, its anticipated flow, which is normally based upon the Department's design flow figures, becomes part of the actual flow impacting the wastewater treatment plant. With the institution of the CAP, future capacity can be assured and an overload of the facility, which can lead to violations of discharge limits and penalties, can be avoided.

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205. COMMENT: The Department is using outdated flows in N.J.A.C. 7:14A-23.3(a). More recent values are available from the USEPA. A process should be implemented to re-evaluate and update the data for the relevant categories on a regular basis. (9)

RESPONSE: The Department is not aware of a comprehensive listing of design flow figures from USEPA that is used for the design flow purposes for the construction and operation of wastewater conveyance or treatment facilities. However, a process does exist to review and potentially update design flow figures, as long as there is justifiable data submitted. As stated in Response to Comment 204, the rules do provide at N.J.A.C. 7:14A-23.3 for consideration and approval of alternative projected flow criteria, if accompanied by adequate supporting data such as water use records for similar facilities. It is incumbent upon the design engineer to supply such information to the Department for consideration prior to or with the TWA application. It should be noted, however, that the Department requires that the facilities be capable of adequately conveying and treating peak flows irrespective of daily or seasonal variations. Although there are times that flows are reduced during the summer and holidays, capacity for peak times must be provided.

As an example of this, at N.J.A.C. 7:14A-23.3(a) the Department has established six new design flow criteria using this procedure.

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206. COMMENT: In N.J.A.C. 7:14A-23.3(a), the Department is failing to recognize the required use of water saving devices in project designs. The Department should consistently reinforce water reuse and conservation approaches. (9)

RESPONSE: Water conservation devices are mandatory only for new construction or internal renovations. Since not all new connections into existing systems are a result of new building construction, the Department continues to utilize the flow figures which represent all types of facilities. In addition, although water conservation devices reduce the volume of wastewater, this results in a correspondingly increased loading concentration to the treatment facility. Thus, the impact of the additional wastewater upon the treatment facility is the same with respect to loading, regardless of the volume.

Subchapter 24 Additional Requirements for Certain Stormwater Discharges

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

207. COMMENT: Proposed new N.J.A.C. 7:14A-24.2(c)4 does not incorporate enough of the Federal language to be fully consistent with the Federal requirements. To achieve the Department's stated intent (as indicated in the proposal Summary at 40 N.J.R. 1507) to comply with 40 CFR 122.26 and 123.35(a), and eliminate substantive conflict between the Federal rule and this component of Subchapter 24, proposed new N.J.A.C. 7:14A-24.2(c)4 should be changed

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to correctly incorporate the language in 40 CFR 122.26(a)(2)(ii) and (c)(1)(iii) about a water quality standard and about sediment from construction activities. Under 40 CFR 122.26(a)(2)(ii) and (c)(1)(iii), an oil and gas facility that “contributes to a violation of a water quality standard” requires a permit even if that facility has not had “the discharge of a reportable quantity” (unless that contribution is from “discharges of sediment from construction activities”). Under the Federal rule, “violation of a water quality standard” (subject to the “discharges of sediment from construction activities” exception) is a “trigger,” separate from the “reportable quantity” triggers that require a permit. Therefore, the Department should include, “. . .or contributes to a violation of a water quality standard (unless that contribution is due solely to discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities).” at the end of the proposed new N.J.A.C. 7:14A-24.2(c)4. (15)

RESPONSE: The Department agrees with the commenter; however, the Department will not be adopting the proposed amendments at N.J.A.C. 7:14A-24.2, 24.4, and 24.7. These amendments were proposed to maintain consistency with Federal rules at 40 CFR Part § 122.26(a)(2) and (e)(8), adopted on June 12, 2006, which relate to the permitting of stormwater discharges associated with construction activities at oil and gas exploration, production, processing, or treatment operations or transmission facilities. On May 23, 2008, the Ninth Circuit Court of Appeals issued a decision in *Natural Resources Defense Council v. United States Environmental Protection Agency*, 526 F.3d 591 (9th Cir. 2008), vacating these rules. On November 3, 2008, the court denied EPA’s request for a rehearing, and the court’s order became effective on November 19, 2008.

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As a result of the decision in *Natural Resources Defense Council v. United States*

Environmental Protection Agency, EPA has indicated that 40 CFR § 122.26(a)(2) and (e)(8)

revert to the language that was in effect prior to the 2006 amendments

(<http://cfpub.epa.gov/npdes/stormwater/oilgas.cfm>). The Department's existing rules at N.J.A.C.

7:14A-24.2, 24.4, and 24.7 (readopted through this rulemaking) reflect this language.

Accordingly, the Department is not adopting the proposed amendments to those sections.

Summary of Agency-Initiated Changes:

The Department is modifying N.J.A.C. 7:14A-2.11(b)3ii and 6.8(d)3iii on adoption to correct a grammatical error. These conditions are missing the word "the" in front of Department's database system.

The Department is modifying N.J.A.C. 7:14A-3.1(d)1vi on adoption to correct a grammatical error. The fifth Discharge Control Scenario for Pollutant Source in the Table is missing the word "than" in front of "sanitary wastewater with at least secondary treatment."

The Department is modifying N.J.A.C. 7:14A-4.3(e), 21.12(c), 24.2, and 24.2(c) on adoption to be consistent throughout the rules. The words "an NJPDES" are being changed to "a NJPDES."

The Department is modifying N.J.A.C. 7:14A-8.16(b)1i on adoption to update the Department's contact information, specifically the program name.

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The Department is modifying N.J.A.C. 7:14A-11.13(d)4ii on adoption to correct a grammatical error. The word “take” in this condition does not make sense and should be “taken.”

Federal Standards Analysis

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The Department has identified various areas in which some existing NJPDES requirements might be considered more stringent than the corresponding Federal provisions. The Department has objectively examined those State standards that are more stringent than the Federal standards and has minimized those differences in the rules readopted with amendments, repealed and new rules.

The within Federal Standards Analysis is modified from the Analysis at 40 N.J.R. at 1523 with regard to N.J.A.C. 7:14A-4 and 19. The modification to the Federal Standards Analysis for N.J.A.C. 7:14A-4 states that the Department is more stringent at existing N.J.A.C. 7:14A-4.4(b)2ii than the Federal rule. This discussion was inadvertently omitted in the proposal. As a result of modifications made to the rules on adoption, the Federal Standards Analysis for N.J.A.C. 7:14A-19 is changed from the proposal. The Department is modifying N.J.A.C. 7:14A-19.3(e)5 on adoption to include the more specific cross references from the Federal rule. The Department is not adopting the amendments to N.J.A.C. 7:14A-19.8(d)2 and 19.8(d)3 as proposed, and will retain readopted N.J.A.C. 7:14A-19.8(d)2 and 19.8(d)3. Further, the Department is not adopting N.J.A.C. 7:14A-19.8(d)5 or 19.8(e).

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

The Department’s organizational rules in general, and N.J.A.C. 7:1-1.3 in particular, are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required.

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

The authority for regulating the construction of individual subsurface sewage disposal systems comes solely from State statute, specifically N.J.S.A. 58:11-23 et seq., 58:10A-1 et seq., including 58:10A-16, 13:1D-1 et seq., and 26:3A2-21 et seq. N.J.A.C. 7:9A has no Federal counterpart.

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

The amendment to the definition of “serious violation” at N.J.A.C. 7:14-8.2 does not have a Federal counterpart. The amendment reflects the inclusion of whole effluent toxicity test terms in the NJPDES rules at existing N.J.A.C. 7:14A-13.14. The amendment does not change the monitoring parameter, but provides for a better-defined statistical condition for testing.

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

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The NJPDES rules are developed partly under the National Pollutant Discharge Elimination System as authorized by the Federal Clean Water Act (including surface water and sludge management programs), under the underground injection control (UIC) program as authorized under the Federal Safe Drinking Water Act, and under ground water monitoring and corrective action portions of the municipal solid waste landfill and hazardous waste programs as authorized under the Resource Conservation and Recovery Act (RCRA). The applicable Federal requirements for surface water, sludge management, underground injection control (UIC), municipal solid waste landfills, and hazardous waste are found at 40 CFR Parts 104, 109, 110, 112, 116, 117, 121 through 125, 129, 130, 131, 133, 136, 140, 144 through 148, 239, 258, 264, 271, 40 CFR chapter I, subchapter N (Parts 400 through 471) and 40 CFR Parts 501 and 503. Most of the NJPDES program is a delegated program, which means that the Department, rather than the USEPA, issues the permits. The requirements for delegated state programs are contained at 40 CFR 123, 145, 239, 271, 403 and 501. In accordance with 40 CFR 123, 145, 239, 271, 403 and 501, a delegated state, such as New Jersey, must include in the rules governing the permitting program specific provisions that are at least as stringent as the corresponding Federal provisions.

For parts of the NJPDES program, however, there are no corresponding Federal programs. For those parts of the NJPDES program, the Department is continuing to exercise its broader authority under the New Jersey Water Pollution Control Act and Water Quality Planning Act. The treatment works approval program, for example, has no analogous Federal counterpart. The State ground water program, except for the underground injection control, sanitary landfill, and hazardous waste facilities requirements, has no analogous Federal counterpart. The State surface water program, in contrast, closely follows the corresponding Federal requirements,

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except that the State surface water program for certain nonpoint sources has no analogous Federal counterpart. Where there is a corresponding Federal program, the rules generally include the same requirements as the Federal provisions. The following discussion includes a section-by-section comparison of each NJPDES subchapter. Those areas where the NJPDES provisions are more stringent than the comparable Federal provisions are specifically identified and discussed.

N.J.A.C. 7:14A-1 Abbreviations, Acronyms, and Definitions

N.J.A.C. 7:14A-1 provides a list of the abbreviations and acronyms used by the Department in the NJPDES permitting program. In addition, it defines the terms used in the rules and it incorporates the applicable definitions found in the Federal rules.

Many of the definitions in N.J.A.C. 7:14A-1 incorporate and clarify Federal definitions in 40 CFR 35.2005, 122.2, 122.23, 122.25, 122.26, 122.27, 122.29, 122.41, 133.10 and 144.3. The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-1.1	Abbreviations and acronyms	Incorporates and clarifies 40 CFR 122.2
7:14A-1.2	Definitions	Incorporates and clarifies 40 CFR 35.2005, 122.2, 122.23, 122.25, 122.26, 122.27, 122.29, 122.41, 133.101 and 144.3

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Abbreviations, acronyms, and definitions as such do not establish any regulatory requirements; consequently, no further analysis is required. Where any definition as used in a specific rule has an impact for purposes of the comparison with Federal law, the applicable section-specific analysis discusses it.

N.J.A.C. 7:14A-2 General Program Requirements

N.J.A.C. 7:14A-2 contains general NJPDES program requirements and incorporates a variety of Federal requirements in, for example, 40 CFR 122, 123, 144, and 145. Following is a discussion of N.J.A.C. 7:14A-2 provisions for which there are no Federal counterparts, or which exceed or might be considered to exceed Federal requirements.

N.J.A.C. 7:14A-2.4 enumerates activities for which the Department issues NJPDES permits. For some of these activities, there are no Federal requirements analogous to N.J.A.C. 7:14A-2.4. The Federal NPDES permit program is limited to discharges from point sources to “waters of the United States” as defined in 40 CFR 122.2 (most surface waters), and to certain treatment works treating domestic sewage. The Federal UIC Program is limited to underground injection through wells. Under N.J.A.C. 7:14A-2.4, however, the Department issues NJPDES permits not only for those point source discharges, treatment works, and underground injection, but also for certain discharges from nonpoint sources; certain discharges to other waters of the State including groundwater with or without underground injection; and certain specified activities with or without those point source discharges, treatment works, or underground injection (such as land application of wastewaters, storage of pollutants, discharges from site remediation projects and certain solid waste management facilities, and treatment, storage or disposal of certain hazardous waste). For activities not subject to analogous Federal

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requirements, N.J.A.C. 7:14A-2.4 is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. For additional discussion of discharges from nonpoint sources, see the discussion of N.J.A.C. 7:14A-2.5(d) below.

There are no current Federal requirements for nonpoint source control analogous to N.J.A.C. 7:14A-2.5(d). Because of the limited scope of USEPA's jurisdiction under the Federal Clean Water Act, the Federal NPDES discharge permit program is limited. In N.J.A.C. 7:14A-2.5(d), however, the Department is exercising its broader authority under the New Jersey Water Pollution Control Act and Water Quality Planning Act to regulate certain agricultural and silvicultural nonpoint source discharges.

A Federal program concerning nonpoint source pollution control exists under the Coastal Zone Management Act. Under Section 6217(g) of the Coastal Zone Management Act Reauthorization and Amendments of 1990 (CZARA), P.L. 101-508, the USEPA has published "Guidance Specifying Management Measures For Sources of Nonpoint Pollution In Coastal Waters" (CZARA 6217(g) Guidance). States may opt to participate or not participate in overall coastal zone management program. No mandatory Federal standards or requirements for nonpoint source pollution control are imposed. The CZARA 6217(g) Guidance includes management measures for nonpoint source pollution control from agriculture and silviculture as well as many other source types. The Department has developed a coastal zone management program, including a component addressing coastal nonpoint pollution control. The rules at N.J.A.C. 7:14A-2.5(d) are one means by which the Department implements its nonpoint pollution control program.

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N.J.A.C. 7:14A-2.6 defines those circumstances where a conflict of interest could affect the permitting process and prohibits persons with such a conflict of interest from participating in the permit decision process. This provision has a Federal counterpart in the NPDES program but not in the UIC program. It provides a positive social benefit for the general public by maintaining the program integrity and ensuring that permitting decisions are made impartially, without regard for financial remuneration to individuals by permittees.

What N.J.A.C. 7:14A-2.7(d) calls “administratively expired,” 40 CFR 122.64(b) calls “termination by notice” or “expedited permit termination.” This provides the Department a simplified process for closing out permits associated with regulated activities that no longer exist and those permits that have expired where the permittee has not met the conditions of N.J.A.C. 7:14A-2.8(a) to administratively continue a permit.

N.J.A.C. 7:14A-2.10 describes the Department's subpoena powers in accordance with N.J.S.A. 58:10A-10.3(b). There is no comparable Federal rule. This provision allows the Department to proceed expeditiously with collection of information. The subpoena powers established at N.J.S.A. 58:10A-10.3 are similar in purpose to powers established in Sections 309(g)(10) and 509(a)(1) and (2) of the Federal Clean Water Act and Section 1423(c)(8) of the Federal Safe Drinking Water Act.

N.J.A.C. 7:14A-2.11(b) sets forth the requirements for applicants, permittees and other interested persons to submit applications, reports, and other information electronically, with the Department's consent and in the manner prescribed by the Department, via the Department's web portal. There is no comparable Federal rule other than 40 CFR 122.21(a)(2)(ii), which applies to NPDES permit applications only. N.J.A.C. 7:14A-2.11(b) should facilitate implementation of future, more comprehensive USEPA rules to allow electronic reporting

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pursuant to the Government Paperwork Elimination Act of 1998, P.L. 105-277.

N.J.A.C. 7:14A-2.11(a), (c), and (d) set forth requirements to provide information in accordance with N.J.S.A. 58:10A-10.3(a) and (c). There are no comparable Federal rules. These provisions allow the Department to proceed expeditiously with collection of information. The requirements established at N.J.S.A. 58:10A-10.3(a) and (c) are similar in purpose to requirements established in Section 308 of the Federal Clean Water Act.

N.J.A.C. 7:14A-2.11(e) sets forth inspection and entry requirements pursuant to N.J.S.A. 58:10A-6(g). Comparable Federal rules at 40 CFR 122.41(i) and 144.51(i) are limited to facilities that have NPDES or UIC permits. This provision allows the Department to enter property to conduct inspection, sampling, copying, or photography for purposes of the NJPDES rules, regardless of whether that property has a NJPDES-permitted facility. The inspection and entry requirements established at N.J.S.A. 58:10A-6(g) are similar in purpose to requirements established in Section 308 of the Federal Clean Water Act.

N.J.A.C. 7:14A-2.12(a) and 2.12(b) state, in part, that permittees and applicants may be required to conduct any and all studies that are necessary to develop permit limits and conditions. This is consistent with the Federal requirements at 40 CFR 122.21, 122.41, 122.43, 122.44, and 144.52, and also provided for in Section 308 of the Federal Clean Water Act. 40 CFR 122.41 and 122.44 require permittees to submit the information needed by the Department to develop effluent limitations. In addition, 40 CFR 122.44 requires the Department to incorporate water quality based limits in discharge permits. Although the Department encourages permittees and applicants to engage in cooperative and coordinated ambient studies to optimize the completion of necessary studies in an efficient manner, the rule does not mandate this.

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N.J.A.C. 7:14A-2.12(c) provides that all studies conducted for the purposes of implementing the requirements of N.J.A.C. 7:14A, applicable to any regulated entity under the surface water, ground water, storm water, residuals or significant indirect user programs, must be performed in accordance with a Department approved Work/Quality Assurance Project Plan (Work/QAPP). This requirement is consistent with various USEPA quality assurance regulations and other quality assurance requirements that apply to programs over which USEPA has partial or full jurisdiction through regulation, delegation, or funding. Such regulations and requirements include USEPA Order 5360.1 A2 (EPA 2000), *Policy and Program Requirements for the Mandatory Agency-Wide Quality System*, as well as 48 CFR 46 and 40 CFR 30, 31, and 35. In recognizing the importance of quality assurance, the Department applies USEPA's quality assurance project plan requirements to all of the Department's environmental programs, including the NJPDES program, even where there is no USEPA or other Federal jurisdiction.

N.J.A.C. 7:14A-2.13 identifies concentrated animal feeding operations (CAFOs) that require a NJPDES permit. Although N.J.A.C. 7:14A-2.13 is generally consistent with 40 CFR 122.23(a), (b)(2), (4), and (6), (c), and (d)(1), some animal feeding operations (AFOs) are identified as CAFOs in N.J.A.C. 7:14A-2.13, but not in the USEPA rules (or vice versa). For example, N.J.A.C. 7:14A-2.13 has categories (removed from the USEPA rules in 2003) for laying hens or broilers at facilities with continuous overflow watering, and for AFOs with specified numbers of "animal units," but does not have categories (added to the USEPA rules in 2003, but later partially vacated by court order) for immature swine, and for laying hens and other chickens if the AFO uses a dry chicken manure handling system.

The Department has readopted N.J.A.C. 7:14A-2.13 and the other NJPDES rules that specifically pertain to CAFOs without amendments. The Department had intended to propose

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amendments that would make the State's rules consistent with the Federal rules regarding immature swine, and for laying hens and other chickens; however, some important provisions of those USEPA regulations were vacated by the United States Court of Appeals for the Second Circuit in *Waterkeeper Alliance Inc., et al. v. EPA*, 399 F. 3d 486 (2d Cir. 2005). The USEPA has not yet promulgated rules in response to the *Waterkeeper Alliance* decision. The Department and USEPA agreed that is reasonable for the Department to postpone proposing such amendments until USEPA promulgates revised CAFO regulations in response to that opinion.

N.J.A.C. 7:14A-2.13(c) allows the Department, in accordance with N.J.S.A. 58:10A-10.3(a), to require any AFO to provide information regarding the number and type of animals confined, the means of discharge, and the name and address of the owner or operator. There are no comparable Federal rules. This provision allows the Department to collect information useful for determining whether an AFO is a CAFO under N.J.A.C. 7:14A-2.13(b) or (d). The requirements established at N.J.S.A. 58:10A-10.3(a) are, however, similar in purpose to requirements established in Section 308 of the Federal Clean Water Act.

N.J.A.C. 7:14A-2.14(c) requires certain aquatic animal production facilities, in accordance with N.J.S.A. 58:10A-10.3(a), to submit certain information to the Department to determine if a NJPDES permit is required. There are no comparable Federal rules.

Adopted N.J.A.C. 7:14A-2.15 regulates Reclaimed Water for Beneficial Reuse (RWBR). There are no comparable Federal rules. This section implements policies concerning reclaiming and recycling of water in Section 201(b) of the Federal Clean Water Act. In addition, the New Jersey RWBR program including this section has been developed in a manner that is consistent with USEPA's 2004 *Guidelines for Water Reuse* (EPA/625/R-04/108) where applicable.

The table below lists the contents of the subchapter and the related Federal law or

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guidance.

Reference	Heading	Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-2.1	Purpose and scope	Incorporates 40 CFR 122.1, 123.25, 145.11.
7:14A-2.2	Liberal construction and severability	Clarifies 40 CFR 123.25.
7:14A-2.3	Incorporation by reference	Clarifies 40 CFR 122.21(c), 123.25, 145.11.
7:14A-2.4	Activities that require a NJPDES permit	Incorporates and clarifies 40 CFR 122.1(b), 122.21, 122.44(m), 124.52(a) and (b), 144.31, 403(f)(iii), 503.
7:14A-2.5	Exemptions	Incorporates 40 CFR 122.3, and is consistent with 40 CFR 264, 265, and 270.1(c).
7:14A-2.6	Conflict of interest	Incorporates 40 CFR 123.25(c).
7:14A-2.7	Permit duration and renewal	Incorporates 40 CFR 122.41(b) and (f), 122.46(a) through (c), 144.36, 144.51(b), and incorporates and clarifies provisions in 40 CFR 122.64(b) that pertain to a permanently terminated discharge.
7:14A-2.8	Administrative continuation of permits	Incorporates 40 CFR 122.6(a) through (c), 144.37 (a) through (c).
7:14A-2.9	Enforcement action	Incorporates 40 CFR 122.41(a) and (c),

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122.5(a), 144.51(a), 144.51(c).

7:14A-2.10 Subpoena

Similar in purpose to Sections 309(g)(10) and 509(a)(1) and (2) of Federal Clean Water Act and Section 1423(c)(8) of Federal Safe Drinking Water Act.

Incorporates N.J.S.A. 58:10A-10.3(b).

7:14A-2.11 Duty to provide information

Incorporates 40 CFR 122.21(a)(2)(ii), 122.41(i) and (l)8, 144.51(i) and (l)8).

Portions similar in purpose to Section 308 of Federal Clean Water Act. Incorporates N.J.S.A. 58:10A-6(g) and N.J.S.A. 58:10A-10.3(a) and (c).

7:14A-2.12 Studies

Consistent with 40 CFR 30, 31, 35, 122.41, 122.43, 122.44, 130.4(b), 144.52, 48 CFR 46 and Section 308 of the Federal Clean Water Act.

7:14A-2.13 Specific criteria for concentrated animal feeding operations

Incorporates 40 CFR 122.23(a), (b)(2), (4), and (6), (c), and (d)(1). Portion similar in purpose to Section 308 of Federal Clean Water Act.

7:14A-2.14 Specific criteria for concentrated aquatic animal production facilities

Incorporates 40 CFR 122.24 and 40 CFR 122 appendix C. Portion similar in purpose to Section 308 of Federal Clean

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Water Act.

7:14A-2.15 Reclaimed water for beneficial reuse (RWBR) Implements Section 201(b) of Federal Clean Water Act, and is consistent with USEPA's 2004 *Guidelines for Water Reuse* where applicable.

N.J.A.C. 7:14A-3 Determination of Permit Fees

N.J.A.C. 7:14A-3 pertains to the establishment and determination of permit fees. All persons who wish to discharge wastewater in the State are required to obtain a NJPDES discharge permit from the Department. Pursuant to N.J.S.A. 58:10A-9, the Department is authorized to establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering NJPDES permits. Fees are assessed to cover the Department's cost to issue and manage NJPDES permits. The NJPDES budget and fee schedule covers activities including the review of NJPDES permit applications, the development of specific permit terms and conditions including wasteload allocations, stream monitoring and modeling, conducting compliance and 24-hour sampling inspections, groundwater compliance sampling, supervising the installation of groundwater monitoring wells, evaluating and approving groundwater remediation alternatives, evaluating compliance with the terms and conditions of each NJPDES permit, and providing for the general administrative costs of the NJPDES program including regulatory support, data processing, and budgeting.

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There is no Federal counterpart to N.J.A.C. 7:14A-3.1. However, Section 1447(a) of the Federal Safe Drinking Water Act (42 U.S.C. §300j6(a) and Section 6001(a) of the Resource Conservation and Recovery Act (42 U.S.C. §6961(a)) expressly recognize that delegated states may charge fees for underground injection, solid waste, or hazardous waste permits.

The USEPA does not currently administer a NPDES, UIC, or RCRA fee program, or require delegated states to assess permit fees to cover the costs of implementing their delegated permit programs. Decisions on how to fund program costs are made by each state under applicable state legislative authority. Therefore, only states with enabling legislation, such as New Jersey, may assess fees to administer some or all of their permitting program.

Since the Federal Water Pollution Control Act and the Federal Safe Drinking Water Act do not contain any standards or requirements regarding fees, the Department has determined that existing requirements and the adopted amendments to N.J.A.C. 7:14A-3.1 do not contain any standards or requirements that exceed any standards or requirements imposed by Federal law. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), do not require further analysis.

Reference	Comparison with	
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-3.1	Fee schedule for NJPDES permittees and applicants	No comparable Federal requirement

N.J.A.C. 7:14A-4 Permit Application Requirements

N.J.A.C. 7:14A-4 pertains to the filing of applications for discharge permits. It specifies the administrative and technical information needed for various types of discharge permits. It

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incorporates the Federal requirements at 40 CFR 122.21, 122.22, 122.41, and 122.44 as tabulated with the exceptions listed below:

N.J.A.C. 7:14A-4.3 includes the following provisions, which are different from Federal requirements.

The provisions of N.J.A.C. 7:14A-4.3 that are required in accordance with 40 CFR 122.21(g), (h), and (k), are applicable to all dischargers. The Department has differentiated three categories of discharges: (1) POTWs and DTWs, (2) discharges of process wastewater including industrial discharges covered under categorical effluent guidelines, and (3) discharges of non-process wastewater. The Department treats all discharges under the same set of rules, since it is the Department's intent to issue permits for all discharges or activities in a manner that is as uniform as possible, and since most of the information required is applicable to all discharges or activities in one form or another. Since the requirements listed under the Federal regulations are similar regardless of category, the Department believes that there will not be any additional costs to permittee. However, where a Federal requirement is specific to a primary industrial category, the Department has not applied those to POTWs and DTWs, since those requirements are specific to distinct categories of discharges, and application across other categories was not appropriate.

N.J.A.C. 7:14A-4.3(c) uses the term “operating entity” rather than “operator” in describing who must obtain a NJPDES permit. The definition of “operating entity” or “operator” in N.J.A.C. 7:14A-1.2 does not exceed USEPA's interpretations of the often-applicable USEPA definitions of “operator.” The Department believes that this definition is consistent with USEPA discussions about who is an “operator” that requires a NPDES permit under 40 CFR 122.21(b). (See 57 Fed. Reg. 41190-41191 (September 9, 1992); USEPA Form 1 (revised August 1990); an

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October 28, 1988 USEPA memorandum from James R. Elder, Director, Office of Water

Enforcement and Permits; and 45 Fed. Reg. 33295, 33299 (May 19, 1980).)

The Department is requesting basic identification information from applicants in N.J.A.C. 7:14A-4.3(a)6 through 8. This information is not directly required under Federal regulation, but helps the Department to identify the permittees and co-permittees when more than one permittee (or potential permittee) exists at a given facility or activity. Confusion arises, for instance, when a person owns property, but leases the property to a potential discharger. Determining who is or may become responsible is especially important in enforcement actions. These requirements do not result in any direct additional expense to the permittee.

The Department is requesting historical enforcement information from applicants in N.J.A.C. 7:14A-4.3(a)10, such as the existence of any administrative consent orders. This information is not directly required under Federal regulation, but helps the Department to ensure that past problems are identified and resolved during the permit process. This requirement does not result in any direct additional expense to the permittee.

The Department is requesting evidence that a water quality management plan amendment approval, or favorable consistency determination, has been received at N.J.A.C. 7:14A-4.3(a)12. This is consistent with the State Act at N.J.S.A. 58:10A-6(e)4. This information is not required under Federal regulation. This requirement is needed to ensure that a permittee does not invest extensive capital in a project (for example, hiring a contractor, consultant, designing a treatment system, constructing) and then have the project denied because it does not meet the requirements for a plan amendment. No additional expenditure is required to submit this information to the Department, but by including this information, the applicant is acknowledging that any construction done without prior water quality management plan approval is done “at risk.”

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In N.J.A.C. 7:14A-4.3(a)13, the Department requires written comments or objections, if any, from the municipality or local agency, to be submitted with the NJPDES permit application. The applicant must submit evidence that the application has been submitted to the local agency and municipality. This requirement will enable the Department to go forward with an application if the local authority has failed to review or comment on a permit application within a specified time period. There are no comparable Federal requirements.

The Department is requesting additional application requirements from applicants in N.J.A.C. 7:14A-4.4. N.J.A.C. 7:14A-4.4(b)2ii requires that samples for VOCs be collected as grab samples. However, 40 CFR 122.21 states, “Grab samples must be used for pH, temperature, cyanide, total fecal coliform. For all other pollutants, a 24-hour composite sample must be used.” This allows samples for VOCs to be collected as composite. Therefore, the Department’s requirement is more stringent than the Federal regulations, but does not result in an additional cost to the permittee.

The Department requires grab samples for VOCs to minimize volatile losses. The collection of composite samples for VOCs is refuted by many sources, including 40 CFR Part 403.12 and 40 CFR 136, and the Department’s Field Sampling Procedures Manual.

N.J.A.C. 7:14A-4.8(a) identifies additional application information requirements for concentrated animal feeding operations (CAFOs). There are several areas in which N.J.A.C. 7:14A-4.8(a) differs from 40 CFR 122.21(i)(1). For example, N.J.A.C. 7:14A-4.8(a) has a requirement (removed from the USEPA rules in 2003) for "the number of acres used for confinement feeding," but does not have the requirement (added to the USEPA rules in 2003) for “the total number of acres under control of the applicant available for land application of manure, litter, or process wastewater.” As in the Federal Standards discussion of N.J.A.C. 7:14A-2.13,

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above, the Department intends to conform to the provisions in a future rulemaking, after the USEPA promulgates its rules regarding CAFOs in response to the *Waterkeeper Alliance* decision.

Existing N.J.A.C. 7:14A-4 Appendix A, Table II and III are consistent with 40 CFR 122 Appendix D. The Department has amended the pollutant lists in these tables to include toxic parameters that the Federal rule does not include, since the State has adopted surface water criteria for these parameters. Monitoring and reporting requirements for these additional toxic parameters are currently being required in the DSW permits for the existing domestic treatment works, and for some industrial dischargers. Although the Department has added pollutants for which the regulated entities must test, the additional pollutants will be part of the scan for the entire fraction (for example, acid compounds or base neutral compounds); therefore, there should not be an additional cost to conduct the required testing.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-4.1	Purpose and scope	
7:14A-4.2	Application requirements	Incorporates 40 CFR 122.21(a) through (c), 122.26, 144.31, 403.8(f)iii.
7:14A-4.3	Application information requirements	Incorporates 40 CFR 122.21, 144.31, 403.5(c), 501.15(a).
7:14A-4.4	Additional application requirement for DSWs	Incorporates 40 CFR 122.21, 122.44, 122.45, 136.

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7:14A-4.5	Specific technical application requirements for direct discharges to surface water	Consistent with requirements of 40 CFR 122.41 and 122.44. No comparable Federal requirement.
7:14A-4.6	Additional application requirements for significant indirect users	Consistent with requirements of 40 CFR 403.8(f), 122.41 and 122.44 for SIUs.
7:14A-4.7	Additional application requirements for discharges to ground water	No comparable Federal requirement
7:14A-4.8	Additional application requirements for specific DSW discharges	Incorporates 40 CFR 122.24 and part of 40 CFR 122.21(i)1.
7:14A-4.9	Signatory requirements for permit applications and reports	Incorporates 40 CFR 122.22(a)1ii, 122.41(k), 144.32, 144.51.
7:14A-4	Permit application testing requirements/pollutant listings	Incorporates 40 CFR 122 Appendix D.

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N.J.A.C. 7:14A-6 Conditions Applicable to All NJPDES Permits

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

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Amended N.J.A.C. 7:14A-6.2(a)4i requires compliance with pretreatment standards for toxic pollutants. The amended rule incorporates Section 307(b) of the Federal Act for toxic pollutants, in addition to Sections 307(a) and (c) that are in the existing rule.

The Department amended N.J.A.C. 7:14A-6.5(b)2ii as a result of significant changes to surface water quality criteria for bacterial indicators and their application contained in the adopted amendments to the Surface Water Quality Standards at N.J.A.C. 7:9B-1.14(d)1 (see 38 N.J.R. 4449(a), October 16, 2006). The Surface Water Quality Standards no longer include fecal coliform criteria for water designated “FW2,” “SE1” and “SC2,” or enterococcus criteria for waters designated “FW2.” The standards do have E. coli criteria for “FW2” waters. The amended Surface Water Quality Standards indicate that the geometric mean values (not the single sample maximum value) will be used to assess water quality, to develop Total Maximum Daily Loads (TMDLs) and to regulate wastewater discharges.

On March 12, 2007, USEPA adopted methods in 40 CFR Part 136 for enterococcus and E. coli in wastewater (72 Fed. Reg. 11212). The Department has determined that the existing effluent standard at N.J.A.C. 7:14A-12.5(b) based on fecal coliform should remain unchanged. These amendments to the Surface Water Quality Standards were largely the result of the Federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 and the Department’s experience with implementing beach monitoring with enterococcus. For further discussion of the basis for the amendments to the Surface Water Quality Standards, see 37 N.J.R. 3480(a) (September 19, 2005).

The Department amended N.J.A.C. 7:14A-6.8 to reflect the monitoring report forms currently used by the Department. It also amended N.J.A.C. 7:14A-6.8(a) to inform permittees approved under the New Jersey Pollutant Discharge Elimination System Electronic Data

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Interchange (NJPDES EDI) program that monitoring report forms may also be accessed for completion via use of an internet service. These amendments are consistent with the intent of 40 CFR Parts 122 and 144 and are not more stringent than these Federal regulations.

The Department amended N.J.A.C. 7:14A-6.9 to reflect the monitoring report forms currently used by the Department. The Department also amended N.J.A.C. 7:14A-6.9(a) to reflect an amendment to the Water Pollution Control Act at N.J.S.A. 58:10A-6f (5), effective January 22, 1993, clarifying who must sign forms for local agencies. These amendments are consistent with the intent of 40 CFR Parts 122 and 144 and are not more stringent than these Federal regulations.

The Department adopted amendments to N.J.A.C. 7:14A-6.10 to conform to 40 CFR 122.41 with respect to residual use or disposal practices. An exceedence of a standard for residual use or disposal is a reportable event even if a discharge has not occurred. 40 CFR 122.41 requires an oral report within 24 hours, and a written submission within five days for such instances of noncompliance. Therefore, the Department amended this section to clarify this requirement.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-6.1	Purpose and scope	Incorporates 40 CFR 122.41 and 122.43(c), 144.45, 144.51.
7:14A-6.2	General conditions applicable to all permittees	Incorporates 40 CFR 122.1, 122.5(b), 122.5(c), 122.41(a), (d), and (l)(3),

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		122.44(b), (c)(1) and (4), (f), (k), (m) and (n), 122.45(f), 144.35, 144.51.
7:14A-6.3	Establishing permit conditions	Incorporates 40 CFR 122.43(a) and (b)(1), 144.52.
7:14A-6.4	Schedules of compliance	Incorporates 40 CFR 122.41(l)(5) and 122.47, 144.51(j)(1), 144.53.
7:14A-6.5	Monitoring	Incorporates 40 CFR 122.41(j)(1) and (4), 122.48, 144.51(j)(1), 144.54.
7:14A-6.6	Recordkeeping	Incorporates 40 CFR 122.41(j)(2) and (3), 122.21(p), 144.51(j)(2) and (3), 144.31(f).
7:14A-6.7	Notice requirements for facility alterations and additions	Incorporates 40 CFR 122.41(l)(1), 144.51(l)(1).
7:14A-6.8	Reporting monitoring results	Incorporates 40 CFR 122.41(l)(4) and (7), 122.48, 144.51(l)(4) and (7), 144.54.
7:14A-6.9	Signatory requirements for MRSF and BR	Incorporates 40 CFR 122.41(l)(4) and (7), 144.51(l)(4) and (7).
7:14A-6.10	Noncompliance reporting	Incorporates 40 CFR 122.41(l)(6) through (8), (m), and (n), 144.51(l)(6) through (8)
7:14A-6.11	Affirmative defenses	Incorporates 40 CFR 122.41(m)(2) through (4) and (n)(2) through (4).
7:14A-6.12	Operation, maintenance, and emergency conditions	Incorporates and clarifies 40 CFR 122.41(e), 144.51(e).

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7:14A-6.13	General permits	Incorporates 40 CFR 122.28.
7:14A-6.14	Emergency permits	Incorporates 40 CFR 144.34.
7:14A-6.15	Residuals management	Incorporates 40 CFR 122.44(a)(2) and (b)(2) and 122.44(o), 405(f).
7:14A-6.16	Pretreatment requirements for local agencies	Incorporates 40 CFR 122.44(j)(3).
7:14A-6.17	Adjustment of DSW limitations for alternative disposal of pollutants	Incorporates 40 CFR 122.50.

N.J.A.C. 7:14A-7 Requirements for Permits to Discharge to Ground Water (DGW)

N.J.A.C. 7:14A-7 establishes the requirements for NJPDES discharge to ground water permits, which include detailed requirements for conducting ground water monitoring programs and for implementing ground water protection programs. This subchapter is applicable to all types of discharges to ground water for which NJPDES permits are required pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., except for those discharges to which N.J.A.C. 7:14A-9 and 10 apply, and discharges associated with land application of residuals (which is regulated under N.J.A.C. 7:14A-20). The scope of this subchapter includes ongoing discharges from industrial septic systems; ongoing discharges from sanitary septic systems discharging greater than 2,000 gallons per day; ongoing discharges from sanitary septic systems used by a multiple dwelling, community, or regional facility that is not a single family residential system; ongoing discharges of industrial, sanitary, and certain stormwater pollutants onto the land surface, into the subsurface environment, or into infiltration basins; and disposal of

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contaminated dredge spoils. This subchapter also establishes several categories of permits-by-rule for ongoing discharges to the ground water from injection wells and other activities that do not endanger underground sources of drinking water, but are otherwise required to be covered under a permit.

The authority for regulating the types of discharges to ground water covered by this subchapter comes primarily from State statutes including N.J.S.A. 58:10A-1 et seq., and has no Federal counterpart (except in regard to injection wells as discussed below). N.J.A.C. 7:14A-7 is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements (except as discussed below).

Some of the units regulated under N.J.A.C. 7:14A-7 are injection wells that are also regulated under N.J.A.C. 7:14A-8. An underground injection control (UIC) permit issued in accordance with N.J.A.C. 7:14A-8 is a DGW permit that is also subject to certain provisions of N.J.A.C. 7:14A-7. In addition, injection wells are regulated under USEPA rules for the Federal Underground Injection Control Program created pursuant to Part C of the Federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§300(f) et seq.). These USEPA rules are found mainly at 40 CFR Parts 144 through 148. To the extent that some N.J.A.C. 7:14A-7 provisions regulate injection wells, N.J.A.C. 7:14A-7 might be considered one of the means by which the Department participates in the UIC program established under Federal law. However, all NJPDES rule provisions that impose standards or requirements specific to injection wells are found in N.J.A.C. 7:14A-8 rather than in N.J.A.C. 7:14A-7. To the extent that some N.J.A.C. 7:14A-7 provisions affect injection wells, those provisions implement Federal UIC mandates; they do not go beyond them.

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N.J.A.C. 7:14A-8 Additional Requirements for Underground Injection Control

Program (UIC)

The Underground Injection Control (UIC) program is a Federally mandated program, and New Jersey assumed primary responsibility for administering the program in 1982 from the USEPA. The UIC program regulates wells that are used to inject fluids into the ground, including geothermal wells (heat pumps), mineral extraction wells, industrial disposal wells (certain dry wells), industrial and sanitary septic systems, and certain stormwater infiltration structures. The Department has compared these rules to the applicable Federal standards set forth in 40 CFR Parts 144 through 146. These rules are substantially the same as or implement the Federal rules; they do not go beyond them (except as discussed below in regard to N.J.A.C. 7:14A-8.4(a)3).

Federal Underground Injection Control rules at 40 CFR 144.87 and 144.88 provide requirements for underground injection wells. New Jersey has primacy for implementing the Federal program and is required by its primacy agreement with USEPA to maintain this rule to be consistent with the Federal rule. The adopted amendment to N.J.A.C. 7:14A-8.4(a)3 avoids a situation where the Department could re-authorize existing injection wells that are currently unlawful and pose a substantial risk to underground sources of drinking water, such as large-capacity cesspools and motor vehicle waste disposal wells that are not authorized by N.J.A.C. 7:14A-8. This avoids a situation where this rule and Federal rule deadlines and closure requirements for injection wells would be different. The adoption does not result in any new costs, and maintains consistency with the Federal rule. The amended rule is no more stringent than the Federal rule.

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Under 40 CFR 144.88(b)(1)(iv), UIC permits for motor vehicle waste disposal wells must include requirements to meet maximum contaminant levels (MCLs) and other health based standards at the point of injection. N.J.A.C. 7:14A-8.4(a)3 includes a requirement to meet Ground Water Quality Standards (N.J.A.C. 7:9C) at the point of injection. Under the NJPDES rules, permits for discharges to groundwater (including UIC permits) are required to comply with the Ground Water Quality Standards. Any applicable requirements in the Ground Water Quality Standards that are not MCLs or health based standards are necessary to achieve the objectives of the Water Pollution Control Act and the Water Quality Planning Act.

Types of Class V injection wells not identified in N.J.A.C. 7:14A-8.5 as eligible for a permit-by-rule require a general or individual NJPDES UIC permit that differs from the authorization by rule that 40 CFR 144.24 and 144.84 provide for some Class V wells. This requirement is authorized by 40 CFR 144.82(d), which recognizes that States can establish additional requirements for Class V wells to protect underground sources of drinking water.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-8.1	Purpose and scope	Incorporates 40 CFR 144.1.
7:14A-8.2	Classification of injection wells	Incorporates 40 CFR 144.6, 144.80, 144.81, and 146.5.
7:14A-8.3	Prohibition of unauthorized injection	Incorporates 40 CFR 144.11.

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7:14A-8.4	Prohibition of movement of fluid into underground sources of drinking water	Incorporates 40 CFR 144.12 and 144.82(a). Also based on 40 CFR 144.81(2) and (16), 144.84(b), 144.85, 144.87, 144.88, and 144.89(b).
7:14A-8.5	Authorization of injection into Class V wells by permit by rule	Incorporates 40 CFR 144.24 and 144.84 for specific types of injection activities eligible under this section for a permit-by-rule. Implements 40 CFR 144.82(d) and 144.83(a).
7:14A-8.6	Identification of underground sources of drinking water	Incorporates 40 CFR 144.7.
7:14A-8.7	Prohibition and elimination of underground injection of hazardous and radioactive wastes	Incorporates 40 CFR 144.13 and 144.23(c).
7:14A-8.8	Authorization by permit	Incorporates pertinent parts of 40 CFR 144.31 through 144.41.
7:14A-8.9	Additional conditions applicable to Class I, II, III, and V UIC permits	Incorporates 40 CFR 144.51.
7:14A-8.10	Establishing UIC permit conditions	Incorporates 40 CFR 144.52.
7:14A-8.11	Corrective or preventive action	Incorporates 40 CFR 144.55.
7:14A-8.12	General operating criteria and	Incorporates 40 CFR 146.6, 146.7, 146.8,

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| | construction standards | and 146.10(a). Also based on 40 CFR 144.12(a). |
| 7:14A-8.13 | Specific operating criteria and construction standards applicable to Class I wells | Incorporates 40 CFR 146.11 through 146.15. |
| 7:14A-8.14 | Specific operating criteria and construction standards applicable to Class II wells | Incorporates 40 CFR 146.21 through 146.25. |
| 7:14A-8.15 | Specific operating criteria and construction standards applicable to Class III wells | Incorporates 40 CFR 146.31 through 146.35. |
| 7:14A-8.16 | Specific operating criteria and construction standards applicable to Class V injection wells | Incorporates 40 CFR 146.51. Also implements 40 CFR 144.12(a), 144.82, 144.89, and 146.10(c). |
| 7:14A-8.17 | Additional requirements for applications for individual UIC permits | Incorporates 40 CFR 146.14, 146.24, and 146.34. Requirements are also consistent with overall NJPDES permit filing requirements. |
| 7:14A-8.18 | Specific operating criteria and construction standards applicable to permit by rule authorizations for underground injection into seepage pits | Implements 40 CFR 144.82(d) and 144.83. |

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7:14A-8 Equation for area of review Incorporates 40 CFR 146.6

Appendix

A

N.J.A.C. 7:14A-9 Ground Water Monitoring Requirements for Sanitary Landfills

N.J.A.C. 7:14A-9 provides the requirements for conducting ground water monitoring and corrective measures at sanitary landfills in New Jersey. Sanitary landfills are divided into two groups, based on whether or not a landfill is subject to Federal law. The first group is comprised of sanitary landfills that meet the definition of a Municipal Solid Waste Landfill (MSWLF) in the Federal rules at 40 CFR Parts 257 and 258, because they continued to operate after 1993. This MSWLF group of sanitary landfills is required to comply with 40 CFR Parts 257 and 258. This subchapter incorporates 40 CFR Parts 257 and 258 in substantially identical form. The second group consists of sanitary landfills that are not identified under Federal rule as MSWLFs. The ground water monitoring and corrective measures programs for these sanitary landfills are not regulated by any comparable Federal law.

For the group of sanitary landfills identified as MSWLFs, the Department has compared these rules to the applicable Federal standards set forth in 40 CFR Parts 257 and 258. This subchapter, as it applies to MSWLFs, is substantively identical to the Federal rules. Therefore, the Department has determined that these rules do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law, and no further analysis is required.

For the group of sanitary landfills that are not identified as MSWLFs under Federal rules, N.J.A.C. 7:14A-9 is not promulgated under the authority of, or in order to implement, comply

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with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27(1994) and P.L. 1995, c. 65 do not require a comparison with Federal law.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-9.1	Scope and purpose	Incorporates 40 CFR 258.1.
7:14A-9.2	Applicability	Incorporates 40 CFR 258.50.
7:14A-9.3	Ground water monitoring system performance standards	Incorporates 40 CFR 258.51.
7:14A-9.4	General ground water monitoring well requirements	Incorporates 40 CFR 258.51.
7:14A-9.5	Ground water monitoring program requirements for sanitary landfills	Incorporates 40 CFR 258.53.
7:14A-9.6	Relevant point of compliance	Incorporates 40 CFR 258.40.
7:14A-9.7	Leak detection monitoring program	Incorporates 40 CFR 258.54.
7:14A-9.8	Assessment monitoring program	Incorporates 40 CFR 258.55.
7:14A-9.9	Assessment of corrective measures	Incorporates 40 CFR 258.56.
7:14A-9.10	Selection of remedy	Incorporates 40 CFR 258.57.
7:14A-9.11	Implementation of the Corrective Action Program	Incorporates 40 CFR 258.58.

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7:14A-9.12	Application requirements for NJPDES- DGW permits for sanitary landfills	Incorporates 40 CFR 258.40.
7:14A-9 Appendix	Constituents for Detection Monitoring	Incorporates Appendix 1 to 40 CFR Part 258.

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N.J.A.C. 7:14A-10 Ground Water Monitoring Requirements for Hazardous Waste Facilities

N.J.A.C. 7:14A-10 incorporates requirements for conducting ground water monitoring and corrective action programs at hazardous waste facilities as required by Federal law in accordance with the Federal Resource Conservation and Recovery Act (RCRA) and its implementing regulations. This subchapter is readopted without amendment. For the hazardous waste facilities affected by this subchapter, the Department has compared the NJPDES rules to the applicable Federal standards set forth in 40 CFR Part 264. In one area, these rules have requirements that are not the same as in the comparable Federal rule. Under N.J.A.C. 7:14A-10.8, and the Federal rule (40 CFR 264.94), all facilities are required to monitor for 14 constituents for the purpose of establishing ground water protection concentration limits. Of the 14, eight constituents in Table 1 of N.J.A.C. 7:14A-10.8 have more stringent criteria or standards under New Jersey's Ground Water Quality Standards at N.J.A.C. 7:9C. It is necessary to utilize the more stringent State criteria because, in accordance with N.J.A.C. 7:9C, all NJPDES permits must incorporate State ground water criteria, with no exceptions.

The New Jersey equivalent to the Federal concentration limits are the criteria in the

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ground water quality standards of N.J.A.C. 7:9C. To determine whether any of New Jersey's human health based ground water quality criteria at N.J.A.C. 7:9C are more stringent than corresponding Federal criteria, the Department compared them parameter-by-parameter with 40 CFR 264.94 Table 1. The New Jersey criteria may be considered more stringent than Federal criteria if they are numerically lower. Comparison of New Jersey's criteria with the corresponding Federal promulgated criteria revealed that New Jersey criteria are more stringent than Federal criteria for eight constituents: arsenic, cadmium, lead, lindane, methoxychlor, silver, toxaphene, and 2,4-D (see Table 1 below). However, the New Jersey criteria are more stringent than Federal criteria because different toxicological bases or carcinogenicity classifications were used to derive them. With the exception of the criterion for lead, the Department adopted these criteria using USEPA Integrated Risk Information System (IRIS) data updated to July 31, 2003. The Federal criteria are based on the Maximum Contaminant Levels (MCLs) in the National Interim Primary Drinking Water Regulations, which were adopted in June of 1977. These MCLs were revised and updated by the USEPA on January 30, 1991 (see 56 Fed.Reg. 3526). Table 1 in 40 CFR 264.93 has not been updated by the USEPA to reflect the modern MCLs. The Department believes its criteria reflect the best available scientific information, compared with the Federal criteria found at 40 CFR 264.93 Table 1. The Department believes the Federal limits are outdated.

Table 1 Concentration Limits for eight constituents.

<u>Constituent</u>	<u>New Jersey Criteria (µg/L)</u>	<u>USEPA Concentration Limits</u> <u>(µg/L)</u>
Arsenic	3	50
Cadmium	4	10

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Lead	5	50
Lindane	0.03	4
Methoxychlor	40	100
2,4-D	70	100
Silver	40	50
Toxaphene	0.03	5

The New Jersey criteria for lead are based on adverse effects relating to neurological development of children and consideration of the sources of lead in drinking water. Unlike most other noncarcinogenic effects, no threshold dose exists for the effects of lead on the neurological development of children. Therefore, any level of lead exposure is suspected to result in a decreased intellectual function in children. Because a significant portion of New Jersey children have been found to have blood lead levels above an acceptable level (New Jersey Department of Health, Childhood lead database, Division of Maternal and Child Health, 1992 Summary Data) and additional exposure to lead from drinking water may come from both the source water and from corrosion within the drinking water distribution system, the Department considers it appropriate to limit the exposure to lead in New Jersey to the greatest extent possible. Thus, for lead, the New Jersey criteria are more stringent than the Federal concentration limits.

In order to evaluate whether or not the more stringent State concentration limits based on N.J.A.C. 7:9C increase costs to permitted hazardous waste facilities, it is important to stress that the maximum concentration limits for the parameters listed in N.J.A.C. 7:14A-10.8 Table 1 apply to hazardous waste facilities only where an unpermitted release of hazardous constituents occurs, and the facility is required to institute compliance and corrective action programs in

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accordance with N.J.A.C. 7:14A-10.13 and 10.14, which are identical to 40 CFR 264.99 and 264.100. Facilities that instituted compliance and corrective action in accordance with the former rule at N.J.A.C. 7:14A-6.15 (repealed May 5, 1997), which was equivalent to the existing rule at N.J.A.C. 7:14A-10.13 and 10.14, are currently operating under authority of NJPDES permits written in accordance with former N.J.A.C. 7:14A-6.15(e)1iii (repealed May 5, 1997), under which the more stringent of either the Federal maximum concentration limits or the N.J.A.C. 7:9C ground water quality standards were applied. Therefore, for hazardous waste facilities remediating the effects of prior releases of hazardous constituents, compliance with the previously existing and these adopted rules did not and will not result in any additional costs.

For hazardous waste facilities that are operating under NJPDES detection monitoring permits, where no release of hazardous constituents has been detected, “state of the art” engineering design and monitoring systems preclude instituting the concentration limits of Table 1. This is because in those rare situations where a leak is detected, the compliance and corrective action responses required by Federal rules and by N.J.A.C. 7:14A-10.13 and 10.14 will effect remediation prior to the time the concentration limits would need to be compared to the ground water quality at the relevant point of compliance monitoring wells.

In one other area these rules contain a requirement to evaluate permit compliance with standards. This requirement is found at N.J.A.C. 7:14A-10.12(g)2, which is substantively the same as 40 CFR 264.98, except that where the Federal rule specifies analysis for 40 CFR Part 264 Appendix IX parameters, the State’s rule requires the practical quantitation levels (PQLs) for that analysis to be those listed in N.J.A.C. 7:9C. Achieving PQLs that are lower than the Federal rule could potentially result in an additional cost to a permittee, because higher quality laboratory standards would be required, which means that higher cost laboratories would need to be

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employed to achieve those PQLs. However, this requirement is not more stringent than the Federal rule, because the Federal rule explicitly states in a footnote to Appendix IX that the PQLs are not part of the regulation. Thus, there is no comparable Federal counterpart to the PQL requirement in N.J.A.C. 7:9C.

The monitoring required by this subchapter is identical to the requirements of the Federal law. For hazardous waste facilities required to implement compliance monitoring and corrective action response, eight standards are more stringent than the promulgated Federal standards. However, seven of the eight standards are outdated, and conflict with State standards developed in accordance with Federal rules. Therefore, only the State ground water quality standard for lead is clearly more stringent than in the Federal rule. However, since the more stringent standards for all eight constituents were required under the former State rules, and since all facilities instituting corrective action already have permits issued in accordance with the former State rules, the previously existing and this adopted rule did not and will not increase costs for hazardous waste facilities required to conduct remediation. Also, even when lead or any of the other seven constituents exist in ground water at concentrations that exceed the contaminant limit of N.J.A.C. 7:14A-10.8, remediation of these constituents is not performed by active methods. Remediation typically consists of establishment of Classification Exception Areas in accordance with N.J.A.C. 7:9C. Delineation of a Classification Exception Area consists of specifying in the permit or equivalent control document an area on a map, and is an insignificant cost for the Department, a zero cost for the permittee, and a significant benefit for any potential ground water users who will be protected by knowing that at the perimeter of the Classification Exception Area, ground water meets the State quality standards.

The table below lists the contents of the subchapter and the related Federal law or

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guidance.

Reference	Heading	Comparison with Related Federal Law or Guidance
7:14A-10.1	Scope and purpose	This section is required to connect these rules to the pertinent requirements pursuant to N.J.A.C. 7:26G and 40 CFR 264 and 265.
7:14A-10.2	Applicability	Incorporates 40 CFR 264.90.
7:14A-10.3	Exemptions	Incorporates 40 CFR 264.90.
7:14A-10.4	General ground water monitoring well requirements	Incorporates 40 CFR 264.97.
7:14A-10.5	Ground water monitoring program requirements for hazardous waste facilities	Incorporates 40 CFR 264.91.
7:14A-10.6	Ground water protection standard	Incorporates 40 CFR 264.92.
7:14A-10.7	Hazardous constituents	Incorporates 40 CFR 264.93.
7:14A-10.8	Concentration limits	Incorporates 40 CFR 264.94.
7:14A-10.9	Relevant point of compliance	Incorporates 40 CFR 264.95.
7:14A-10.10	Compliance period	Incorporates 40 CFR 264.96.
7:14A-10.11	Ground water monitoring system performance standards	Incorporates 40 CFR 264.97.
7:14A-10.12	Leak detection monitoring program	Incorporates 40 CFR 264.98.

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7:14A-10.13	Compliance monitoring program	Incorporates 40 CFR 264.99.
7:14A-10.14	Corrective action program	Incorporates 40 CFR 264.100.
7:14A-10.15	Application requirements for NJPDES-DGW permits for hazardous waste facilities	No comparable Federal requirements. These requirements comply with administrative requirements of NJPDES program.
7:14A-10.16	Application requirements for NJPDES-DGW permits for hazardous waste facilities with surface impoundments	No comparable Federal requirements. These requirements comply with administrative requirements of NJPDES program.
7:14A-10.17	Application requirements for NJPDES-DGW permits for hazardous waste facilities with land discharge by infiltration/percolation lagoons	These are the same as requirements for similar nonhazardous pollutant sources regulated under N.J.A.C. 7:14A-7.
7:14A-10.18	Application requirements for NJPDES-DGW permits for hazardous waste landfills	These are the same as requirements for nonhazardous sanitary landfills pursuant to N.J.A.C. 7:14A-9.12.

N.J.A.C. 7:14A-11 Conditions and Procedures Applicable to Discharges to Surface Water

Requirements of readopted N.J.A.C. 7:14A-11 are equivalent to the corresponding Federal requirements, except for the provisions outlined below.

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Adopted N.J.A.C. 7:14A-11.3(a) includes a reporting requirement that is more stringent than the Federal reporting requirements at 40 CFR 122.42. In some cases, it may require more frequent reporting of toxic discharges to the Department than are mandated by Federal requirements. The Federal requirement at 40 CFR 122.42 requires reporting to the Department if a non limited toxic pollutant exceeds the specified level for discharges which occur on a “routine/frequent” basis or exceeds the specified level for discharges which occur on a “non routine/infrequent” basis.

In contrast, adopted N.J.A.C. 7:14A-11.3(a) requires reporting to the Department whether or not the discharge occurs on a “routine/frequent” basis, or occurs on a “non routine/infrequent” basis. The adopted rule uses the more stringent Federal level established for “routine/frequent” discharges.

The additional cost of this potentially more frequent reporting is the cost to comply with the monitoring and reporting requirements specified in N.J.A.C. 7:14A-6.5 and 6.10. This cost is minimal and worth the additional cost because it will alert the Department if a toxic discharge has or will occur and allow the Department to take appropriate responses to safeguard the public health and/or the environment.

Additionally, this provision eliminates confusion that results from the Federal rule’s failure to define what is “routine/frequent” and what is “non routine/infrequent.” The adopted rule applies the same requirement to each.

The provision for a variance to publicly owned treatment works (POTWs) under 40 CFR Part 122.21(n)1 is not reflected in the table below. Variances under the Federal provision were available to POTWs for a limited time as a variance from the secondary treatment requirements for some discharges to the ocean. The variance is no longer available under the Federal

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provisions and no facilities in New Jersey were granted the variance during the time that it was available. Subsequently, public funds were used to install secondary treatment facilities at all facilities in the State.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-11.1	Purpose and scope	Incorporates 40 CFR 122.1, except that the scope of the DSW permit program has been expanded to include stormwater discharge into surface waters of the State from point and nonpoint sources regulated under N.J.A.C. 7:14A-24.2(a), and to include the discharge of pollutants into surface waters of the State from agricultural and silvicultural activities regulated under N.J.A.C. 7:14A-2.5(d).
7:14A-11.2	Establishing DSW permit conditions	Incorporates 40 CFR 122.44. Also see the discussion of N.J.A.C. 7:14A-24.9 and 25 below in regard to stormwater discharges associated with industrial activity or small construction activity, and in regard to

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| 7:14A-11.3 | Additional requirements for all existing manufacturing, commercial, mining, silviculture, and research facilities | Incorporates 40 CFR 122.42. |
| 7:14A-11.4 | Permit denial or conditions requested by other governmental agencies | Incorporates 40 CFR 124.59(b). |
| 7:14A-11.6 | Federal criteria and standards for DSW permits | Incorporates 40 CFR 125, Parts A, B, D, H, I, J. |
| 7:14A-11.7 | Variances and modifications under the State and Federal acts | Incorporates variance provisions under 40 CFR 125 and 122.21, except that variance under 122.21(n)(1) was excluded. This variance was available to POTWs for a limited time and no variances were granted to facilities in New Jersey. |
| 7:14A-11.8 | Decisions on variances | Incorporates 40 CFR 124.62. |
| 7:14A-11.9 | Procedures for variances | Incorporates 40 CFR 124.63. |
| 7:14A-11.10 | Public notice of Section 316(A) request | Incorporates 40 CFR 124.57. |
| 7:14A-11.11 | Special procedures for decisions on thermal | Incorporates 40 CFR 124.66. |

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	variances under Section	
	316(A)	
7:14A-11.12	Discharges from combined sewer overflows	See Appendix C, below.
7:14A-11.13	NJPDES/DSW PCB pollutant minimization plans for major facilities discharging to PCB impaired waterbodies	No comparable Federal requirement
7:14A-11 - Appendix C	Federal Policy on Combined Sewer Overflows	This Appendix incorporates the Federal policy on combined sewer overflows published in the Federal Register on April 19, 1994.

N.J.A.C. 7:14A-12 Effluent Standards Applicable to Direct Discharges to Surface Water and Indirect Discharges to a Domestic Treatment Works

N.J.A.C. 7:14A-12 sets forth State effluent standards based on the Federal provisions regarding establishment of effluent standards under Section 301(b)1(C) of the Clean Water Act and Federal regulations at 40 CFR Part 122. The subchapter establishes minimum effluent treatment standards for conventional pollutants, phosphorus, oil and grease and chemical specific toxic pollutants prior to the establishment of water quality based effluent limitations for those pollutant parameters.

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Since the effluent standards at N.J.A.C. 7:14A-12 are State effluent standards under Section 301(c)3 of the Federal statute, there are no equivalent Federal rules or standards for comparison. In most cases where an effluent standard would be included in the discharge permit, the permittee has the option of completing a water quality study to provide the Department with the necessary information to determine a water quality based effluent limitation.

The Federal requirements require developing TMDLs for waterbodies and incorporating water quality based limits in discharge permits. The State standards for BOD₅ and phosphorus are a preliminary step in the process of including water quality based limits in NJPDES-DSW permits. These State standards are less stringent than requiring immediate completion of the necessary water quality studies to determine water quality based limits for all discharges and compliance with water quality based limits.

Conventional Pollutants

There is no comparable Federal requirement to the BOD₅ effluent standards contained at N.J.A.C. 7:14A-12.4. However, there are Federal rules that require inclusion of water quality based limits in discharge permits for all pollutants, including conventional pollutants. Since these effluent standards were implemented more than 20 years ago and are used prior to the development of water quality based effluent limitations, most dischargers are currently in compliance with the conventional pollutant effluent standards and the Department does not anticipate any cost to permittees attributable to the provision.

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Phosphorus

There is no comparable Federal requirement. Since this effluent standard has been implemented for more than 20 years, many dischargers are currently in compliance with the phosphorus effluent standard and the Department does not anticipate costs to those permittees.

Oil and Grease

There are similar Federal requirements pertaining to oil and grease which prohibit the discharge of a visible oil sheen. The State standards are equivalent numerical effluent standards that the Department believes provide a quantifiable measure of “no visible sheen.” Since this effluent standard has been fully implemented, most dischargers are currently in compliance with the oil and grease effluent standard. The Department does not anticipate any costs to permittees attributable to this provision.

Chemical Specific Toxic Pollutants

There is no comparable Federal requirement for effluent standards applicable to new permittees or those conducting groundwater remediations as a whole. There are Federal effluent standards (effluent limitations guidelines and categorical standards) applicable to specific classes of permittees. In addition, there are Federal rules that require inclusion of water quality based limits in discharge permits for all pollutants, including toxic pollutants. The State effluent standards are used for remediation in an effort to expedite the remediation. The effluent standards for new dischargers are applicable only if violation of a SWQS will not result. Since the effluent standards applicable to groundwater remediation discharges should be attained with

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standard treatment, such as air strippers and carbon, the Department does not anticipate any additional cost to permittees.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C)	Heading	Comparison with Related Federal Law or Guidance
7:14A-12.1	Purpose and scope	N/A
7:14A-12.2	Secondary treatment effluent standards	Incorporates 40 CFR 133.102.
7:14A-12.3	Secondary treatment special considerations	Incorporates 40 CFR 133.103, except for the provisions noted above. Incorporates guidance from USEPA Handbook For Sewer System Evaluation, MCD-19.
7:14A-12.4	Minimum BOD ₅ effluent standards	Clarifies 40 CFR 122.44(d) as it applies to the interim period prior to the development of TMDLs.
7:14A-12.5	Disinfection	Clarifies and quantifies provisions under Section 301 of the Federal Act which restricts discharges from adversely affecting human health and potability of water.
7:14A-12.6	Foam	USEPA 440/5-86-001 (Quality Criteria for

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Water, dated 1986, commonly termed
 “The Gold Book”).

7:14A-12.7	Phosphorus effluent standard	No specific Federal equivalent. Generally implements 40 CFR 122.44.
7:14A-12.8	Oil and grease effluent standards	Clarifies and defines 40 CFR 110.3(b) prohibition of visible oil sheen.
7:14A-12.10	Petroleum hydrocarbon exemptions	Clarifies 40 CFR 110.3(b).
7:14A-12.11	Toxic effluent standards	Clarifies Federal provisions for establishing effluent standards.
Appendix A	Reserved	
Appendix B	Effluent Standards for Site Remediation Projects	State 301(c)3 standards. No Federal equivalent. In addition, provides option for expedited permit issuance. Clarifies 40 CFR 122.44(d) for situations when need for water quality based limits for new discharges from site remediation projects has not been assessed. Less stringent than 40 CFR 122.44(d) since effluent standards may be substituted for site specific water quality study.
Appendix C	Effluent Standards for New	State 301(c)3 standards. No Federal

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Sources, New Discharges or equivalent. In addition, provides option
Expanded Direct for expedited permit issuance Clarifies 40
Discharges CFR 122.44(d) for situations when need
for water quality based limits for new
dischargers has not been fully assessed.
Less stringent than 40 CFR 122.44(d)
since default limits may be substituted for
site specific water quality study for new
discharges.

N.J.A.C. 7:14A-13 Effluent Limitations for DSW Permits

N.J.A.C. 7:14A-13 incorporates the corresponding Federal requirements at 40 CFR 122.44, 122.45, and 125.3. In general, the Federal regulations specify that a type of requirement (such as an effluent limitation) must be included in a discharge permit, but do not specify the procedures to determine the specific requirement. The specific procedures, such as those to calculate an effluent limitation, are included in Federal guidance documents. In accordance with the State Administrative Procedure Act, those procedures that are generally applicable to broad classes of dischargers have been incorporated into the rules proposed for readoption with amendments.

N.J.A.C. 7:14A-13 includes the following technical procedures that are not included in the Federal regulations but that are based on Federal guidance documents:

1. Procedures to determine seasonal effluent limitations;
2. Establishment of surrogate parameters;

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3. Implementation of toxicity identification and reduction procedures by the permittee;
4. Specific procedures to determine if a particular discharge has the reasonable potential to cause or contribute to an exceedance of the ambient water quality standards;
5. Procedures to calculate water quality based effluent limitations;
6. Procedures to determine the existing effluent quality and to calculate effluent limits based on the existing quality;

In some cases, the requirements of this subchapter are more flexible than the corresponding Federal requirements.

1. Federal requirements at 40 CFR 122.44(d) require incorporation of water quality based limits for discharges following a determination of reasonable potential. N.J.A.C. 7:14A-13.21 combined with N.J.A.C. 7:14A-12 Appendices B and C provide a mechanism to determine interim limitations during the time period when the appropriate data are being collected to develop scientifically based TMDLs, WLAs, and water quality based effluent limitations for discharges.
2. Designation of an alternate point of compliance for whole effluent toxicity for some dischargers. The Department may establish an alternate compliance point for dischargers that meet a set of specific qualifications. This provision will generally apply to those dischargers to waters classified as SC where the outfall pipe is also used as the chlorine contact chamber.
3. Determination of reasonable potential for a discharge to cause or contribute to an exceedance of the ambient water quality standards when the pollutant of interest is present in the source water for the facility or domestic water supply.

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4. Inclusion of action levels for various parameters (for example, pH, alkalinity, hardness, or temperature) that affect the final concentration of a pollutant of interest in the ambient waterbody. This provision allows the Department to base the final effluent limitation(s) on the actual or anticipated range of the parameter, rather than the theoretical range, reducing the likelihood of incorporating effluent limits which are more restrictive than necessary to protect ambient water quality.
5. N.J.A.C. 7:14A-13.9 specifies how the Department will determine seasonal water quality based effluent limits. There is no comparable Federal requirement. The Federal law neither expressly allows nor prohibits seasonal effluent limits.
6. N.J.A.C. 7:14A-13.11 provides the option to include interim effluent limitations. There is no comparable Federal requirement. The Federal law neither expressly allows nor prohibits interim effluent limits.
7. N.J.A.C. 7:14A-13.12 provides the option to include wet weather limitations during the period when the facility is taking steps to correct excessive inflow and infiltration. There is no comparable Federal requirement. The Federal law neither expressly allows nor prohibits these specific interim effluent limits.
8. N.J.A.C. 7:14A-13.16 provides the option to include a chlorine produced oxidant (CPO) decay factor in a permit where there is a significant period of time between where the final effluent sample for CPO is taken and the point of discharge. Also, a chlorine demand factor may be applied to adjust the measured CPO concentration of an effluent sample when the CPO demand factor and procedure to be followed are in the permit. The Federal law neither expressly allows nor prohibits CPO decay factors or demand factors.

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9. N.J.A.C. 7:14A-13.18(f) provides for implementation of action levels for acute whole effluent toxicity (WET) for some permittees that currently must comply with the acute WET effluent standard of an LC50 greater than or equal to 50 percent as an effluent limit.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-13.1	Purpose and scope	N/A
7:14A-13.2	Types of effluent limitations	Incorporates 40 CFR 122.44(a) through (e).
7:14A-13.3	Applicability of effluent limitations	Incorporates 40 CFR 122.44(a) through (e).
7:14A-13.4	Establishment of technology based limitations	Incorporates 40 CFR 125.3.
7:14A-13.5	Determination of reasonable potential to cause an excursion above the SWQS as a basis for requiring inclusion of water quality based effluent limitations.	Incorporates 40 CFR 122.44(d). Consistent with USEPA guidance based on Technical Support Document for Water Quality Based Toxics Control (EPA/505/2-90-001). Calculation procedures are no more restrictive than Federal guidance. Intake credits for water quality based limits patterned after Great Lakes Initiative published at 40 CFR 132 Appendix F, Procedure 5E.

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- 7:14A-13.6 Calculation of water quality based limitations Incorporates 40 CFR 122.44(d) and 40 CFR 122.45(d) and (f). Includes implementation procedures which incorporate USEPA guidance based on Technical Support Document for Water Quality Based Toxics Control (EPA/505/2-90-001). Calculation procedures are no more restrictive than Federal guidance. An addition to this section at N.J.A.C. 7:14A-13.6(b) codifies existing practices to address difficulties in monitoring effluent concentrations where dischargers have long outfall pipes. This addition allows use of CPO demand when a chlorine demand analysis has been performed and can be used in calculating a less stringent final CPO water quality based effluent limitation to be applied in the permit. There is no comparable Federal requirement.
- 7:14A-13.7 Determination of water quality based effluent limitations based on narrative criteria Incorporates 40 CFR 122.44(d)(1)(vi) Consistent with USEPA guidance based on Technical Support Document for Water Quality Based Toxics Control (EPA/505/2-90-001).

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7:14A-13.8	Calculation of effluent limitations using existing effluent quality	Consistent with 40 CFR 122.44 when there is a need to determine limits based on existing effluent quality. There are no specific Federal rules regarding calculation procedures for limits based on existing effluent quality. This section applies USEPA guidance from the Technical Support Document for Water Quality Based Toxics Control to evaluating existing effluent quality.
7:14A-13.9	Seasonal effluent limitations	No comparable Federal requirement.
7:14A-13.10	Surrogate effluent limitations	Incorporates 40 CFR 122.44(d)1(vi)C and (e)2.
7:14A-13.11	Interim effluent limitations	No comparable Federal requirement.
7:14A-13.12	Wet weather effluent limitations	No comparable Federal requirement.
7:14A-13.13	Quantity of flow used in the development of effluent limitations	Incorporates 40 CFR 122.45(b).
7:14A-13.14	Expression of effluent limitations	Incorporates 40 CFR 122.45(c) and (f).
7:14A-13.15	Permit averaging periods	Incorporates 40 CFR 122.45(d).
7:14A-13.16	Point of compliance for	Incorporates 40 CFR 122.45(a).

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| effluent limitations | Changes in this section are being made to codify existing practices to address difficulties in monitoring effluent concentrations where discharges have long outfalls. This is a new provision that allows for the use of chlorine decay factors for calculating the final CPO effluent concentration when the procedures and equations are specified in a permit. There is no comparable Federal requirement. |
| 7:14A-13.17 Toxicity reduction evaluations | Consistent with USEPA guidance: Methods for Aquatic Toxicity Identification Evaluations. |
| 7:14A-13.18 Inclusion of action levels for water quality based effluent limitations | Consistent with USEPA guidance based on Technical Guidance Manual for Performing Wasteload Allocations for parameters such as metals which are dependent on other measurements such as pH, hardness, or temperature. The procedures provide implementation details for 40 CFR 122.44(d) and (f). There is no Federal equivalent of the WET action level. |
| 7:14A-13.19 Antibacksliding | Incorporates 40 CFR 122.44(l) and USEPA |

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guidance.

7:14A-13.20	Limitations for non-continuous discharges	Incorporates 40 CFR 122.45(e).
7:14A-13.21	Implementation of water quality based effluent limitations	Consistent with 40 CFR 122.44(d) for situations when need for water quality based limits has not been assessed. Less stringent than 40 CFR 122.44(d) since most water quality based limits would be delayed until after a TMDL is adopted. With N.J.A.C. 7:14A-13.13 and N.J.A.C. 7:14A-12 Appendices B and C, provides interim strategy to eventually attain SWQS.

N.J.A.C. 7:14A-14 Monitoring Requirements Applicable to DSW and SIU Permits

N.J.A.C. 7:14A-14 specifies monitoring requirements for parameters included in a DSW or SIU permit as an effluent limitation or as a monitor only requirement. This subchapter sets forth monitoring frequencies, including the reasons for an increase or decrease in the frequency.

Inclusion of minimum monitoring frequencies provides a consistent database for use in evaluating facility performance. The Federal rules at 40 CFR 122.44 and 122.48 require that effluent monitoring be conducted in such a way as to be representative of the regulated activity. Federal guidance documents specify that the monitoring must be at a frequency that provides meaningful information regarding effluent quality and considers effluent variability. The monitoring frequency varies with the anticipated variability of the specific parameter, the ease

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and relative expense of monitoring, and the size and type of facility. Although minimum monitoring frequencies are not set by either Federal rule or guidance, several guidance documents recommend a weekly minimum monitoring frequency to provide adequate representation of effluent variability. The Department believes that the monitoring frequencies set forth in N.J.A.C. 7:14A-14 constitute the minimum monitoring frequency to provide meaningful and adequate information regarding effluent quality. These monitoring frequencies provide a baseline for establishing monitoring frequencies for pollutants in permits, and are somewhat less stringent than the frequencies recommended in the USEPA’s “Technical Support Document for Water Quality-based Effluent Limitations.” (EPA/505/2-90-001)

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-14.1	Purpose and scope	N/A
7:14A-14.2	Monitoring frequency requirements for direct surface water discharges	Incorporates 40 CFR 122.44(I) and 122.48 in accordance with recommendations in Technical Support Document for Water Quality Based Toxics Control (EPA/505/2-90-001).
7:14A-14.3	Monitoring requirements for NJPDES-SIU permits	Incorporates requirements of 40 CFR 403.12(g).
7:14A-14.4	Monitoring frequency requirements for	No comparable Federal requirement.

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polychlorinated biphenyls

(PCBs) effluent

characterization

N.J.A.C. 7:14A-15 Procedures for Decision Making - NJPDES Permit Processing

Requirements

N.J.A.C. 7:14A-15 incorporates the requirements of 40 CFR Part 124. These provisions are designed to enable the Department in issuing final permits in a timely and efficient manner. Each of the provisions readopted is less stringent than the corresponding Federal provision. The Department believes that these procedures will reduce administrative cost and effort and hence the cost of processing permit applications. These provisions will not have a negative environmental impact, but will provide increased administrative efficiency and reduction in program costs for the Department. The following lists ways that the rules adopted with amendments will decrease the overall costs of administering the permitting program:

1. When a public comment period is extended for 15 days or less, the Department is not requiring publication of a public notice in a newspaper. In most cases, publication of a formal legal notice in the newspaper requires a minimum of three to four weeks, so that the resulting comment period is often extended for six to eight weeks rather than 15 days. The rule provides that the applicant and all persons who commented on the draft permit would be notified by other means.
2. When comments are submitted regarding a specific permit action or provision, the comments must be relevant to the permit and of a legal or factual nature to be considered.

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3. When a public hearing on a permit action is requested, the party requesting the public hearing must indicate why a hearing is necessary as compared to submittal of written comments. Since scheduling a public hearing is both expensive and requires a minimum of an additional two to four months of time prior to permit issuance, public hearings should be utilized when there is sufficient public interest in a permit action that can not be as readily addressed through submittal of written comments.

4. An applicant or permittee will have the option to make some of the logistical arrangements related to permit issuance, such as publication of the notice and scheduling the public hearing. The Department has found that the permittee is often able to complete these logistical arrangements in a shorter time frame than the Department. No permittee is required to make these arrangements, so there is no mandatory cost to a permittee. This provision provides additional administrative efficiency, and by reducing the total permit processing time may provide financial benefit to, for example, an applicant for a new or expanded discharge with a limited time to begin production or occupy commercial or residential properties.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-15.1	Purpose and scope	N/A
7:14A-15.3	Preapplication conferences, permit check lists and technical manuals	Incorporates requirements of N.J.S.A. 58:10A-1 et seq. for providing information to permittees about application requirements.

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Consistent with 40 CFR 124.

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| 7:14A-15.4 | Procedures for Department review of individual NJPDES permit applications | Incorporates 40 CFR 124.3. Minor editorial changes in wording. |
| 7:14A-15.5 | Consolidation of permit processing | Incorporates 40 CFR 124.4. Minor editorial changes in wording. |
| 7:14A-15.6 | Draft permits | Incorporates 40 CFR 124.6. Minor editorial changes in wording. |
| 7:14A-15.7 | Statement of basis | Incorporates 40 CFR 124.7. Minor editorial changes in wording. |
| 7:14A-15.8 | Fact sheet | Incorporates 40 CFR 124.8. Minor editorial changes. |
| 7:14A-15.9 | Administrative record for the draft permit | Incorporates 40 CFR 124.9. |
| 7:14A-15.10 | Public notice of permit actions and public comment period | Incorporates 40 CFR 124.10. Allows greater flexibility by allowing applicant or permittee to place the public notice in the newspaper. Provides that when a comment period is extended for 15 days or less, an additional public notice is not required. |
| 7:14A-15.11 | Public comments and requests for public hearing | Incorporates 40 CFR 124.11. Clarifies that comments submitted on a permit must be relevant legal or factual comments. Also |

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- clarifies that the party requesting a public hearing must explain why a public hearing is necessary.
- 7:14A-15.12 Public hearings Incorporates 40 CFR 124.12. Provides additional flexibility in scheduling a hearing in that the applicant may be permitted to make the logistical arrangements.
- 7:14A-15.13 Obligation to raise issues and provide information during the public comment period Incorporates 40 CFR 124.13.
- 7:14A-15.14 Reopening of the public comment period Incorporates 40 CFR 124.14.
- 7:14A-15.15 Final permit decision and issuance and effective date of a permit Incorporates 40 CFR 124.15. Provides flexibility for the Department to specify an effective date for the permit less than 30 days from the issuance date if there were no comments (other than from the permittee) on the draft permit.
- 7:14A-15.16 Response to comments Incorporates 40 CFR 124.17. Clarifies that comments submitted on a permit must be relevant legal or factual comments.
- 7:14A-15.17 Administrative record for the final permit Incorporates 40 CFR 124.18. Clarifies that a party who wishes to review the

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administrative record needs to make an appointment in advance so that the record will be complete and readily available.

7:14A-15 – Guide to the NJPDES Permit No comparable Federal requirement.

Appendix A Processing Requirements

N.J.A.C. 7:14A-16 Transfer, Modification, Revocation and Reissuance, Renewal, Suspension, and Revocation of Existing Permits

N.J.A.C. 7:14A-16 includes the provisions regarding the transfer, modification, revocation and reissuance, renewal, suspension, and revocation of existing NJPDES permits.

The subchapter is consistent with 40 CFR 122 and 144, except that:

1. In accordance with N.J.S.A. 58:10A-6(k), N.J.A.C. 7:14A-16.3(b)4 requires that all permit fees and fines must be paid prior to issuing a permit modification incorporating a less stringent effluent limitation.
2. The Department may revoke and reissue a permit without the consent of the permittee. This allows the Department to efficiently convert the issuance schedule for permits to a TMDL based or other watershed based schedule and would be beneficial for any shift to watershed based permit issuance. Conversion to a watershed based permit scheduling may result in significantly increased efficiency in permit issuance and positive economic and environmental impacts, and would not require any expenditure by the permittee. In addition, this provision allows the Department to revoke and reissue a general permit for which there may be so many permittees that obtaining the consent of every permittee may be impossible for practical purposes. Revoking and reissuing a general permit may have positive or

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negative economic impacts on permittees or applicants depending on the nature of the change to the permit. There is no similar Federal provision.

3. N.J.A.C. 7:14A-16.5 includes the scope of changes to discharge permits that can be accomplished through minor modifications of permits. The allowable changes are not more stringent than the Federal requirements, but result in reduced costs to both the Department and affected permittees through more efficient processing of some permit modifications, and provide administrative flexibility to the Department.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-16.1	Purpose and scope	N/A
7:14A-16.2	Transfer of a permit	Incorporates 40 CFR 122.61 and 144.38.
7:14A-16.3	Procedures for the modification, revocation and reissuance, renewal, suspension, or revocation of a permit	Incorporates 40 CFR 122.62 and 144.39. Incorporates requirement of N.J.S.A. 58:10A-1 et seq. requiring payment of all permit fees prior to requesting a permit modification for less stringent effluent limitations.
7:14A-16.4	Causes for major modification or revocation and reissuance of a permit	Incorporates 40 CFR 122.62 and 144.39, except that the consent of the permittee is not required if the Department determines that a permit should be revoked and

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reissued.

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| 7:14A-16.5 | Minor modification of a permit | Incorporates 40 CFR 122.63 and 144.41.
Expands the causes for issuing minor modifications. |
| 7:14A-16.6 | Causes for suspension or revocation of a permit or denial of a permit renewal | Incorporates 40 CFR 122.64 and 144.40, except that provisions in 40 CFR 122.64(b) that pertain to a permanently terminated discharge are incorporated and clarified in N.J.A.C. 7:14A-2.7. |

N.J.A.C. 7:14A-17 Procedures for Decision Making – Adjudicatory Hearings and Stays of Permit Conditions

N.J.A.C. 7:14A-17 pertains to the procedures for requesting, evaluating and processing a request for an adjudicatory hearing and a stay of permit conditions. It incorporates USEPA requirements at 40 CFR 124.16, 124.74, 124.75, 124.77 and 124.85 for conducting adjudicatory hearings with the following exceptions.

Parties other than the permittee are permitted to request a hearing to contest a permit action and a stay of permit conditions in accordance with N.J.S.A. 58:10A-7. There is no similar Federal provision. The rules provide that requests for a hearing made by a third party must be accompanied by a justifiable reason. The rules allow the Department to make a determination on a request that the request for a hearing does not have merit and thus deny the request. In the event a hearing were provided to a third party, the permittee could incur the cost of participating in the hearing. These costs could include attorney’s fees, and costs of any consultants that the

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party chose to rely upon. The permittee is not required to participate in a hearing involving a third party.

The Federal rules provide for an automatic stay of permit conditions when an adjudicatory hearing is granted. Under the adopted rules, a stay of permit conditions is not automatically granted when an adjudicatory hearing is requested by a permittee or third party. This provision provides flexibility without increasing the cost of complying with discharge permits. A request for a stay of permit conditions is not precluded by this provision. It is only required that such a request be specifically made. Therefore, there is no additional cost in requesting a stay. When a stay is granted, the previous permit conditions remain in effect. There are no Federal provisions that allow the previous permit conditions to be modified. These rules provides flexibility to include interim limits during the adjudication period. This provision can potentially reduce cost (such as the cost to construct a new treatment facility) while maintaining or improving effluent quality.

N.J.A.C. 7:14A-17 provides an avenue of relief to a permittee who wishes to contest the terms and conditions of a NJPDES permit and imposes no additional cost beyond Federal requirements.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference		Comparison with
<u>(N.J.A.C.)</u>	<u>Heading</u>	<u>Related Federal Law or Guidance</u>
7:14A-17.1	Purpose and scope	N/A
7:14A-17.2	Request for an adjudicatory hearing	Incorporates 40 CFR 124.74. Minor editorial changes in wording.

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7:14A-17.3	Consideration as a party to the action	No comparable Federal requirement.
7:14A-17.4	Granting or denying hearing requests	Incorporates 40 CFR 124.75. Minor editorial changes in wording.
7:14A-17.5	Notice and conduct of an adjudicatory hearing	Incorporates 40 CFR 124.77 and 124.85.
7:14A-17.6	Stays of contested permit conditions	Incorporates 40 CFR 124.16 and 124.60, but does not provide for an automatic stay of permit conditions when an adjudicatory hearing is requested.
7:14A-17 –	Guide to the NJPDES	No comparable Federal requirement.
Appendix A	Permit Appeal and Stay Process	

N.J.A.C. 7:14A-18 Public Access to Information and Requirements for Department Determination of Confidentiality

N.J.A.C. 7:14A-18 incorporates 40 CFR 122.7 and 144.5, and clarifies the information required to make a determination and the procedures that the Department will follow in making confidentiality determinations. These procedures ensure that confidentiality is maintained for the submitted information that qualifies for such treatment. N.J.A.C. 7:14A-18 does not place requirements or restrictions on applicants or permittees.

The table below lists the contents of the subchapter and the related Federal law or guidance.

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Reference	Heading	Comparison with Related Federal Law or Guidance
7:14A-18.1	Public access to information and scope of authority	N/A
7:14A-18.2	Confidentiality	Incorporates and clarifies 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.3	Procedures for asserting confidentiality	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.4	Fees for a claim of confidentiality	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.5	Procedure for confidentiality determinations	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.6	Substantive criteria for confidentiality determinations	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.7	Class determinations	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.8	Access to and safeguarding of confidential information	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.
7:14A-18.9	Disclosure of confidential information to State,	Incorporates 40 CFR 122.7 and 144.5. Minor editorial changes in wording.

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- interstate and Federal
agencies with the exception
of the USEPA and the U.S.
Department of Justice
- 7:14A-18.10 Disclosure of confidential information to authorized agents
Incorporates 40 CFR 122.7 and 144.5.
Minor editorial changes in wording.
- 7:14A-18.11 Designation by person of an addressee for notices and inquiries
Incorporates 40 CFR 122.7 and 144.5.
Minor editorial changes in wording.
- 7:14A-18.12 Access to information for the USEPA and U.S.
Department of Justice
Incorporates 40 CFR 122.7 and 144.5.
Minor editorial changes in wording.
- 7:14A-18.13 Use of confidential information in rulemaking, permitting and enforcement proceedings
No comparable Federal requirement.

N.J.A.C. 7:14A-19 Pretreatment Program Requirements for Local Agencies

N.J.A.C. 7:14A-19 addresses the industrial pretreatment program requirements mandated by the New Jersey Water Pollution Control Act, and the Federal General Pretreatment Regulations (40 CFR Part 403). In 1982, the State of New Jersey was delegated authority by the

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USEPA to implement and enforce the Pretreatment Program requirements. Under State law, the Department has explicit legal authority to operate and enforce the State Pretreatment Program. As a result of program delegation and having the responsibility to enforce those requirements, the Department referred to the Federal regulations under 40 CFR Part 403, and whenever possible, the Department incorporated the language from the Federal regulations under 40 CFR Part 403 within N.J.A.C. 7:14A-19.

As a result of the streamlining modifications to the Federal General Pretreatment Regulations (see 70 Fed. R. 60134, October 14, 2005), the Department readopted this subchapter with amendments to incorporate specific provisions from those changes. The Department incorporated “optional” streamlining provisions at N.J.A.C. 7:14A-19.3(e).

Amended N.J.A.C. 7:14A-19.3(b)2ii requires that local agencies provide information in their annual reports regarding acceptance or denial of hauled wastes. If a local agency accepts hauled waste at its treatment plant, it must specify what types of wastes are accepted. This information allows the Department to better track where wastewater is managed throughout the State. There is no Federal equivalent to this requirement.

Amended N.J.A.C. 7:14A-19.3(c)7i adds the parameters molybdenum, ammonia, and phosphorus to the list of pollutants for which an annual pollutant scan must be completed. Molybdenum and ammonia were newly listed as “pollutants of concern” under the Local Limits Development Guidance (EPA, Office of Wastewater Management, July 2004) and, therefore, the inclusion of these parameters in the annual monitoring evaluation is consistent with the updated USEPA guidance. Phosphorus has been added to the list so that the Department and/or local agencies generate data on phosphorus removal efficiencies at POTWs. This information is utilized as a tool to help local agencies to achieve or maintain compliance with the surface water

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quality standard for this parameter. A majority of local agencies already conduct phosphorus monitoring on their effluent so, in most cases, the additional costs is associated only with conducting the phosphorus monitoring on the treatment plant influent. At a yearly cost of less than \$25.00 for analysis of phosphorus, the Department does not believe that this is an excessive burden on the treatment plants.

Amended N.J.A.C. 7:14A-19.3(e) specifies the provisions that must be included in the rules and regulations or sewer use ordinance of a delegated local agency (DLA) in order to implement the streamlining provisions under the 40 CFR Part 403 regulations. These amendments are intended to reduce the regulatory burden on DLAs without adversely affecting environmental protection, and to allow DLAs to better focus oversight resources on indirect users with the greatest potential for affecting treatment plant operations or the environment. The Federal regulations include these provisions as “optional” under various sections of 40 CFR Part 403. In an effort to ensure consistent implementation throughout the State, the Department, after consultation with the Pretreatment Task Force, is requiring that DLAs have the authority to implement these particular provisions as noted at amended N.J.A.C. 7:14A-19.3(e).

Amendments to N.J.A.C. 7:14A-19.6(a)7 include deletion of the requirement that SIUs be evaluated every two years for the need of a slug control plan, and the incorporation of new language specifying that SIUs must be evaluated once for the need of such a plan. These modifications are consistent with 40 CFR 403.8(f)(2)(vi).

The amendment to N.J.A.C. 7:14A-19.6(f) incorporates the language regarding the signatory requirements for reports submitted by DLAs. This is consistent with 40 CFR 403.12(m).

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Amendments to N.J.A.C. 7:14A-19.7(a) through (c) specify the criteria that a local agency must meet in order to perform limited sampling in lieu of conducting a complete headworks analysis, as well as the criteria for exemptions to conducting the headworks analysis. The criteria on limited sampling and exemptions are consistent with current Department policy. Additionally, the USEPA Local Limits guidance anticipates only that headworks analyses will be completed to control non-domestic discharges. As such, the amendments under this subsection do not exceed standards or requirements imposed by Federal law.

Amendments to N.J.A.C. 7:14A-19.7(f) specify that the local limit re-evaluation to be completed by DLAs must be submitted after the NJPDES discharge permit has been renewed by the Department. This modification is consistent with 40 CFR 122.44(j).

Amendments to N.J.A.C. 7:14A-19.8(d)2 and 19.8(d)3 regarding procedural requirements for IPP permits are not being adopted and readopted N.J.A.C. 7:14A-19.8(d)2 and 19.8(d)3 will be retained. The Department is not adopting N.J.A.C. 7:14A-19.8(d)5 or 19.8(e) as proposed. The Department's proposal included some inadvertent cross references, and it was not intended that those portions of the NJPDES rules that detail the Department's permit procedures would govern the actions of a DLA.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with Related Federal Law or Guidance
7:14A-19.1	Purpose and scope	Incorporates 40 CFR 403.1, 403.2 and 403.4.

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7:14A-19.2	Industrial pretreatment program development by local agencies	Incorporates 40 CFR 403.8. Minor editorial changes in wording.
7:14A-19.3	Industrial pretreatment program requirements for all local agencies	Incorporates 40 CFR 403.8 and optional streamlining provisions from multiple sections of 40 CFR Part 403. Minor editorial changes in wording.
7:14A-19.4	Enforcement response plans	Incorporates 40 CFR 403.8 and 403.18. Minor editorial changes in wording.
7:14A-19.5	Enforcement requirements in an industrial pretreatment program	Incorporates 40 CFR 403.8 and N.J.S.A. 58:10A-1 et seq. Minor editorial changes in wording.
7:14A-19.6	Additional requirements for delegated local agencies	Incorporates 40 CFR 403.8 and N.J.S.A. 58:10A-1 et seq. Minor editorial changes in wording.
7:14A-19.7	Development of local limits by local agencies	Incorporates 40 CFR 403.5, 403.18 and 122.21. Minor editorial changes in wording.
7:14A-19.8	Requirements for issuance of IPP permits by delegated local agencies	Incorporates 40 CFR Part 403.8. Minor editorial changes in wording.
7:14A-19.9	Modifications of an industrial pretreatment program	Incorporates 40 CFR 403.18. Minor editorial changes in wording.
7:14A-19.10	Public notice and public hearing requirements for delegated local	Incorporates 40 CFR 403.8 and 403.25. Minor editorial changes in wording.

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agencies

7:14A-19.11	Enforcement action for failure to implement or enforce an approved industrial pretreatment program	Incorporates Federal Clean Water Act, Section 309(g), and N.J.S.A. 58:11-55. Minor editorial changes in wording.
7:14A-19 – Appendix A	Enforcement Response Plan	Incorporates 40 CFR 403.8(f)(5) and N.J.S.A. 58:10A-1 et seq.

N.J.A.C. 7:14A-20 Standards for the Use or Disposal of Residual

USEPA’s Standards for the Use and Disposal of Sewage Sludge state that nothing precludes a State from imposing requirements for the use or disposal of sewage sludge more stringent than the requirements in 40 CFR Part 503 or from imposing additional requirements for the use or disposal of sewage sludge. See 40 CFR 503.5(b). The Department readopted N.J.A.C. 7:14A-20 with amendments, repeal and new rules. Subchapter 20 incorporates the Federal standards at 40 CFR Part 503 for the land application of sewage sludge. The rules readopted with amendments, repeal and new rules that include standards that exceed those established by Federal law are summarized below. All requirements described below that exceed Federal standards are achievable under current technology.

Case-by-Case Permitting

40 CFR Part 503 allows the permitting authority to impose case-by-case standards or additional requirements that are more stringent than the standards or requirements expressed in the rule. See 40 CFR 503.5(a), and 58 Fed. Reg. 9324, 9328 and 9388 (February 19, 1993). The Department adopted this provision in 1997 at N.J.A.C. 7:14A-20.5(a). The Department

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readopted N.J.A.C. 7:14A-20.5(a) with amendments that identify additional cases where this authority may be used. The Department's rules remain consistent with Federal law, while providing specific examples of how and when such authority might be applied. Therefore, readopted and amended N.J.A.C. 7:14A-20.5(a) does not exceed Federal standards found at 40 CFR 503.5(a).

Environmental Assessment

The Department readopted N.J.A.C. 7:14A-20.6 with amendments that add a list of operations that are exempt from the requirement to submit an environmental assessment. N.J.A.C. 7:14A-20.6 addresses locations where residual are treated. Federal rules do not address sites that treat residual. Therefore a Federal standards analysis is not required.

Site Approval

For non-exceptional quality sewage sludge, 40 CFR Part 503 includes certain requirements for notifying the permitting authority before sewage sludge is land applied. Federal law also establishes certain site restrictions, but does not provide for a site-specific review and approval of sites proposed for land application of non-exceptional quality residual. The Department readopted with amendments its existing requirement that it review proposed non-exceptional quality residual land application sites and, if suitable, approve them with a "Letter of Land Application Management Approval" or "LLAMA." See N.J.A.C. 7:14A-20.7(a)3 and (h)2vii. In the Department's opinion, a LLAMA is necessary in order to document and enforce the site specific restrictions, recordkeeping and reporting appropriate for each land application site receiving residual. Conditions such as slope, run-off control,

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public access, buffer zones, drinking water wells, dwellings, depth to ground water, site soil texture and parent geologic material must be delineated by the LLAMA applicant. Also, the Department requires the LLAMA applicant to issue a local public notice and to provide a copy of the LLAMA application to the municipality where the proposed land application site is located, thus allowing opportunity for public involvement in the review process.

One requirement of an application for a LLAMA that is not required by Federal law is that the applicant obtain and implement a conservation plan or soil erosion and sediment control plan. The State requirement for conservation planning on land to which certain residuals are applied predates the 1993 Federal rules at 40 CFR Part 503. Farms that implement conservation plans garner many benefits, including decreased nutrient loss from fertilizers such as residual. Therefore, the Department encourages all farms to implement conservation plans prior to the land application of bulk quantities of any fertilizer or soil amendment. See 28 N.J.R. 380(a), 483 (February 5, 1996). There is no fee for obtaining a conservation plan through the United States Department of Agriculture Natural Resources Conservation Service (USDA-NRCS); however, due to resource constraints, some USDA-NRCS offices do not have the resources to provide timely planning services for LLAMA applicants. The Department now accepts LLAMA applications that include equivalent conservation plans prepared by a person equally qualified in nutrient management and conservation/erosion control planning. See the discussion of N.J.A.C. 7:14A-20.7(a)3i(7). Such planning will cost up to \$1,200 per 100 acres of farmland. Applicants can still opt for the free USDA-NRCS service.

The Department also expanded the LLAMA application requirements at N.J.A.C. 7:14A-20.7(a)3i(1) to include an evaluation of local transportation patterns, a delineation of proposed fields with labeled acreage, and an aerial photograph showing the location of the proposed residual

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land application site. The remainder of site specific information required to apply for a LLAMA are consistent with the requirements of 40 CFR Part 122 for submitting a Land Application Plan. The Department estimates that the cost of preparing a complete LLAMA application ranges from \$20.00 to \$125.00 per acre.

Management Practices

In general, management practices are intended to restrict residual land application on certain areas and during periods that have a high risk of nutrient and sediment runoff or leaching in order to minimize the loss of residual constituents (especially nutrients) to the waters of the State. The Department amended N.J.A.C. 7:14A-20 in order to strengthen non-point source controls from agricultural land application of residual by increasing the number of buffered acres for some farmland. Management practices at N.J.A.C. 7:14A-20.7(b)2ii include conditions more stringent than those found at 40 CFR 503.14. These include restrictions from applying residual to ponded ground; saturated or shallow soils; land subject to seasonal flooding; land within 200 feet of surface water; or land that is within close proximity to drinking water supply wells. For any farmer using residual or contemplating using residual, costs to manage land buffered out by the rule can be expected to be higher than costs to manage land fertilized with residual. The Department believes that the cost of managing buffered land without biosolids is reasonable since the farmer still realizes significant savings on the cost of fertilizer on land that is not buffered and since the cost to the environment of nutrient loss to the waters of the State is prevented by adequate buffering.

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Cumulative Loadings

Pursuant to 40 CFR 503.12, the cumulative amount of each pollutant in sewage sludge applied to a site must be tracked commencing July 20, 1993 for a bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2). The Department readopted the requirement that all historical cumulative pollutant loadings kept pursuant to its NJPDES permits be included in the tracking of the cumulative pollutant loading rates. See proposed readopted N.J.A.C. 7:14A-20.7(b)1v. Since many states did not have a sewage sludge program that required the tracking of cumulative metal loadings, it would have been impossible for the USEPA to establish a national rule requiring such historical loadings to be included. However, the Department did implement a residuals land application program prior to adoption of 40 CFR Part 503 and believes that it is consistent with the purpose and intent of 40 CFR Part 503 to use this information in calculating cumulative pollutant loading rates, since the USEPA would likely have used pre-July 20, 1993 data if it had been available nationally. In addition, the Department believes that it is environmentally responsible to include known metal loading on existing land application sites. Tracking historical loadings will not increase the cost of land application programs but may, marginally, reduce the life of an existing land application site.

Elimination of Ceiling Quality Bagged Residual Program

The Department prohibited the distribution in a bag or other container non-exceptional quality residual as currently allowed by Federal law and repealed N.J.A.C. 7:14A-20.7(h)4. The type of non-exceptional quality residual contemplated for distribution at repealed N.J.A.C. 7:14A-20.7(h)4 fails to meet the pollutant concentrations in 40 CFR 503.13(b)3, and is

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inconsistent with the Department's intent to promote use of the highest quality residuals. The adoption is more stringent than the Federal rule, which would allow such distribution.

The Department has never received a request for permission to distribute this type of residual in a bag or other container. Moreover, most sewage sludge samples taken by New Jersey generators meet the cited criteria. Accordingly, the Department does not anticipate that there will be a cost associated with the adoption.

Foreign Material

The Department readopted N.J.A.C. 7:14A-20.7(e) regarding the screening of residuals prior to land application to remove non-biodegradable components without amendment. Federal rules do not address the screening of residual prior to land application. Therefore, a Federal standards analysis is not required.

Domestic Septage

The Department readopted N.J.A.C. 7:14A-20.7(f), regarding septage management, without amendment. The Department has chosen not to adopt the Federal requirements for land application of domestic septage at 40 CFR Part 503. Land application of septage has not been permitted in New Jersey since prior to adoption of the November 1987 Statewide Sludge Management Plan. N.J.A.C. 7:14A-20.7(f) reiterates the policy statement of the November 1987 Statewide Sludge Management Plan that the use of domestic treatment works is the most environmentally sound method for management of domestic septage. In this manner, domestic septage is introduced at the head of the treatment plant, is subject to the same treatment

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processes as sewage and, as a result, contributes to the sewage sludge produced by the domestic treatment works.

Although, N.J.A.C. 7:14A-20.7(f) does allow for the land application of domestic septage on a case-by-case basis only where an overriding public benefit is demonstrated and no reasonable alternative exists, no such demonstration has been made and the POTW alternative continues to exist. In addition, N.J.A.C. 7:14A-20.7(f) requires that all septage must be treated to the same standards applicable to other residuals intended for land application. Domestic septage is not currently land applied in New Jersey. If domestic septage were land applied in New Jersey, the cost would be equivalent to the cost of land application of other residual.

Agronomic Rate

The Department's rules regarding land application of residuals differ from the Federal rules. The Federal rule, 40 CFR Part 503, does not expressly impose the requirement that exceptional quality residuals be land applied at the agronomic rate; whereas, N.J.A.C. 7:14A-20 does. Also, 40 CFR Part 503 does not extend the definition of agronomic rate to include nutrient factors other than nitrogen (such as phosphorus and pH). The Department's readopted rules do. Failure to require that exceptional quality residual be land applied at the agronomic rate would encourage over-application.

The only cost associated with the adopted rule is the nominal cost to label exceptional quality residual with appropriate agronomic rate. Although the cost is small, the benefit is considerable. Properly labeling the material will help the person applying the residual avoid over-application, which could cause excess nutrients to run off into the waters of the State. The adopted rules are not new, and regulated entities have been able to comply with them, using

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available technology. Accordingly, the Department knows the requirements are achievable. See

N.J.A.C. 7:14A-1.2 and 20.7(g).

Monitoring

Residual monitoring requirements readopted with amendments at N.J.A.C. 7:14A-20.7(i) include requirements that exceed Federal law. The USEPA has established a residual monitoring frequency from annual to monthly based on the size of the facility. Under the rules readopted with amendments, the frequency of monitoring can be less than quarterly only if the activity involves a single source removing residual for land application no more frequently than three times per year and where the total removed is less than 290 metric tons per year. The potential increased cost associated with a small facility's having to monitor quarterly, rather than annually, is not expected to exceed \$3,000 per year per monitored location for monitoring for pollutant limits, pathogen requirements and vector attraction reduction. Nevertheless, considering the potential for residual quality to change over time, the Department does not believe that monitoring less often than quarterly for a land application operation is protective of public health and the environment.

There are also advantages to monitoring more frequently than is required under the Federal rule. For example, if a monitoring event identifies an exceedance of a pollutant limit, then all residual used or disposed after the monitoring results are generated may not be land applied until another sample is determined to indicate compliance. Where more frequent samples are obtained, a person who prepares residual is better able to document consistency in residual quality and also better able to react to variations in residual quality when they occur.

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The Department also adopted new N.J.A.C. 7:14A-20.7(i)6 to require monitoring of residual additives used in the production of a marketable residual product. N.J.A.C. 7:14A-20.7(i)6 does not have a Federal counterpart, and is not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law. Accordingly, no further analysis is required.

Recordkeeping

The Department adopted new N.J.A.C. 7:14A-20.7(j)3 to require daily records of exceptional quality residual bulk distribution outlets and the quantity delivered to each outlet. This exceeds Federal rules which require no records to be kept for distribution of exceptional quality residual. The recordkeeping requirement will ensure that necessary information is available to prove responsible marketing of exceptional quality residual. Permits currently issued by the Department require exceptional quality residual distribution recordkeeping; therefore, the regulated community is already complying with the requirement. Proposed N.J.A.C. 7:14A-20.7(j)3 will not result in costs that exceed activities currently compliant with 40 CFR Part 503, since distributors of exceptional quality residual must keep similar records as a business practice in order to facilitate product transportation, delivery and billing.

Reporting

The Federal rule at 40 CFR Part 503 requires facilities that land apply sewage sludge to submit annual reports. The Department's repealed regulation at N.J.A.C. 7:14A-20.7(k) was more stringent, requiring quarterly reporting. The Department's new N.J.A.C. 7:14A-20.7(k) eliminates the quarterly reporting requirement. Instead, the necessary reports are governed by

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N.J.A.C. 7:14A-6.8, which establishes the basis for all reporting under NJPDES and requires that monitoring data be reported at intervals specified in a permit. The Department will, through the permitting process, establish the frequency of reporting, which could be more stringent than the Federal rule but would not be less frequent than annually.

For facilities involved in preparing residual for land application, 40 CFR Part 503 does not require the submission of reports by facilities under 1.0 MGD or that serve fewer than 10,000 people. This does not mean that these facilities are exempt from 40 CFR Part 503 (they are not), but they do not have to report information unless a determination on reporting is made. Under the amended rule, the Department will continue to require such facilities to report.

Pursuant to the Regulatory Impact Analysis included in the Preamble to 40 CFR Part 503 (see 58 Fed. Reg. 9374), the reporting costs to comply with the Federal land application subpart are estimated to be \$20,000 annually. This represents a small percentage of the total cost to comply with the 40 CFR Part 503 land application subpart. The Department believes that the costs associated with more frequent reporting – which is possible under the adopted rule – are negligible. This is especially true since the information required to be reported must be recorded and maintained under proposed readopted N.J.A.C. 7:14A-20.7(j), which is fully consistent with 40 CFR Part 503.17(a).

Residuals Crossing State Lines

The Department readopted and amended N.J.A.C. 7:14-20.7(l) regarding notification requirements for an out-of-State generator intending to land apply residual in New Jersey. The amended subsection does not exceed Federal standards. Both Federal and State rules require that

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notice must be given prior to transporting the residual across a state line. Therefore, the Department's requirements for notification are consistent with Federal law.

The Department readopted and amended N.J.A.C. 7:14-20.7(b)1ix, which establishes a standard that exceeds Federal notification requirements regarding residual that is exported from New Jersey to be applied to the land. The Federal rule requires a person exporting residual for application to the land to provide advance notification to the receiving state's permitting authority including the location of the land application site; the approximate time residual will be applied; the identity of the person who prepares the residual for land application; and the identity of the person who will apply the residual. The Federal requirement at 40 CFR 503.12(i) remains applicable, since 40 CFR Part 503 is a self-implementing rule applicable to all persons involved in the land application of sewage sludge.

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

Surface Disposal

The Department readopted with amendments portions of N.J.A.C. 7:14A-20 applicable to surface disposal of residual that include standards that exceed those established by Federal law. See N.J.A.C. 7:14A-1.2, 20.1, 20.2 and 20.8.

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The Department maintains that operating surface disposal sites for use in sewage sludge disposal is equivalent to landfilling of sewage sludge, which is restricted under N.J.S.A. 13:1E-42 and the Statewide Sludge Management Plan. Therefore, the Department's rules do not allow the use of sewage sludge surface disposal sites, as would otherwise be provided under 40 CFR Part 503. There are currently no active sewage sludge surface disposal sites in New Jersey. However, in recognition of the existence of several inactive surface disposal sites, the Department's readopted rules will continue to allow in-situ closure applications and permits that provide for long-term monitoring and site restrictions.

Landfilling as a mode of waste disposal requires extensive and long-term commitment of land. This mode of sewage sludge disposal must be considered a method of last resort in New Jersey, which is the most densely populated State in the country and which has limited land available to be committed for waste disposal. This fact led to the findings in the New Jersey Solid Waste Management Act that New Jersey must move away from its current reliance on the landfilling of solid waste. See Part 4-V of the 1987 Statewide Sludge Management Plan. As stated, there are currently no active sewage sludge surface disposal sites.

Existing N.J.A.C. 7:14A-20.8 applies only to sewage sludge surface disposal sites. The Department readopted the rule with amendments intended to broaden the scope of the rule to include a number of existing, active, industrial surface impoundments that receive liquid residual discharges. Due to the size of and volume of residual that has accumulated in some impoundments, they are essentially surface disposal sites, regardless of the intent of their original design. Such facilities are not consistent with the intent of N.J.S.A. 13:1E-42. Therefore, the Department amended the subchapter to impose standards on all residual surface disposal sites.

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

As indicated in the Regulatory Impact Analysis prepared by the USEPA as part of the 40 CFR Part 503 regulation, the estimated total annual nationwide cost to comply with the surface disposal subpart was \$18,335,000 compared to \$14,182,000 for land application and \$11,703,000 for incineration. See 58 Fed. Reg. 9371 (February 19, 1993). Total annual costs include management practice costs; monitoring, recordkeeping, and reporting costs; and in a few cases, costs for a change in use or disposal practices. Thus, from a cost perspective, surface disposal appears to be one of the least attractive residual management options. Nevertheless, as described above, the Department's decision not to adopt the 40 CFR Part 503 provisions for surface disposal was not based on costs alone.

Reed Beds

The Department repealed N.J.A.C. 7:14A-20.9, Fact sheet, and replaced it with standards, management practices and submission requirements for reed beds. Reed bed treatment combines the action of conventional drying beds with the effects of aquatic plants upon water-bearing substrates. Proposed N.J.A.C. 7:14A-20.9 has no Federal counterpart.

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Residual Transfer Stations

The Department readopted N.J.A.C. 7:14A-20.10 regarding residual transfer stations without amendment. N.J.A.C. 7:14A-20.10 has no Federal counterpart.

Residual Quality Determinations

The Department readopted N.J.A.C. 7:14A-20.11 regarding the pollutant concentration of residual prior to its introduction into the treatment process without amendment. Federal rules do not address the pollutant concentration of residual prior to introduction into the treatment process. Therefore a Federal standards analysis is not required.

Residual Blending and Distribution

The Department adopted new N.J.A.C. 7:14A-20.12 to establish application requirements and standards for residual blending and distribution operations. Federal rules do not address residual blending and distribution operations. Specifically, 40 CFR 503.10 provides exemptions for materials derived from sewage sludge (for example, composted sewage sludge mixed with sand) when it is “applied to the land,” but sets no standards for the sites where blending actually occurs. Therefore, a Federal standards analysis is not required.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference (N.J.A.C.)	Heading	Comparison with <u>Related Federal Law or Guidance</u>
7:14A-20.1	Purpose	40 CFR Parts 122, 123, 124 and 503.

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7:14A-20.2	Applicability	40 CFR Parts 122, 258 and 503, specifically 503.10.
7:14A-20.3	Relationship to other regulations	40 CFR Parts 258, 261, 503.4 and 761.
7:14A-20.4	Special definitions	40 CFR Parts 503.9, 503.11 and 503.21.
7:14A-20.5	Establishing limitations, standards and other permit conditions	40 CFR Parts 122.1(b)4, 122.44, 503.5.
7:14A-20.6	Environmental assessment	No comparable Federal requirement
7:14A-20.7	Land application	40 CFR Part 122 (specifically, 122.21(d)3), 124 and 503. USEPA's Technical Support Document for Land Application of Sewage Sludge, November 1992, EPA 822/R-93-001a and 001b. USEPA's Control of Pathogens and Vector Attraction in Sewage Sludge, USEPA/625/R-92/013, Revised July 2003.
7:14A-20.8	Surface disposal of residual	40 CFR Part 503.
7:14A-20.9	Reed beds	No comparable Federal requirement
7:14A-20.10	Residual transfer stations	No comparable Federal requirement
7:14A-20.11	Generic residual quality determinations	No comparable Federal requirement
7:14A-20.12	Residual blending and	No comparable Federal requirement

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distribution

N.J.A.C. 7:14A-21 Requirements for Indirect Users

The Federal General Pretreatment Regulations at 40 CFR Part 403 include the requirements for indirect users and the role of the control authority to regulate such users. N.J.A.C. 7:14A-21 incorporates the requirements from 40 CFR Part 403 relevant to indirect user control mechanisms for implementing the pretreatment program in the non-delegated areas of the State. With the exception of the amendment under N.J.A.C. 7:14A-21.10(a)3, all of the amendments to N.J.A.C. 7:14A-21 update the subchapter consistent with the Federal General Pretreatment Regulations under 40 CFR Part 403, as amended by the streamlining modifications finalized October 14, 2005.

Amended N.J.A.C. 7:14A-21.10(a)3 incorporates an updated reference to the new USEPA local limits guidance document. As such, the existing requirements and amendments in N.J.A.C. 7:14A-21 do not exceed requirements imposed by the Federal law or regulations.

N.J.A.C. 7:14A-21.12 establishes specific requirements for dental facilities that discharge to the sanitary sewer and generate amalgam waste through placement or removal of amalgam fillings. These requirements set forth specific mandates for dental amalgam waste collection and management. These requirements do not have any Federal counterpart. Accordingly, no further analysis is required.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference	<u>Heading</u>	Comparison with
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Related Federal Law or Guidance

7:14A- 21.1	Purpose and scope	Incorporates 40 CFR 403.1, 403.2, 403.4, chapter I, and subchapter N.
7:14A- 21.2	Minimum requirements for all indirect users	Incorporates 40 CFR 403.5(b), chapter I and subchapter N. Minor editorial changes in wording.
7:14A- 21.3	Additional requirements for all significant indirect users	Incorporates 40 CFR 403.6 and 403.12. Minor editorial changes in wording.
7:14A- 21.4	Categorical standards, calculation of equivalent and/or mass limits	Incorporates 40 CFR 403.6 and 403.15. Minor editorial changes in wording.
7:14A- 21.5	Variance from categorical pretreatment standards for fundamentally different factors	Incorporates 40 CFR 403.13. Minor editorial changes in wording.
7:14A- 21.6	Bypass	Incorporates 40 CFR 403.17. Minor editorial changes in wording.
7:14A- 21.7	Additional requirements for facilities which meet the SIU definition and discharge to a delegated local	Incorporates 40 CFR 403.8(f). Minor editorial changes in wording.

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	agency's treatment works	
7:14A- 21.8	Additional requirements for facilities which meet the SIU definition and discharge to a non-delegated local agency's treatment works	Incorporates 40 CFR 403.10(e) and 403.8(f). Minor editorial changes in wording.
7:14A- 21.9	Exemptions from the requirements for an individual NJPDES- SIU permit from the Department	Pursuant to authority granted under N.J.S.A. 58:10A-6(d)(1) and 40 CFR 403.3(v). Minor editorial changes in wording.
7:14A- 21.10	Establishing conditions and effluent limitations for an individual NJPDES-SIU permit issued by the Department	Incorporates 40 CFR 403.
7:14A- 21.11	Violations; closing off of use of sewerage connections	Incorporates State statutes under N.J.S.A. 58:11-56.
7:14A- 21.12	Requirements for dental facilities	No comparable Federal requirement

N.J.A.C. 7:14A-22 Treatment Works Approvals, Sewer Bans, Sewer Ban Exemptions

N.J.A.C. 7:14A-22 provides the administrative requirements for submitting treatment works approval applications to the Department, and specifies the implementation of the sewer

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ban program, sewer ban exemption program and capacity assurance program. The purpose of this program is to protect the integrity of the waters of the State by preventing the entry of pollutants due to inadequately designed or operated wastewater collection, conveyance and treatment facilities. The authority for regulating the construction of treatment works through the treatment works approval program, regulating the amount of flow entering a treatment works through the sewer ban and capacity assurance programs and the authority for the regulation of minimum specifications, comes solely from State statutes (N.J.S.A. 58:10A-1 et seq. and 13:1D-1 et seq.) This subchapter has no Federal counterpart.

N.J.A.C. 7:14A-23 Technical Requirements for Treatment Works Approval Applications

N.J.A.C. 7:14A-23 provides the minimum standards and specifications for the construction and operation of sewerage facilities. The authority for the rules regarding treatment works designs comes solely from the State statutes at N.J.S.A. 58:10A-1 et seq. and 13:1D-1 et seq. This subchapter has no Federal counterpart.

N.J.A.C. 7:14A-24 Additional Requirements for Certain Stormwater Discharges

N.J.A.C. 7:14A-24 sets forth additional requirements applicable to all stormwater discharges to surface water (DSW) and some stormwater discharges to groundwater (DGW). Many of the requirements applicable to DSW incorporate Federal requirements at 40 CFR 122. Some DGW subject to N.J.A.C. 7:14A-24 are through Class V injection wells subject to the Federal underground injection control (UIC) rules at 40 CFR 144 through 146.

For some provisions in N.J.A.C. 7:14A-24 there are no Federal counterparts. These provisions include requirements in N.J.A.C. 7:14A-24.4(a)3 (permit application deadlines for

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certain large or medium municipal separate storm sewer systems), 24.5 (requests for information about stormwater discharges associated with industrial activity), and 24.7(c) (identifying information required in individual permit applications for certain stormwater DSW that are not from industrial or commercial facilities or from small MS4s). All provisions in this subchapter for which there are no Federal counterparts do not exceed any standards or requirements imposed by Federal law.

N.J.A.C. 7:14A-24.9(a) does not incorporate 40 CFR 122.44(i)(4)(iv), which provides that permits for stormwater discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a registered professional engineer that the facility is in compliance with the permit, or alternative requirements. There are no inactive mining operations in New Jersey that are so remote and hard to reach that annual inspections are impracticable.

The table below lists the contents of the subchapter and the related Federal law or guidance.

Reference	Heading	Comparison with Related Federal Law or Guidance
7:14A-24.1	Scope	N/A
7:14A-24.2	Stormwater discharges for which a NJPDES permit is required under this subchapter; exemptions	Incorporates and clarifies 40 CFR 122.26(a) (except 122.26(a)(1)(v), (a)(5), and (a)(9)(iii)), and (for discharges from concentrated animal feeding operations) is consistent with the first sentence in 40 CFR 122.23(a) (except as noted in the

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discussion of Subchapter 2 above in regard to N.J.A.C. 7:14A-2.13). Also see the discussion of Subchapter 25 below in regard to small municipal separate storm sewer systems (small MS4s).

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| 7:14A-24.3 | Petitions | Incorporates and clarifies 40 CFR 122.26(f), 122.32(a)(2) and (b), and 123.35(c), and interprets population criteria in 40 CFR 122.32(d) and 123.35(d)(1). |
| 7:14A-24.4 | Deadlines to apply for NJPDES permit for stormwater discharges | Incorporates and clarifies 40 CFR 122.21(c)(1) and (d)(2), 122.26(a)(9)(iii) and (e), and 122.33(b)(2)(ii) and (c). Also see the discussion of N.J.A.C. 7:14A-25 below in regard to small MS4s. |
| 7:14A-24.5 | Requests for information about stormwater discharges associated with industrial activity | No comparable Federal requirement. |
| 7:14A-24.6 | “Permanent No Exposure” of industrial activities and materials to stormwater | Incorporates and clarifies 40 CFR 122.26(g). |
| 7:14A-24.7 | Permit application requirements for stormwater discharges associated with industrial activity or small | Incorporates and clarifies 40 CFR 122.21(a)(2)(i)(G), (f), and (g), 122.26(a)(9)(ii) (as interpreted at 64 Fed. |

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construction activity, and for certain other stormwater DSW	Reg. 68782; December 8, 1999), and 122.26(c), and USEPA Form 2F. For stormwater discharges associated with construction activity, also incorporates, clarifies, and implements 40 CFR 122.44(s) and 122.34(b)(4), and is consistent with 40 CFR 122.44(i) and (in the Pinelands Area) Section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §471i. Also consistent with Sections 3.3.2 and 5.2 of USEPA’s April 1991 Guidance Manual for the Preparation of NPDES Permit Applications for Storm Water Discharges Associated With Industrial Activity (EPA-505/8-91-002), and Section 4.1.1 of USEPA’s July 1992 NPDES Storm Water Sampling Guidance Document (EPA 833-B-92-001).
7:14A-24.8 Sample collection procedures for individual stormwater DSW permit applications	Incorporates and clarifies 40 CFR 122.21(g)(7)(ii) (except for the last two sentences, which N.J.A.C. 7:14A-4.4(b) incorporates). For volatile organics, is also consistent with requirements in 40 CFR

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136 Appendix A, methods 601 and 624.

7:14A-24.9	Monitoring requirements for certain stormwater discharges	Incorporates and clarifies 40 CFR 122.34(g), 122.44(i)(4) (except (i)(4)(iv)) and (i)(5), 122.41(j)(2), and 122.42(c). Also see the discussion of N.J.A.C. 7:14A-25 below in regard to small MS4s.
7:14A-24.10	Additional requirements for stormwater discharges associated with construction activity	Incorporates, clarifies, and implements 40 CFR 122.44(s), 122.44(a), 122.34(b)(4), and 122.35(b), and is consistent with (in the Pinelands Area) Section 502 of the National Parks and Recreation Act of 1978.

N.J.A.C. 7:14A-25 Municipal Stormwater Regulation Program

N.J.A.C. 7:14A-25 sets forth requirements applicable to the Municipal Stormwater Regulation Program, which regulates discharges to surface water (DSW) and discharges to groundwater (DGW) from municipal separate storm sewer systems (MS4s). Many of the requirements applicable to DSW incorporate Federal requirements at 40 CFR 122 and 123.35. Some DGW regulated under N.J.A.C. 7:14A-25 are through Class V injection wells subject to the Federal UIC rules at 40 CFR 144-146.

N.J.A.C. 7:14A-25.8, Tier B Municipal Stormwater General Permit, has no Federal counterpart. The Tier B Municipal Stormwater General Permit (Tier B Permit) is not a NPDES permit under Section 402 of the Federal Clean Water Act or 40 CFR 122 or 123. However, the Tier B Permit is closely related to designation criteria and waivers under 40 CFR 123.35 and

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122.32. By obtaining the Tier B Permit, Tier B municipalities avoid designation or receive waivers under these USEPA rules. All provisions in NJPDES rules for which there are no Federal counterparts do not exceed any standards or requirements imposed by Federal law.

N.J.A.C. 7:14A-25.9(d) provides in part that an operating entity that seeks to implement a stormwater program under N.J.A.C. 7:14A-25.6 may seek authorization to discharge under an individual NJPDES permit in certain cases only. This aspect of N.J.A.C. 7:14A-25.9(d) might be considered to exceed 40 CFR 122.33(b)(2)(i), which allows any operating entity that seeks to implement a stormwater program under 40 CFR 122.34 to apply for a individual permit. The Department is restricting individual permit applications because the conditions of the individual and general permit are likely to be similar, and the greater amount of Department staff time required for issuing an individual permit when an authorization under a general permit would achieve the equivalent stormwater control would be an inefficient use of resources for no additional environmental benefit.

For some DGW through Class V injection wells, N.J.A.C. 7:14A-25 requires a general or individual NJPDES DGW permit that differs from the authorization by rule that 40 CFR 144.24 and 144.84 provide for some Class V wells. This requirement is authorized by 40 CFR 144.82(d), which recognizes that States can establish additional requirements for Class V wells to protect underground sources of drinking water.

For additional background about the relationship of this subchapter to Federal laws or rules, see the Department's adoption of N.J.A.C. 7:14A-25, particularly the Department's Response to Comments 88 through 100 (36 N.J.R. 813(a), 826 through 829).

The table below lists the contents of the subchapter and the related Federal law or guidance.

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Reference	Heading	Comparison with Related Federal Law or Guidance
7:14A-25.1	Scope	N/A
7:14A-25.2 and 25.3	Identifying municipalities, public complexes, and highways or other thoroughfares regulated under the small MS4 program; Assignment of municipalities to Tier A or Tier B	Incorporates, clarifies, and implements 40 CFR 122.26(a)(9), (b)(16), and (f), 122.32, 122.33(a), and 123.35(b), (c), and (d)(1).
7:14A-25.4	Deadlines to apply for NJPDES permits for small MS4s	Incorporates, clarifies, and implements 40 CFR 122.21(c)(1) and (d)(2), 122.26(a)(9)(iii) and (e)(9), and 122.33 and (c), and deadline in 40 CFR 122.33(b)(2)(ii).
7:14A-25.5	Applying for a NJPDES permit for a small MS4	Incorporates, clarifies, and implements 40 CFR 122.28(b), 122.33(b), and 122.34(d).
7:14A-25.6	Content of NJPDES permits for small MS4s	Incorporates, clarifies, and implements 40 CFR 122.34, 122.41(j)(2), and 123.35(b), (e), (f), and (g). Provisions pertaining to additional measures are consistent with 40 CFR 122.4, 122.34(e)(1), 122.44(d)(6), and 130.12(a), and Section 208(e) of the Federal Clean Water Act. Provisions requiring

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- permittees to implement best management practices specified by the Department are consistent with USEPA guidance at 64 Fed. Reg. 68763 (December 8, 1999).
- 7:14A-25.7 Sharing of responsibility to implement control measures for a small MS4 Incorporates, clarifies, and implements 40 CFR 122.35, and is also consistent with 40 CFR 122.62(a)(14).
- 7:14A-25.8 Tier B Municipal Stormwater General Permit The Tier B Municipal Stormwater General Permit (Tier B Permit) is not a NPDES permit under Section 402 of the Federal Clean Water Act or 40 CFR 122 or 123. However, the Tier B Permit is closely related to designation criteria and waivers under 40 CFR 123.35 and 122.32.
- 7:14A-25.9 Individual NJPDES permit applications for small MS4s Incorporates, clarifies, and implements 40 CFR 122.33(b)(2) and (b)(3) (except that N.J.A.C. 7:14A-25.4 incorporates and clarifies the deadline in 40 CFR 122.33(b)(2)(ii)). The Department's ability to require individual permits is consistent with 40 CFR 122.28(b)(3) and 124.52, and with USEPA guidance at 64 Fed. Reg. 68737 (December 8, 1999).

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7:14A-	Requirements for large and	Incorporates and clarifies 40 CFR
25.10	medium municipal separate storm sewer discharges	122.26(b)(2), (b)(5), (b)(6), and (d), and 122.42(c).

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 7:14A.

Full text of the adopted amendments, new rules and repeals follows (additions to proposal indicated in boldface with asterisks **thus**; deletions from proposal indicated in brackets with asterisks **[thus]**):

CHAPTER 1C

***[NINETY-DAY CONTRUCTION PERMITS] * (RESERVED) ***

CHAPTER 14A

NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM

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SUBCHAPTER 2. GENERAL PROGRAM REQUIREMENTS

7:14A-2.11 Duty to provide information

(a) (No change from proposal.)

(b) An application for a permit or treatment works approval, a request for authorization, a report required by a permit (including, but not limited to a monitoring report form), and other information requested by the Department may be submitted electronically via the Department's web portal at www.nj.gov/dep/online.

1. - 2. (No change from proposal.)

3. The Department may require an applicant or a permittee to submit an application for a permit, treatment works approval, request for authorization, or a report required by a permit, and other information on paper, rather than electronically, if the Department determines:

i. (No change from proposal.)

ii. The data submitted electronically have compromised, or have the potential to compromise ***the*** Department's database system (for example, a virus is transmitted).

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(c) - (g) (No change from proposal.)

7:14A-2.12 Studies

(a) - (c) (No change from proposal.)

(d) Reuse feasibility studies performed under N.J.A.C. 7:14A-2.15 are exempt from the requirements of (c) above.

7:14A-2.15 Reclaimed water for beneficial reuse

(a) Any person producing or proposing to produce RWBR shall refer to the guidance for restricted access RWBR or public access RWBR specified in the Department's "Technical Manual for Reclaimed Water for Beneficial Reuse, * **dated January 2005, as supplemented or amended,***" and shall comply with all RWBR limitations and conditions in the applicable NJPDES permit. * **The implementation of a RWBR program at a facility will not be a basis for the Department to allow that facility to expand its sewer service area or capacity to accept additional wastewater.*** The Technical Manual for Reclaimed Water for Beneficial Reuse is available from the Department's Division of Water Quality at PO Box 029, Trenton, New Jersey 08625 or from the Division's website (<http://www.nj.gov/dep/dwq>).

1. - 2. (No change from proposal.)

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[(b) Except as provided in (d) below, each application for an individual renewal NJPDES DSW permit for a facility discharging to a receiving waterbody classified in the Surface Water Quality Standards at N.J.A.C. 7:9B as SE or SC waters, or for an individual renewal NJPDES DSW or DGW permit for a facility located in a critical water supply area delineated by the Department under the Areas of Critical Water Supply Concerns rules at N.J.A.C. 7:19-8, shall include a reuse feasibility study. A reuse feasibility study shall be submitted with the water quality management plan amendment request, in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15, for a new or expanding discharge regulated under (c) below.]

[(c) Each reuse feasibility study submitted to the Department under (b) above] ***(b) If a permittee elects to conduct and submit a Reuse Feasibility Study, it*** shall be conducted in accordance with the Department's Technical Manual for Reclaimed Water for Beneficial Reuse,* **dated January 2005, as supplemented or amended.*** and shall be signed and sealed by a professional engineer licensed in the State of New Jersey.

*[(d) The following are exempt from the requirements of (b) above to perform a reuse feasibility study:

1. A facility that discharges to an individual subsurface sewage disposal system;
2. A facility with a monthly average flow of less than 0.1 MGD;

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3. A facility for which 75 percent or more of the monthly average flow is directly reused;

4. A facility that discharges to surface waters where the removal of any wastewater flows to the receiving water will result in unsatisfactory passing flows;

5. A facility that discharges only stormwater or is a separate storm sewer;

6. A concentrated animal feeding operation (CAFO); and

7. An agricultural facility with irrigation return flows.]*

[(e)] **(c)*** Each applicant that produces or proposes to produce RWBR shall include the following in the NJPDES permit application or request for authorization under the general RWBR permit (NJ0142581), as applicable:

1. - 4. (No change from proposal.)

5. An engineering report, operating protocol and reuse supplier agreement or any other additional information that the Department may require in accordance with N.J.A.C. 7:14A-

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4.3(e) and the guidance provided in the Department's Technical Manual for Reclaimed Water for Beneficial Reuse*, **dated January 2005, as supplemented or amended***; and

6. (No change from proposal.)

SUBCHAPTER 3. DETERMINATION OF PERMIT FEES

7:14A-3.1 Fee schedule for NJPDES permittees and applicants

(a) - (b) (No change from proposal.)

(c) The annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a discharge to Surface Water from an industrial treatment works (ITW) regulated under an individual NJPDES permit is derived by applying the formula:

Environmental Impact = (Total Pollutant Load + Heat Load) where:

i. Total Pollutant Load is the sum of *[all]* **each*** limited *[pollutants]* **pollutant's average loading*** (in kilograms per day) **for the selected 12 month period, as determined in**

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accordance with N.J.A.C. 7:14A-3.1(a)7, * multiplied by *[their]* **its*** associated risk

factor*[s]* as listed in Table I below.

(1) - (2) (No change.)

ii. (No change.)

2. - 4. (No change.)

(d) Except as provided by (k) below, the annual fee for discharges to groundwater, except for residuals covered in (e) below, is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Groundwater regulated by an individual NJPDES permit is derived by applying the formula:

Environmental Impact = (Pollution Potential Factor) x (Discharge Control Factor) where:

i. - v. (No change from proposal.)

vi. The Discharge Control Factor is a measure of the potential of a discharge to affect groundwater and is based on whether a pollutant source passes through to a DSW or POTW, is designed to be discharged to the ground, or is a landfill. The Discharge Control Factor is

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assigned as follows:

<u>Discharge Control Scenario for Pollutant Source</u>	<u>Discharge Control Factor</u>
Permitted but not being discharged (does not apply to landfills)	0
Pass-through wastewater to DSW or POTW, lined (surface impoundment with a liner having hydraulic conductivity of at least $<10^{-7}$ cm/sec)	1
Pass-through wastewater to DSW or POTW, unlined and/or partially lined (surface impoundment or infiltration/percolation lagoon that is unlined or partially lined)	10
Designed for discharge to the ground (sanitary wastewater with at least secondary treatment)	20
Designed for discharge to the ground (all other wastewater other <u>than</u> sanitary wastewater with at least secondary treatment)	25
Landfills, completely lined ($<10^{-7}$ cm/sec)	30
Landfills, unlined and/or partially lined	40
2. (No change.)	

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(e) - (f) (No change from proposal.)

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a discharge by a significant indirect user (SIU) to a domestic treatment works (DTW) is derived by applying the formula:

Environmental Impact = (Total Pollutant Load)

i. Total Pollutant Load is the sum of **[all]** ****each**** limited **[pollutants]** ****pollutant's average loading**** (in kilograms per day) ****for the selected 12 month period, as determined in accordance with N.J.A.C. 7:14A-3.1(a)7,**** multiplied by **[their]** ****its**** associated risk factor**[s]** as listed in Table I below.

(1) (No change.)

(h) - (m) (No change from proposal.)

SUBCHAPTER 4. PERMIT APPLICATION REQUIREMENTS

7:14A-4.3 Application information requirements

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(a) - (d) (No change from proposal.)

(e) In addition to the information reported on the application form, applicants shall provide to the Department, upon request, such other information as the Department may reasonably require, or that the applicant wishes to have considered, to assess the activity or discharge(s) of the facility and to determine whether to issue *a* NJPDES permit in accordance with this chapter. This additional information may include additional quantitative data and bioassays to assess the relative toxicity of the discharge(s) to aquatic life, requirements to determine the cause of any toxicity, or other such information concerning existing or proposed pollution control programs, such as the technical application requirements listed in N.J.A.C. 7:14A-4.5 through 4.8. In accordance with N.J.A.C. 7:14A-15.4, a technically incomplete application may be inactivated (and the issuance of the draft permit therefore delayed) until the information requested under this subsection is supplied to the Department.

7:14A-4.4 Additional application requirements for discharges to surface water

(a) (No change.)

(b) All applicants for an individual NJPDES permit shall provide as part of their application, information on the discharge of pollutants in accordance with this subsection (except information on stormwater discharges, which is to be provided as specified in N.J.A.C. 7:14A-24.7, 24.8, 25.9 and 25.10).

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1. - 2. (No change.)

3. An effluent characterization shall be submitted as follows:

i. Every applicant for an individual NJPDES permit shall report quantitative data that contains daily maximum and monthly average values, for every outfall, for the following pollutants:

(1) - (7) (No change.)

(8) Dissolved oxygen

ii. - iv. (No change.)

v. For new sources or new discharges, when the applicant is unable to provide sampling data, the applicant must include estimates for the new sources or new discharges of pollutants or parameters listed in (b)3i above with the addition of *[fecal coliform]* **bacterial indicators** (if believed present or if sanitary waste is or will be discharged), chlorine produced oxidants (if chlorine is used in the treatment process), oil and grease, and flow, along with the source of each estimate.

vi. (No change.)

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4. - 7. (No change.)

APPENDIX A

PERMIT APPLICATION TESTING REQUIREMENTS/POLLUTANT LISTINGS

Table III

Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

...

Chromium ⁺³, Total (Trivalent)

[Chromium ⁺⁶, Total (Hexavalent)] ***Chromium ⁺⁶, Dissolved (Hexavalent)***

Copper, Total

...

SUBCHAPTER 6. CONDITIONS APPLICABLE TO ALL NJPDES PERMITS

7:14A-6.8 Reporting monitoring results

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(a) - (c) (No change from proposal.)

(d) Monitoring results may be submitted to the Department electronically, provided:

1. - 2. (No change from proposal.)

3. The permittee agrees to submit a monitoring report *[reform or]* **form on** paper, rather than electronically, if the Department determines:

i. - ii. (No change from proposal.)

iii. The data submitted electronically have compromised, or have the potential to compromise **the** Department's database system (for example, a virus is transmitted).

(e) - (i) (No change from proposal.)

7:14A-6.13 General permits

(a) - (b) (No change.)

(c) General permits may be issued, modified, revoked and reissued, suspended, or revoked in accordance with applicable requirements of N.J.A.C. 7:14A-15, 16 and 17. The Department

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shall publish in the New Jersey Register a notice of administrative change revising the list of general permits in the table below to reflect any of these general permit actions. The list in this table is for informational purposes only. The Department advises prospective applicants to obtain a copy of the most recent general permit list from the Department's Division of Water Quality at PO Box 029, Trenton, New Jersey 08625, or from the Division's website (<http://www.state.nj.us/dep/dwq>). A copy of any general permit on the list may be obtained from the same address.

<u>NJPDES Permit No.</u>	<u>Category</u>	<u>Name of General Permit</u>	<u>Discharge Type¹</u>	<u>Year Issued</u>
NJ0108308	I1	Stormwater Basins at Sanitary Landfills	DGW	*[2001]* <u>*2007, modified in 2007*</u>
NJ0108642	I2	*[Filter Backwash Water from]* Potable Water Treatment Plant*[s]* <u>*Basins and Drying Beds*</u>	DGW	2003
NJ0130281	T1	Existing Sanitary *[Septic Systems]* <u>*Subsurface Disposal Systems*</u>	DGW	*[2003]* <u>*2008*</u>
NJ0142051	LSI	Lined Surface Impoundment	DGW	2004
<u>*NJ0138622*</u>	<u>*R7*</u>	<u>*Wood Recyclers*</u>	<u>*DGW*</u>	<u>*2007*</u>
<u>*NJ0168416*</u>	<u>*K2*</u>	<u>*Dental Facilities Onsite Wastewater Treatment Systems*</u>	<u>*DGW*</u>	<u>*2007*</u>
NJ0138631	R8	Concentrated Animal Feeding Operation (CAFO)	DGW/DSW	*[2003]* <u>*2008*</u>
NJ0107671	SM	Scrap Metal *[Stormwater]* <u>*Processing/Auto Recycling*</u>	DGW/DSW	2005
NJ0088315	5G2	Basic Industrial Stormwater	DGW/DSW	*[2002]* <u>*2007*</u>
NJ0141852	R9	Tier A Municipal Stormwater	DGW/DSW	2004* ₁ <u>modified in 2005*</u>
NJ0141861	R10	Tier B Municipal Stormwater	DGW/DSW	2004* ₁ <u>modified in 2005*</u>
NJ0141879	R11	Public Complex Stormwater	DGW/DSW	2004* ₁ <u>modified in 2005*</u>
NJ0141887	R12	Highway Agency Stormwater	DGW/DSW	2004* ₁ <u>modified</u>

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NJ0141950	R13	Mining and Quarrying *Activity* Stormwater	DGW/DSW	in 2005* 2005* ₁ modified in 2007*
NJ0088323	5G3	Construction Activity Stormwater	DSW	*[2002, modified in 2004]* *2007*
NJ0108456	CPM	Concrete Products Manufacturing Stormwater	DGW/DSW	2003* ₁ modified in 2008*
NJ0134791	R5	Newark Airport Complex Stormwater	DSW	2005
NJ0132721	R4	Hot Mix Asphalt Producers Stormwater	DGW/DSW	2004* ₁ modified in 2007*
NJ0070203	CG	Non-contact Cooling Water	DSW	2006
NJ0102709	B4B	Groundwater Petroleum Product Clean-up	DSW	*[2003]* *2008*
NJ0142581	ABR	Wastewater Beneficial Reuse	DSW	2006
NJ0155438	BGR	Groundwater Remediation Cleanup	DSW	2005
NJ0105023	CSO	Combined Sewer *[Overflow]* *Systems*	DSW	2004* ₁ modified in 2006*
NJ0128589	B6	Swimming Pool Discharges	DSW	1998
[NJ0132933] *NJ0132993*	BG	Hydrostatic Test Water	DSW	2005
NJ0134511	B7	Construction Dewatering	DSW	2005
NJ0105767	EG	Land Application Food Processing Residuals	RES	2003
NJ0132519	ZG	Residuals Transfer Facilities	RES	2004
NJ0132501	4G	Residuals - Reed Beds	RES	*[2002]* *2008*

(d) - (o) (No change.)

SUBCHAPTER 8. ADDITIONAL REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL (UIC) PROGRAM

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

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(a) - (b) (No change from proposal.)

(c) The owner or operator of a Class V injection well shall submit inventory information to the Department at the address indicated in (i) below within 90 days of *[a notification by the Department. Notification shall be a public notice in a local newspaper or in the New Jersey Register, or a written request]* **installation of the Class V injection well***. The inventory information shall consist, at a minimum, of the following information:

1. - 7. (No change.)

(d) - (i) (No change from proposal.)

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

(a) (No change from proposal.)

(b) Class V wells shall, at a minimum, be constructed in accordance with the following requirements:

1. Well drilling permit requirements:

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i. Where applicable, any owner or operator of a new Class V well shall obtain a well drilling permit before the commencement of any construction, in accordance with the Well Construction and Maintenance; Sealing of Abandoned Wells rules (N.J.A.C. 7:9D). Information and applications for a well permit may be obtained from:

*[NJDEP

Water Supply Administration

Bureau of Water Allocation]*

***New Jersey Department of Environmental Protection**

Division of Water Supply

Bureau of Water Systems and Well Permitting*

PO Box 426

Trenton, New Jersey 08625-0426

2. (No change from proposal.)

(c) (No change from proposal.)

(d) Plugging and abandonment requirements for Class V wells are as follows:

1. Class V wells shall be plugged and abandoned in accordance with the requirements of N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:9D, where applicable. Cessation of injection operations constitutes abandonment in accordance with the requirements of N.J.S.A. 58:4A-4.1.

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The improper maintenance of a well may constitute abandonment of that well in accordance with N.J.S.A. 58:4A-4.1. Class V wells shall be closed in a manner that prevents fluid movement that may cause a violation of the State primary drinking water rules under N.J.A.C. 7:10 or the Ground Water Quality Standards under N.J.A.C. 7:9C, or that may adversely affect public health or safety. Additional requirements are as follows:

i. - ii. (No change from proposal.)

iii. Other Class V wells, not otherwise included in *[(a)1 or 2]* **(d) i or ii*** above, shall be plugged and abandoned in accordance with the terms of a UIC permit that includes the following conditions as applicable:

(1) - (2) (No change from proposal.)

(3) Remove material where necessary to prevent fluid movement that may adversely affect human health.

[(3)] **(4)***When components or residuals (for example, gravel filter material, fill material, soil) from an abandoned individual subsurface sewage disposal system are removed from the ground, such components or residuals shall be managed in accordance with this chapter, the State Solid Waste Management Act (N.J.S.A.13:1E-1 et seq.) and its implementing rules at N.J.A.C. 7:26, 7:26A and 7:26G.

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(e) - (g) (No change from proposal.)

7:14A-8.18 Specific operating criteria and construction standards applicable to permit by rule authorizations for underground injection into seepage pits

(a) This section sets forth the operating criteria and construction standards for underground injection into seepage pits under a permit-by-rule pursuant to N.J.A.C. 7:14A-8.5(b)*4 or* 5.

(b) - (d) (No change.)

SUBCHAPTER 11. PROCEDURES AND CONDITIONS APPLICABLE TO NJPDES-DSW PERMITS

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

(a) - (c) (No change from proposal.)

(d) After submission of the PCB monitoring required under (c) above and under the facility's permit, the Department will determine whether each permittee must complete a PCB Pollutant Minimization Plan (PMP), and will notify each permittee of this decision in writing.

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1. - 3. (No change from proposal.)

4. If the Department determines that the permittee is required to perform a PMP, the permittee shall submit an annual report every 12 months from the implementation of the PMP. The annual report shall contain:

i. (No change from proposal.)

ii. At a minimum, a detailed discussion of the specific progress and actions ~~*[take]*~~ **taken** by the permittee during the previous twelve month period that addresses reducing PCB loadings and implementation of the PMP.

(e) (No change from proposal.)

SUBCHAPTER 19. PRETREATMENT PROGRAM REQUIREMENTS FOR LOCAL AGENCIES

7:14A-19.3 Industrial pretreatment program requirements for all local agencies

(a) - (d) (No change from proposal.)

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(e) All delegated local agencies shall include within their local sewer use ordinance or rules and regulations, their authority to:

1. - 4. (No change from proposal.)

5. Define and classify non-significant categorical indirect users including the criteria, reporting, and oversight conditions consistent with 40 CFR 403.3*(v)*, 403.8*(f)(2)(v)(B)*, and 403.12*(q)*, respectively.

(f) (No change from proposal.)

7:14A-19.6 Additional requirements for delegated local agencies

(a) - (i) (No change from proposal.)

(j) If a delegated local agency determines to establish equivalent mass limits pursuant to N.J.A.C. 7:14A-21.4(b), the delegated local agency:

1. (No change from proposal.)

2. Shall reassess the equivalent mass limit ***upon notification of a revised production rate*** and recalculate the limit as necessary to reflect changed conditions at the facility*[upon notification of a revised production rate]*; and

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3. May retain the same equivalent mass limit in the modified or renewed industrial pretreatment program permit, if:

i. (No change from proposal.)

ii. The actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to *[(d) above]* ***N.J.A.C. 7:14A-21.4(g)***; and

iii. (No change from proposal.)

(k) (No change from proposal.)

7:14A-19.7 Development of local limits by local agencies

(a) - (f) (No change from proposal.)

(g) The written technical evaluation required to be submitted by delegated local agencies under (f) above shall include the following:

1. - 5. (No change from proposal.)

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6. A statement from the local agency as to whether or not local limits need to be revised based on the information gathered under *[(e)]* *(g)*1 through 5 above.

(h) (No change from proposal.)

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

(a) (No change.)

(b) The delegated local agency shall include the following requirements in all IPP permits:

1. (No change.)

2. All permit requirements for IPP/SIU permits established in 40 CFR 403.8(f)(1)*(iii)*(B)(1) through (6).

(c) (No change.)

(d) All delegated local agencies shall include in their sewer use ordinance or rules and regulations the following permit issuance requirements:

1. (No change.)

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*[2. Procedural requirements for the issuance of IPP permits. These requirements shall include, at a minimum, the following:

- i. Public notice and comment criteria consistent with N.J.A.C. 7:14A-15.10;

- ii. Public comment and request for public hearing criteria consistent with N.J.A.C. 7:14A-15.11;

- iii. Public hearing criteria consistent with N.J.A.C. 7:14A-15.12;

- iv. Criteria regarding the obligation to raise issues during the public comment period, consistent with N.J.A.C. 7:14A-15.13;

- v. Public comment period re-opening criteria, consistent with N.J.A.C. 7:14A-15.14;

- vi. Final permit decision and issuance criteria, consistent with N.J.A.C. 7:14A-15.15; and

- vii. Response to comments criteria, consistent with N.J.A.C. 7:14A-15.16.

3. Procedural requirements for modification, revocation and reissuance, renewal, suspension, or revocation of IPP permits consistent with N.J.A.C. 7:14A-16.3 through 16.6.]*

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***2. Procedural requirements for the issuance, renewal, modification, suspension, revocation of IPP permits or indirect user authorizations. The procedures must include notice, opportunity to comment, and opportunity to request a public hearing on all draft IPP permits. The DLA shall issue a response-to-comments document at the time that a final permit is issued. The response-to-comments document shall:**

- i. State the action the DLA has taken on the final permit;**

- ii. Specify which provisions, if any, of the draft permit have been changed in the final permit, and the reasons for any such change; and**

- iii. Briefly describe and respond to all relevant comments on the draft permit raised during the public comment period, or during the public hearing, if any;***

[4.] ***3.*** The requirement that no IPP permit shall be issued, renewed, or modified by a delegated local agency so as to relax any effluent limitation unless the IPP permittee or applicant has complied with the requirements of N.J.S.A. 58:10A-6k*[*; and]* *.*

*[5. Procedural requirements for permit appeals consistent with N.J.A.C. 7:14A-17.

(e) A delegated local agency shall submit modifications to its local sewer use ordinance or rules and regulations that incorporate the requirements set forth in (d) above within 90 days after

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notification by the Department. All changes to a delegated local agency's local sewer use ordinance or rules and regulations shall be made in accordance with N.J.A.C. 7:14A-19.9.]*

APPENDIX A

ENFORCEMENT RESPONSE PLAN

...

Discharge Limit Violation

1. Exceedance of local or Federal standard (permit limit)	Individual or monthly non-serious violation	NOV; compliance response/corrective action plan, if needed	60 days from receipt	NM
	Serious violation (individual or monthly)	NOV; Seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.16	NOV-*[6 months]* *60 days* ; penalty within 6 months	NM
2. Exceedance of local or Federal standard (permit limit) (continued)	Significant Noncompliance (IU meets SNC criteria under 40 CFR Part 403)	Public notice	Annually, but no later than 60 days after 403 annual report submitted to NJDEP.	NM
	Significant noncompliance (IU meets SNC criteria in NJWPCA, under N.J.S.A. 58:10A-3.w.)	NOV; Seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.16	NOV-60 days; penalty within 6 months	NM

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SUBCHAPTER 20. STANDARDS FOR THE USE OR DISPOSAL OF RESIDUAL

7:14A-20.7 Land application

(a) In addition to the information required in N.J.A.C. 7:14A-4 and 20.6, an applicant for a NJPDES permit to prepare residual for land application shall submit the following:

1. - 2. (No change from proposal.)

3. For bulk residual that is not of exceptional quality, requests for approval to land apply residual shall be submitted in accordance with the following:

i. For each residual land application site identified at the time of permit application, the applicant shall include in the permit application an application for a Letter of Land Application Management Approval (LLAMA) and, in accordance with the applicable NJPDES Permit Technical Manual, supply information necessary to determine if the site is appropriate for land application and a description of how the site is or will be managed, including, but not limited to, the following:

(1) - (6). (No change from proposal.)

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(7). A conservation plan *[approved and on file with]* ***or soil erosion and sediment control plan (as applicable) certified by*** the County Soil Conservation District; a written determination from the Natural Resources Conservation Service that no conservation plan is required for the site; or an equivalent conservation plan that is developed by a person trained in nutrient management and conservation/erosion control planning and that is approved by the Department ***solely for the purposes of this subchapter***.

ii. - iv. (No change from proposal.)

4. - 5. (No change from proposal.)

(b) - (g) (No change from proposal.)

(h) Residual applied to the land shall conform to one of the following programs based on the level of quality, pathogen reduction and vector attraction reduction achieved:

1. (No change from proposal.)

2. Residual that is not exceptional quality shall be applied only if it meets the ceiling concentrations in 40 CFR 503.13(b)(1); meets the Class B pathogen requirements in 40 CFR 503.32(b); and meets one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (8) or will meet one of the vector attraction reduction requirements in 40 CFR

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503.33(b)(9) or (b)(10). Such residual shall be applied only in accordance with the following requirements:

i. - v. (No change from proposal.)

vi. A conservation plan***or soil erosion and sediment control plan (as applicable)*** pursuant to (a)3i(7) above; and

vii. (No change from proposal.)

(i) – (m) (No change from proposal.)

7:14A-20.9 Reed beds

(a) - (b) (No change from proposal.)

(c) Residual shall be loaded onto a reed bed no more than once every 14 days after plants reach maturity***, unless otherwise approved by the Department in a permit***. Less frequent loading rates will be set forth in the permit during the time that plants are maturing or as required due to unfavorable loading conditions (for example, in the presence of standing water).

(d) - (h) (No change from proposal.)

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SUBCHAPTER 21. REQUIREMENTS FOR INDIRECT USERS

7:14A-21.3 Additional requirements for all significant indirect users

(a) - (f) (No change from proposal.)

(g) Monitoring and analysis to demonstrate continued compliance shall be conducted as follows:

1. - 2. (No change from proposal.)

3. The reports required under (b), (e), and (f) above and (h) below shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require monitoring at a frequency necessary to assess ***and ensure*** compliance by indirect users with applicable pretreatment standards and requirements. Sampling shall be as follows:

i. - iv. (No change from proposal.)

4. For sampling required in support of baseline monitoring and 90-day compliance reports required in (b) and (e) above, a minimum of four grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which

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historical sampling data do not exist; for facilities for which historical sampling data are available, the control authority may authorize a lower minimum where historical data ***is representative of the current discharge and*** demonstrates compliance. For the reports required by (f) above and (h) below, the number of grab samples necessary to assess ***and ensure*** compliance with applicable pretreatment standards and requirements shall be determined by the control authority.

5. - 6. (No change from proposal.)

(h) - (k) (No change from proposal.)

7:14A-21.12 Requirements for dental facilities

(a) - (b) (No change.)

(c) If a local agency conducts a headworks analysis pursuant to N.J.A.C. 7:14A-19.7(a) and determines that additional mercury control measures are necessary to ensure compliance with its NJPDES permit, then the control authority shall impose additional mercury control measures on dischargers to the local agency's treatment works, including, as appropriate, dental facilities subject to this section. Where additional mercury control measures are necessary, all dental facilities discharging to such local agency shall apply for ***[an]*** ***a*** NJPDES-SIU permit.

(d) - (e) (No change.)

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SUBCHAPTER 22. TREATMENT WORKS APPROVALS, SEWER BANS, SEWER BAN EXEMPTIONS

7:14A-22.3 Activities for which a treatment works approval is required

(a) Except as provided in N.J.A.C. 7:14A-22.4, no person shall engage in any of the following activities except in conformance with a valid treatment works approval from the Department:

1. - 4. (No change from proposal.)

5. Building, installing, operating or modifying any individual subsurface *sewage* disposal system if required pursuant to N.J.A.C. 7:9A-3.9;

6. - 7. (No change from proposal.)

(b) - (c) (No change from proposal.)

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

(a) A treatment works approval from the Department is not required for the following activities:

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1. - 2. (No change from proposal.)

3. Except as provided at N.J.A.C. 7:14A-22.3(a)5, building, installing, operating or modifying a *[septic system or other]* ***individual*** subsurface ***sewage*** disposal system where the aggregate projected flow of the facility, using the criteria established in N.J.A.C. 7:9A, is less than or equal to 2,000 gallons per day of sanitary sewage. Treatment works for such facilities are regulated pursuant to N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems;

4. - 13. (No change from proposal.)

(b) - (e) (No change from proposal.)

7:14A-22.24 Requests for adjudicatory hearings

(a) Subject to the limitations of (d) below, a person may request an adjudicatory hearing to contest the issuance or denial of a treatment works approval *[of]* ***and/or*** the approval or denial of a sewer ban exemption request.

(b) - (j) (No change from proposal.)

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SUBCHAPTER 24. ADDITIONAL REQUIREMENTS FOR CERTAIN STORMWATER DISCHARGES

7:14A-24.2 Stormwater discharges for which *[an]* ***a*** NJPDES permit is required under this subchapter; exemptions

(a) - (b) (No change.)

(c) The following stormwater discharges are exempt from the requirement to obtain *[an]* ***a*** NJPDES permit from the Department:

1. (No change.)

2. Stormwater DSW from mining operations ***or oil and gas exploration, production, processing or treatment operations or transmission facilities,*** composed entirely of flows which are from conveyances or systems of conveyances (including, but not limited to, pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations; and

3. (No change.)

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[4. Stormwater discharges associated with all field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except when the area where the field activity or operation has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6; or has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987. This exemption includes discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities that contribute to a violation of a surface water quality standard.]

(d) – (g) (No change.)

7:14A-24.4 Deadlines to apply for NJPDES permit for stormwater discharges

(a) Any operating entity for a stormwater DSW or DGW identified under (a)1 through 8 below that does not have an effective NJPDES permit authorizing its stormwater discharges shall submit a request for authorization for a general NJPDES permit, or an application for an individual NJPDES permit, in accordance with the following deadlines:

1. – 3. (No change.)

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4. For a stormwater DSW or DGW that is the subject of a notice under N.J.A.C. 7:14A-24.2(b), or that is subject to N.J.A.C. *[7:14A-24.7(a)4]* ***7:14A-24.7(a)5***, a request for authorization for a stormwater general permit, or an application for an individual permit, shall be submitted within 180 days of notice, unless the Department approves a later date.

5. (No change.)

6. *[The]* **Except as provided in (a)6i below, the** deadline to obtain NJPDES permit authorization for all stormwater DSW identified under paragraph 1 of the definition of “stormwater discharge associated with small construction activity” in N.J.A.C. 7:14A-1.2 is March 3, 2004, or the date on which construction commences, whichever is later. General permits for such discharges shall specify deadlines for submitting requests for authorization under such permits. An entity submitting an individual permit application for such discharges shall submit an application at least 90 days before the date on which construction is to commence (unless the Department approves a later date), or by March 3, 2004, whichever is later.

***i. The deadline to obtain NJPDES permit authorization for stormwater discharge associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities is March 10, 2005, or the date on which construction commences, whichever is later. General permits for such discharges shall specify deadlines for submitting requests for authorization under such permits. An entity submitting an individual permit application for such discharges shall submit an application at least 90 days before the date on which construction is to**

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commence (unless the Department approves a later date), or by December 10, 2004,

whichever is later.*

7. – 8. (No change.)

(b) (No change.)

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

(a) Operating entities for stormwater discharges associated with industrial activity or small construction activity (from point or nonpoint sources), and for industrial or commercial stormwater DSW (from point or nonpoint sources) identified under N.J.A.C. 7:14A-24.2(a)1 or 7, shall apply for an individual NJPDES DSW permit or request authorization under a final stormwater general NJPDES DSW permit in accordance with the deadlines set forth at N.J.A.C. 7:14A-24.4. Any such operating entity that is required or seeks to obtain an individual DSW permit shall submit an individual permit application in accordance with the requirements of N.J.A.C. 7:14A-4 as modified and supplemented by this section and N.J.A.C. 7:14A-24.8. Except as provided in (a)2 and (b) below, this individual permit application shall include (for discharges composed entirely of stormwater) the NJPDES-1 Form, NJPDES Form RF, and NJPDES Form R, Part A (the facility's residual use or residual disposal practices may require the completion of additional sections of Form R). If this individual permit application is for a stormwater discharge mixed with domestic sewage and/or an industrial nonstormwater discharge

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that requires a NJPDES-DSW permit, the operating entity shall comply with N.J.A.C. 7:14A-4, but is exempt from the requirements of (a)1 and 2 below, and shall not submit NJPDES Form RF.

1. - 2. (No change.)

***3. The operating entity for an existing or new discharge composed entirely of stormwater from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to apply for a NJPDES DSW permit in accordance with this section, unless the facility:**

i. Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. 117.21 or 40 C.F.R. 302.6 at anytime since November 16, 1987;

ii. Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. 110.6 at any time since November 16, 1987; or

iii. Contributes to a violation of a surface water quality standard.*

[3] **4***. The operating entity for an existing or new discharge composed entirely of stormwater from a mining operation is not required to apply for a NJPDES DSW permit in

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JANUARY 5, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

accordance with this section, unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

[4] *5*. Applicants shall provide such other information as the Department may reasonably require under N.J.A.C. 7:14A-4.3(e) to determine whether to issue a NJPDES DSW permit. The Department may require any operating entity subject to (a)2 above to comply with (a)1 above and submit NJPDES Form RF.

(b) – (c) (No change.)