

UPDATED AS OF JUNE 4, 2007

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**ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
DIVISION OF WATERSHED MANAGEMENT**

Water Quality Management Planning

Proposed Readoption with Amendments: N.J.A.C. 7:15

Proposed New Rules: N.J.A.C. 7:15-1.6, 1.7, 3.10, 5.24, 5.25 and 5.26

Proposed Repeals and New Rules: N.J.A.C. 7:15-5.1, 5.2, 5.13, 5.14, 6 and 8

Proposed Repeals: N.J.A.C. 7:15-4.5, 5.5, 5.7, 5.9 through 5.12, 5.21 and 7

Authorized by: Lisa P. Jackson, Commissioner,
Department of Environmental Protection

Authority: N.J.S.A. 13:1D-1 et seq., 13:19-1 et seq., 13:20-1 et seq., 23:2A-1 et seq., 40:55D 93-99, 58:1A-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq., 58:16A-50 et seq., 58:11-23 et seq., and 58:29-1 et seq.

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

DEP Docket Number: 10-07-04/527

Proposal Number: PRN 2007-164

Public hearings concerning this proposal will be held as follows:

Date: Friday, June 8, 2007
Time: 12:00 P.M. to 4:00 P.M. or close of testimony, whichever occurs first
Location: Galloway Township Library
306 East Jimmie Leeds Road
Galloway, New Jersey

Date: Monday, June 11, 2007
Time: 1:00 P.M. to 5:00 P.M. or close of testimony, whichever occurs first
Location: Lewis Morris County Park and Cultural Center
300 Mendham Road (County Road 510)
Morris Township, New Jersey

Date: Friday, June 15, 2007
Time: 1:00 P.M. to 5:00 P.M. or close of testimony, whichever occurs first
Location: New Jersey Department of Environmental Protection
Public Hearing Room, 1st floor
401 East State Street
Trenton, New Jersey

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Submit written comments by July 20, 2007 to:

Gary J. Brower, Esq.
Attention: DEP Docket Number 10-07-04/527
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 4th Floor
P.O. Box 402
Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. MacIntosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's website at <http://www.nj.gov/dep>.

The agency proposal follows:

Summary

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

New Jersey's surface and ground waters are a finite resource that belong to each and every resident, held in trust and managed by the State of New Jersey. Long-term protection of this resource is imperative to the health, welfare, and quality of life for all residents of New Jersey (human and non-human alike). Clean and plentiful water is essential to support human needs including drinking water, agricultural production, fisheries, recreation and industry. Some have estimated that the total daily per capita demand for water; including food production, food processing, energy production and the production of consumer goods in addition to daily direct water uses such as drinking, cooking and sanitary needs; is nearly 1,200 gallons per day. Clean and plentiful water is also essential to the maintenance, migration and propagation of fish and wildlife resources and the maintenance of a healthy, balanced and sustainable ecosystem, which is also critical to the human condition.

Water quantity and water quality are interrelated and consideration of both is essential to the maintenance of all these uses of water resources. The withdrawal of water from streams reduces the assimilative capacity, or the amount of flow available for dilution, during times of low flow, thereby degrading water quality. Surface and ground waters are also interrelated because ground water makes up much of stream base flow, the flow in streams when there is

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little or no precipitation. Therefore, the Department is concerned not only with direct diversion of surface waters, but the withdrawal of ground water as well. Similarly, the addition of pollutants to streams will affect their ability to maintain these uses. The effects of the addition of toxins are readily apparent, resulting in the direct mortality of aquatic life. Other pollutants impair the uses of surface waters by more insidious means. For example, the addition of phosphorus to surface waters can result in severe algal blooms and the growth of rooted aquatic vegetation that discolor water, change the taste of drinking water, clog water intakes, impede navigation, and cause huge diurnal dissolved oxygen swings that suffocate fish.

Since the passage of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. §§ 1251 et seq., commonly referred to as the Clean Water Act), and subsequent State legislative enactments, New Jersey has made significant progress in protecting and restoring the physical, chemical, and biological integrity of the State's waters. Much of that progress is attributable to efforts to control pollution from industrial and municipal wastewater treatment facilities. However, persistent problems remain, including nonpoint source pollution, headwaters destruction, air deposition of pollutants to waterways, and habitat degradation. The 2006 Integrated Water Quality Monitoring and Assessment Report concluded that 71 percent of hydrologic unit code (HUC) 14 subwatersheds and 34 percent of lakes were impaired for one or more designated uses or failed to meet the Surface Water Quality Standards, N.J.A.C. 7:9B. It is estimated that between 40 and 70 percent of this pollution results from nonpoint sources of pollution.

Nonpoint source pollution is dependent upon factors of topography, vegetative cover, population concentration, and land use. Buildings, roads, driveways, parking areas, lawns and even agricultural land uses add contaminants to stormwater and prevent or reduce the percolation of water into the soil, resulting in:

- Increased runoff of nonpoint source pollution and sedimentation of streams;
- Increased stormwater runoff and faster and higher flood peaks;
- Increased scour and erosion of streambanks;
- Reduced recharge to ground water and lower stream base flow; and
- Destruction of wildlife habitats.

The effects of development and increased impervious surfaces in watersheds combine to degrade the physical, chemical, and biological integrity of the State's streams, rivers, lakes, wetlands, and estuaries.

The Department is charged with improving, enhancing, and protecting the quality of New Jersey's natural environment, as well as to ensuring equitable and beneficial uses of the State's waters. Today's problems require more creative and comprehensive solutions - solutions that take into account not only today's needs, but result in a sustainable water resource to meet the needs of future generations. A sustainable economy must conserve environmental quality, while taking into account the economic and social costs and benefits of development. Sustainable

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development calls for comprehensive planning through an inclusive public process that involves citizens, businesses, scientists, government agencies and other stakeholders.

One of the tools the Department utilizes to attempt to assure that both current decision making and future planning adequately take into account protection of water quality and quantity is the Water Quality Management Planning rules, N.J.A.C. 7:15. The Department develops and administers the Water Quality Management Planning rules in conjunction with the Statewide Water Quality Management Plan, which is part of the Continuing Planning Process required pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and as required by Sections 303(e) and 208 of the Federal Clean Water Act.

The Water Quality Management Planning rules, N.J.A.C. 7:15, were first adopted on October 2, 1989. They primarily implement the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., whose purpose is to maintain, and where attainable, restore the chemical, physical and biological integrity of the surface and ground water resources of the State. Accordingly, the rules prescribe water quality management policies, procedures and standards which protect public health; safeguard fish, aquatic life, and scenic and ecological values; and enhance domestic, municipal, recreational, industrial and other uses of water. These rules also establish a grant program to assist watershed management groups in carrying out watershed management activities, pursuant to the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq.

The current rules serve several basic functions. Subchapters 1 through 3 set forth the Department's general regulatory framework for Water Quality Management Planning activities. Subchapters 4 and 5 complement and supplement other Department rules pertaining to wastewater management, including, but not limited to, the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, the Surface Water Quality Standards, N.J.A.C. 7:9B, the Ground Water Quality Standards, N.J.A.C. 7:9C, and the Financial Assistance Programs for Environmental Infrastructure Facilities rules, N.J.A.C. 7:22. Subchapters 6 and 7 provide the basis for the development, ranking, adoption and modification of the "water quality limited surface waterbodies" listing as required under Section 303(d) of the Federal Water Pollution Control Act and address the development and adoption of total maximum daily loads (TMDLs) for water quality limited surface waterbodies identified through the List of Water Quality Limited Segments. The purpose of each TMDL is to ensure that water quality standards are attained and maintained in the surface waterbody. Subchapter 8 addressed the density of individual subsurface sewage disposal systems (commonly referred to as "septic systems"). This subchapter became operative on March 20, 2001 (see 33 N.J.R. 697(a)), but was invalidated on March 18, 2002 by the Appellate Division due to procedural deficiencies. See, *In re Adopted Amendments N.J.A.C. 7:15-8*, 349 N.J. Super. 320 (App. Div. 2002). The Department placed a notice of the invalidation in the New Jersey Register on October 21, 2002 (see 34 N.J.R. 3641(b)). Subchapter 9 allows for the award of grants to watershed management groups pursuant to the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq.

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In accordance with the requirements of Executive Order No. 66 (1978) and the Administrative Procedure Act, at N.J.S.A. 52:14B-5.1, N.J.A.C. 7:15 is scheduled to expire May 1, 2007. The Department has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department is proposing to readopt the Water Quality Management Planning rules with amendments, repeal some rule text and propose new rules. As a result of this proposal, the chapter expiration for the rules is now October 28, 2007, pursuant to N.J.S.A. 52:14B-5.1e.

Statutory Authority

In 1977, the Legislature enacted the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act (WQPA), N.J.S.A. 58:11A-1 et seq. Both acts form an integral part of the Department of Environmental Protection's framework for regulating water supply and water quality in the State. *New Jersey Builders Ass'n. v. Fenske*, 249 N.J. Super. 60, 63-65 (App. Div. 1991). They were the Legislature's response to the Federal Clean Water Act, which established an integrated Federal system to address the nation's water pollution. Among other things, the Federal Clean Water Act established wastewater facilities planning through the requirement for areawide waste treatment management plans under Sections 201 and 208. Further, Section 303 required delegated states to engage in a continuing planning process (a brief description of the Federal Program can be found at 40 CFR 130.5, 130.6).

In the Water Quality Planning Act, the Legislature found that:

1. The people of the State have a paramount interest in the restoration, maintenance and preservation of the quality of the waters of the State for the protection and preservation of public health and welfare, food supplies, public water supplies, propagation of fish and wildlife, agricultural and industrial uses, aesthetic satisfaction, recreation, and other beneficial uses;
2. The severity of the water pollution problem in the State necessitates continuing water quality management planning in order to develop and implement water quality programs in concert with other social and economic objectives;
3. Water quality is dependent upon factors of topography, hydrology, population concentration, industrial and commercial development, agricultural uses, transportation and other such factors which vary among and within watersheds and other regions of the State; and
4. Pollution abatement programs should consider those natural and man-made conditions that influence water quality (N.J.S.A. 58:11A-2a).

The Legislature further declared that the objective of the Act is, whenever attainable, to restore and maintain the chemical, physical and biological integrity of the waters of the State, including ground waters, and the public trust therein (N.J.S.A. 58:11A-2b). The Act also directs the Department to implement a continuing planning process to integrate and unify water quality

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management planning processes, assess water quality and establish water quality goals and standards, and develop a statewide implementation strategy to achieve the water quality standards (N.J.S.A. 58:11A-7). Further, the Department is to “coordinate and integrate the continuing planning process with related Federal, State, regional and local comprehensive, functional and other relevant planning activities, programs and policies” (N.J.S.A. 58:11A-7c).

Under the Water Quality Planning Act, water resource planning is conducted based on areawide Water Quality Management (WQM) plans. The areawide WQM plans identify treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a 20-year period, annually updated, including an analysis of alternative waste treatment systems and any requirements for the acquisition of land for treatment purposes; and the identification of the necessary waste water collection and urban stormwater runoff systems (N.J.S.A. 58:11A-5a). In addition, the areawide plan is to include a regulatory program to “provide control or treatment of all point and nonpoint sources of pollution, including in-place or accumulated pollution sources, to the extent practicable,” and “to regulate the location, modification and construction of any facilities within such area which may result in any discharge in such area” (N.J.S.A. 58:11A-5c(1) and (2)). Moreover, the areawide plans are to include a process to identify, among other things, construction activity related sources of pollution and to set forth procedures and methods, including land use requirements to control, to the extent feasible, such sources (N.J.S.A. 58:11A-5h). All projects and activities affecting water quality in any planning area must be developed and conducted in a manner consistent with the areawide WQM plan adopted for that planning area (N.J.S.A. 58:11A-10).

In addition to the Water Quality Planning Act, the Department’s mandate with respect to managing and protecting the State’s water resources is further grounded in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and the Department’s enabling legislation, N.J.S.A. 13:1D-9 et seq. In these statutes the Department is directed to: “[p]repare, administer and supervise Statewide, regional and local programs of conservation and environmental protection...” (N.J.S.A. 13:1D-9f), “[e]ncourage, direct and aid in coordinating State, regional and local plans and programs concerning conservation and environmental protection in accordance with a unified Statewide plan which shall be formulated, approved and supervised by the department...” (N.J.S.A. 13:1D-9g), and “[a]dminister or supervise programs of conservation and environmental protection...” (N.J.S.A. 13:1D-9h).

The Legislature further declared in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., that “[i]t is the policy of this State to restore, enhance and maintain the chemical, physical and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water”. (N.J.S.A. 58:10A-2) In the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Legislature recognized that “the water resources of the State are public assets of the State held in trust for its citizens and are essential to the health, safety, economic welfare, recreational and aesthetic enjoyment, and general welfare, of the people of New Jersey;...” and that “...the water resources of the State and any water brought into the State

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must be planned for and managed as a common resource from which the requirements of the several regions and localities in the State shall be met; ... to insure that within each basin there exist adequate water supplies to accommodate present and future needs; ..." (N.J.S.A. 58:1A-2)

The policies expressed in the Federal Clean Water Act, the State Water Pollution Control Act, Water Quality Planning Act and Water Supply Management Act provide the foundation for the environmental protection programs for all of New Jersey's waters. Other laws also play important roles, including the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99; the Watershed Protection and Management Act, N.J.S.A. 58:29-1 et seq.; the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.; the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.; the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.; and the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.

The Water Quality Management Planning Act rules are intended to integrate these statutory mandates into a comprehensive water quality management planning process that will be effective in restoring, maintaining and enhancing whenever attainable, water quality, water quantity and ecosystem health.

Water Quality Management Plans and Wastewater Management Plans

In accordance with the Water Quality Planning Act and Section 208 of the Federal Clean Water Act, the Governor has designated 12 areawide Water Quality Management Planning Areas in New Jersey: Atlantic, Cape May, Mercer, Monmouth, Ocean, Sussex, Tri-County, Lower Raritan-Middlesex, Upper Raritan, Lower Delaware, Upper Delaware and the Northeast. The areawide Water Quality Management Plans (formerly known as 208 plans) are umbrella plans, each with various adopted components that address different aspects of water resource planning. For example, Wastewater Management Plans (WMPs), which assess the cumulative water resource impact of future development, are a component of the areawide WQM plans. Total maximum daily loads, which address existing water quality impairment and establish an implementation plan to restore the water quality of those waters, are another component of the areawide plans. The individual components are adopted into the appropriate areawide Water Quality Management Plan in order to give them effect.

WMPs are a key planning document under the Water Quality Management Planning rules. WMPs are intended to provide a comprehensive evaluation of the cumulative effects of existing and future land use on the water resources of the State and to ensure that the areawide WQM plans integrate related Federal, State, regional and local comprehensive, functional and other relevant land use planning activities through a continuing planning process. WQM plans must be updated periodically by WMPs in order to reflect and respond to changes in municipal zoning, State and regional planning activities and regulatory standards, and to ensure that the most up-to-date information is fully incorporated into decisions concerning wastewater management choices. To accomplish these continuing planning process objectives, WMPs are

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not static and are required to be updated every six years, similar to the schedule established in the Municipal Land Use Law for the periodic examination of municipal master plans and development regulations (N.J.S.A. 40:55D-89).

A WMP evaluates whether appropriate and adequate wastewater treatment capacity is available to accommodate the needs of existing and future development in consideration of environmental constraints. Thus, WMPs must evaluate existing land use, current local zoning, and environmental constraints information to project future wastewater generation potential. This wastewater generation potential is then compared to the capacity of existing wastewater facilities to determine whether adequate wastewater treatment capacity exists. Where adequate existing wastewater treatment capacity does not exist, the WMP must identify proposed new or expanded wastewater treatment facilities and assess the impact of the new or expanded treatment facilities on surface and ground water quality. If new or expanded treatment facilities or capacity cannot be accommodated, then either the wastewater service area or the density of future development within that service area must be reduced.

In addition, WMPs provide the vehicle through which the Department establishes a regulatory program for the control of nonpoint sources of pollution, as required by the Water Quality Planning Act. As a component of an areawide WQM plan, WMPs must also address the impact of wastewater management decisions, and the pattern and density of development they allow, on water quality, water quantity and other environmental features. Wastewater management alternatives identified in a WMP will influence the density of development, the pattern of growth and the associated environmental and water quality impacts in the wastewater management planning area. Centralized wastewater management can accommodate a dense pattern of development and will thus encourage growth. In contrast, wastewater management based on individual subsurface sewage disposal systems is not appropriate for dense development based on public health and environmental concerns. For example, among the Department's conservation planning objectives is the protection of threatened and endangered species habitats. Extending centralized wastewater management into these habitats would encourage the destruction of these habitats, contrary to the Department's conservation planning objectives. A wastewater planning area designation of these environmentally sensitive areas for individual subsurface sewage disposal systems not only removes the public subsidy for the destruction of these habitats but also assists in reducing the density of development within these environmentally sensitive habitats reducing the alteration of habitat characteristics.

In the current rules, the assignment of wastewater management plan responsibility occurs along a hierarchy beginning with designated areawide WQM planning agencies, through the Passaic Valley Sewerage Commissioners, various joint meetings and municipal utilities authorities and ending with municipalities. This hierarchy has resulted in the present designation of 161 wastewater management planning agencies, each with responsibility over a discrete wastewater management planning area. Unfortunately, the overwhelming majority of those planning agencies have not kept the WMPs current, as required by the Water Quality Management Planning rules. As a result, most WMPs cannot be relied upon to ensure that adequate wastewater treatment exists to support the development contemplated by local land use

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plans, and to accurately assess the impacts of those wastewater management decisions on water resources.

The existing rules are largely process driven, detailing the procedures for the processing of WMPs and amendments. The existing rules also require the submission of future wastewater estimates, consideration of wastewater management alternatives and mapping of various environmental features, but do not include thresholds for when an application should be adopted or disapproved based on these factors.

Executive Order No. 109 (2000) (EO 109) was signed in 2000 to ensure that the Department considers secondary and cumulative impacts of development in the water quality planning process. EO 109 requires the Department to assess alternatives designed to address depletive and consumptive water use, detailed land use, environmental build-out and pollutant loading prior to making a final decision on an application for approval of a WMP, or WMP update. In implementing EO 109, the Department has been evaluating new or expanded discharges to surface water with respect to the antidegradation requirements of the Surface Water Quality Standards, N.J.A.C. 7:9B. In addition, the Department has been evaluating the adequacy of stormwater management and riparian zone protection relative to water quality and quantity impacts of future development. The Department has also evaluated water supply impacts to encourage the selection of an alternative that will allow for future development while minimizing decreases in stream flow resulting from consumptive or depletive water losses. Lastly, the Department has assessed encroachment on habitats for threatened and endangered species as the result of specific projects or activities and future sewer service area designations and has attempted to avoid or minimize encroachment into threatened and endangered species habitats designated as Rank 3, 4 or 5 on the Department's Landscape Project Maps. After gaining experience in implementing EO 109, the Department is ready to promulgate rules on the Department's criteria for conducting these analyses.

Public Outreach

Over the years, affected entities, advocacy groups and other members of the public have suggested modifications of these rules to address a number of key issues. More recently, the Department invited a number of stakeholders representing a cross-section of affected entities and advocacy groups to a meeting on June 21, 2006 for an information exchange on the key issues. The Department also solicited feedback on these issues and responses at the June 13, 2006 meeting of the Clean Water Council; in meetings with a consortium of planning groups, including New Jersey Future, on August 15 and November 20, 2006; and with the Department of Community Affairs, Office of Smart Growth on November 5, 2006. The Clean Water Council conducted its annual public hearing on the Water Quality Management Planning rules on October 10, 2006, which provided many groups and individuals with an opportunity to voice concerns and issues, and offer solutions. Further, the Department presented issues and possible responses at the League of Municipalities convention on November 16, 2006 and at the County Planners Association meeting on November 17, 2006.

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In an effort to address problems related to the numerous outdated WMPs, on October 17, 2005, the Department issued a notice of intent to withdraw sewer service area where wastewater management plans were not up to date through proposed amendments to the applicable WQM plans. (See 37 N.J.R. 4071(a).) Three public hearings were held on this proposal, November 17, 21 and 30, 2005. The Department received numerous comments objecting to the immediate withdrawal of sewer service, and suggesting that such an action is more appropriately undertaken through rulemaking. In response, the Department withdrew the proposed amendment on March 6, 2006 (see 38 N.J.R. 1349(b)). The Department is now proposing a phased approach to the withdrawal of sewer service areas to assure updated WMPs form the basis of water resource planning.

Through the Department's outreach efforts, the following seven major concerns with the existing rules were repeatedly identified: 1) WMPs are too difficult to prepare, 2) Department review of WMPs takes too long, 3) WMP agencies lack authority to adjust sewer service areas and land use zoning, 4) there is no compliance mechanism for WMP preparation, 5) State Plan integration, 6) the current rule lacks clear standards for approval of WMPs and WMP amendments, and 7) the rules do not address the impacts of individual subsurface sewage disposal systems. The Department is proposing to address these concerns in this proposal, as will be addressed in more detail below.

A more complete discussion of each of these changes is included in the following summary of the existing rules at N.J.A.C. 7:15 proposed for readoption, the amendments proposed herein by subchapter and section, the proposed repeal of certain sections, and proposed new rules.

Subchapter 1. General Provisions

General

N.J.A.C. 7:15-1 identifies the general subject matter, construction, purpose, and severability of the rules and includes definitions that are applicable to the entire chapter. The Department is proposing to readopt this subchapter with amendments and two new sections as described below.

N.J.A.C. 7:15-1.1 Scope

N.J.A.C. 7:15-1.1 sets forth the scope of the Water Quality Management Planning rules. N.J.A.C. 7:15-1.1(a) establishes the policies and procedures regarding water quality management planning that this chapter incorporates from the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Department's enabling legislation at N.J.S.A. 13:1D-1 et seq. The Department is proposing to amend N.J.A.C. 7:15-1.1(a) to include the following statutory authorities: Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq., the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., the Endangered

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and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq., and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. to reflect the Department's authorities under those statutes.

The Department is proposing to amend N.J.A.C. 7:15-1.1(a)6, which identifies wastewater facilities priority systems and project priority lists as a subject of the rule, to update a term, and to add regional stormwater management plans. The words "wastewater facilities" were removed from the priority systems and project priority lists as the Department's Environmental Infrastructure Financing Program now provides funding for a number of activities that are not "wastewater facilities," such as remedial work, stormwater and other nonpoint source pollution management projects, landfill construction and closure, drinking water projects, open space acquisition and conservation and security measures such as fencing, lighting, motion detectors and cameras. Regional stormwater management plans were added to this list as regional stormwater management plans may be included as an amendment to areawide WQM plans in accordance with N.J.A.C. 7:15-3.4(b)5.

The policy at N.J.A.C. 7:15-1.1(a)7, which requires coordination of WQM planning with Coastal Zone, Hackensack Meadowlands and Pinelands programs, is proposed for amendment to add the Highlands program and municipal zoning as additional items which must be coordinated with WQM planning. The Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., required the Department to establish a Highlands permitting review program that provided a coordinated review of Highlands development in the preservation area, including regulatory programs under the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq. This paragraph memorializes that coordination. Additionally, the Department is proposing to memorialize coordination of WQM planning with municipal zoning in this paragraph.

The procedure at N.J.A.C. 7:15-1.1(a)10, which references requirements for the adoption or amendment of wastewater management plans, is proposed for amendment to coordinate with proposed amendments to this process in Subchapter 5. Specifically, N.J.A.C. 7:15-1.1(a)10 clarifies that this paragraph contains the process for amendment (N.J.A.C. 7:15-3.4) and revision (N.J.A.C. 7:15-3.5) of WQM plans, and acknowledges the new process for the withdrawal of wastewater service areas in proposed N.J.A.C. 7:15-8.

The policy and procedure at N.J.A.C. 7:15-1.1(a)11 establishes the assignment of the duty to prepare and update wastewater management plans to certain sewerage agencies and municipalities and provides for the alternative assignment of such wastewater management plan responsibilities. N.J.A.C. 7:15-1.1(a)11 is proposed for amendment regarding assignment of duties for wastewater management plans from "certain sewerage agencies and municipalities" to the county boards of chosen freeholders and municipalities in accordance with proposed N.J.A.C. 7:15-5.4, 5.6, 5.8 and 5.13.

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The Department is proposing to add reference to the process for the listing of impaired water bodies on the List of Water Quality Limited Segments and establishing total maximum daily loads (TMDLs) to the list of policies and procedures addressed in this chapter at N.J.A.C. 7:15-1.1(a)13. The requirements for this listing and the determination of TMDLs were previously added to these rules as Subchapters 6 and 7 on May 5, 1997. However, N.J.A.C. 7:15-1.1 was not amended at that time to cross reference these procedures. The List of Water Quality Limited Segments and TMDL requirements are proposed for amendment, but remain in these rules at Subchapter 6.

The Department is proposing to add the designation of appropriate wastewater service area in consideration of environmentally sensitive areas to the list of policies and procedures addressed in this chapter at N.J.A.C. 7:15-1.1(a)14 to reflect proposed rules at N.J.A.C. 7:15-5.24 and 5.25.

Proposed N.J.A.C. 7:15-1.1(a)15 adds the application and approval process for grants for watershed management groups under the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq., (codified at N.J.A.C. 7:15-9) to the list of policies and procedures addressed in this chapter.

N.J.A.C. 7:15-1.2 Construction

N.J.A.C. 7:15-1.2 identifies the Legislative framework under which these rules are promulgated including the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Department's enabling legislation at N.J.S.A. 13:1D-1 et seq., and provides that the rules are to be liberally construed so as to effectuate the provisions of those acts. The Department is proposing to amend this section to include the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq., the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Realty Improvement Sewerage and Facilities Act, (N.J.S.A. 58:11-23 et seq.), and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. N.J.A.C. 7:15-9, the watershed management grants process, was promulgated under the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq., to reflect the Department's authority under these statutes.

N.J.A.C. 7:15-1.3 Purpose

N.J.A.C. 7:15-1.3 sets forth the purpose of the Water Quality Management Planning rules. The Department is proposing to amend N.J.A.C. 7:15-1.3(a) to specifically include the Watershed Protection and Management Act of 1997, the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99, the Water Supply Management

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Act, N.J.S.A. 58:1A-1 et seq., the Realty Improvement Sewerage and Facilities Act, (N.J.S.A. 58:11-23 et seq.), and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., as these are statutes that are implemented under these rules.

The Department is proposing to amend N.J.A.C. 7:15-1.3(a)2 by adding the word “enhance” between “help to restore” and “and maintain” to reflect the Legislative mandate of the Water Pollution Control Act, N.J.S.A. 58:10A-2. Also, the Department is correcting the spelling of “ground waters.”

The Department is proposing to amend N.J.A.C. 7:15-1.3(a)14 by deleting the words “sewerage facilities” and replacing them with “wastewater management planning.” This paragraph will now state that the purpose of the chapter is to “Encourage the development of comprehensive regional wastewater management planning...” This change clarifies that the purpose of this chapter encompasses broad wastewater management planning, not just sewerage facilities planning.

N.J.A.C. 7:15-1.5 Definitions

The Department is proposing to amend N.J.A.C. 7:15-1.5 by adding a number of new definitions that will support the proposed amendments and new provisions of this chapter; to delete definitions that are no longer applicable due to other proposed amendments to these rules; to define terms used in the existing rules that were not previously defined; and to add definitions for terms used in rule text that was added to N.J.A.C. 7:15 when the Stormwater Management rules, N.J.A.C. 7:8, became effective on February 2, 2004 (see 36 N.J.R. 670(a)). The Department is also proposing to modify some existing definitions to reflect how the terms are used in the proposed rule amendments. A number of changes to agency names have been made to the definitions and will be reflected throughout the proposal.

The proposed amendments to this section incorporate definitions from other rules and statutes (such as the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, the Stormwater Management rules, N.J.A.C. 7:8, the Surface Water Quality Standards, N.J.A.C. 7:9B, the Safe Drinking Water Act Rules, N.J.A.C. 7:10, the Flood Hazard Area Control rules, N.J.A.C. 7:13, the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, the Water Supply Allocation Permits rules, N.J.A.C. 7:19, the Financial Assistance Programs for Environmental Infrastructure Facilities rules, N.J.A.C. 7:22, and the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.) that are used in this chapter, thereby helping to ensure consistency across programs and making this section more comprehensive than the existing rule. A description of the proposed amendments to this section follows:

The Department is proposing a new definition for “acid producing soils” to be consistent with the definition proposed as part of the repeal and replacement of the Flood Hazard Area Control rules, N.J.A.C. 7:13. (See 38 N.J.R. 3950(a).) “Acid producing soils” produce sulfuric acid when exposed to oxygen. Proposed N.J.A.C. 7:15-5.25(g)2ii(4) identifies a riparian zone width of 150 feet for acid producing soils.

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The Department is proposing to amend the definition of “actual flow” to be consistent with the definition of this term in the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A. This term is used throughout N.J.A.C. 7:15-5 in the calculation of wastewater flows at current and build-out conditions. The Department is adding “industrial treatment works” to reflect that “actual flow” also pertains to industrial treatment works, not just domestic treatment works, under these rules.

The Department is proposing a new definition of “applicant.” Although this term is used extensively in the existing rules, this term was previously not defined.

The Department is proposing to amend the definition of “Best Management Practices (BMPs)” to be consistent with the definition of this term in the NJPDES rules, N.J.A.C. 7:14A. The current definition refers only to the methods, measures, or practices to prevent or reduce the amount of pollution from point or non-point sources, including structural and nonstructural controls and operation and maintenance. The proposed definition is more descriptive and includes treatment requirements, operating procedures, and techniques to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. Additionally, the proposed definition clarifies that BMPs can be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters. This change more accurately describes the term and its use in these rules.

The Department is proposing to amend the definition of “BRC-regulated sewer or water utilities” to “BPU-regulated sewer or water utilities” to reflect the change of the name of the organization from the Board of Regulatory Commissioners to the Board of Public Utilities.

The Department is proposing definitions for the terms “Category One waters” or “C1 waters,” and “Category Two waters” or “C2 waters,” consistent with the definitions of these terms in the Surface Water Quality Standards, N.J.A.C. 7:9B.

The Department is proposing a new definition for the term “Clean Water Act” which will replace the definition for the term “Federal Act”. The terms are synonymous and the definition will remain the same. “Clean Water Act” is the more common term for the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.

The Department is proposing to define “combined sewer overflow” or “CSO” and “combined sewer system” consistent with the definition of these terms in the NJPDES rules, N.J.A.C. 7:14, for clarity. Combined sewers are systems usually found in highly urbanized areas that are designed to carry sanitary sewage at all times and are also designed to carry stormwater. During large storm events, these systems may be overloaded and are designed to overflow into surface waters at certain locations. These terms were both previously used in these rules, but were not defined.

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The Department is proposing to define “committed flow” consistent with the definition of this term in the NJPDES rules, N.J.A.C. 7:14, for clarity. “Committed flow” is the sum of the actual flow to a wastewater treatment facility plus the sum of all anticipated flow from connections that have been approved by the Department but are not yet in operation. The term “committed flow” is used at N.J.A.C. 7:15-5.25 in determining if adequate capacity exists to serve environmental build-out.

The Department is proposing a new definition for the term “composite zoning.” Composite zoning is a compilation of various similarly zoned areas into a single representative zoning designation. Under composite zoning, residential zones that would allow a similar density of units would be consolidated into a single zone with an intermediate density of units that represents a weighted average of similar zones. A municipality may have a large number of individual zoning designations for residential, commercial, and other land use types which provide for unique or ranges of development intensity. For example, residential zones may allow for gradations in terms of the density of units allowed per acre of land that are relatively fine (lot size of 10,000 square feet, 15,000 square feet, etc.) or quite distinct (one acre per unit, three acres per unit, etc). Commercial or industrial land uses may be defined in terms of intensity of square foot coverage per acre which, again, may be in fine or distinct gradations. Composite zoning or municipal zoning is a required submittal item at N.J.A.C. 7:15-5.17 and is used as part of the environmental build-out analysis at N.J.A.C. 7:15-5.25. An approximation of the development yield of undeveloped and underdeveloped lands is sufficient to inform the analyses required at N.J.A.C. 7:15-5.25. Further, there are inherent uncertainties as to how individual development projects will proceed, because of peculiarities of the land such as the shape of the parcel, or access and infrastructure issues that make a precise determination of build-out yield impossible. Therefore, grouping of various similar zoning types in a composite of the component types will allow for a sufficient level of detail that can be efficiently and effectively carried out as a GIS exercise. For example, residential zones that allow 10,000, 15,000 and 20,000 square foot lots can be grouped as one intermediate, or composite, zone based on an area-weighted average of the contributing zones. In the above example, if there were 400 acres of 10,000 square foot zone, 500 acres of the 15,000 square foot zone and 800 acres of the 20,000 square foot zone, the 10,000 square foot zone would be 24 percent of the total 1,700 acres for the three zones, the 15,000 sq ft zone would represent 29 percent of the total and the 20,000 square foot zone would represent 47 percent of the total. By multiplying the percent by area of each zone allowance, the weighted average lot size for the contributing zones is determined: $(24 \text{ percent} \times 10,000) + (29 \text{ percent} \times 15,000) + (47 \text{ percent} \times 20,000) = 16,150$ square feet is the composite zone for the 1,700 acres.

The Department is proposing to define “conservation restriction” consistent with the definition of this term as proposed in the Coastal Permit Program rules, N.J.A.C. 7:7, and the Coastal Zone Management rules, N.J.A.C. 7:7E (see 38 N.J.R. 4570(a)), except that an additional allowance for the preservation of continuing agricultural uses has been added. The form and recording requirements for “conservation restrictions” are proposed at N.J.A.C. 7:15-1.7. Additionally, “conservation restrictions” are required under N.J.A.C. 7:15-3.5(b)4x to preserve 70 percent of the site where development proposals use clustering on 30 percent of their site as

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the option to obtain a WQM plan revision instead of a WQM plan amendment where WMPs are not in compliance with the schedule at N.J.A.C. 7:15-5.23.

The Department is proposing to delete the term “CP1 application” since this form is no longer used by the Department.

The Department is proposing a definition for the term “designated use” consistent with the term as defined in the Surface Water Quality Standards, N.J.A.C. 7:9B. The Department is proposing this definition because no adverse effects on any downstream designated use may occur under proposed N.J.A.C. 7:15-3.5(b)4viii(2) as part of the evaluation criteria to determine if a “reclaimed water for beneficial reuse” project in a non-tidal watershed can qualify for a WQM plan revision, instead of an amendment. In addition, the term is used in proposed N.J.A.C. 7:15-6 with respect to defining segments that should be placed on the List of Water Quality Limited Segments for which a total maximum daily load is expected to be needed. Where designated uses are not met in a segment due to a specific pollutant, a segment should be placed on the List of Water Quality Limited Segments.

The Department is proposing to amend the definition of the word “district” to clarify that “district” includes “either any or all” (replacing the current “either or both”) of the areas defined as a district of a sewerage authority, as defined in N.J.S.A. 40:14-3(6), the district of a municipal authority as defined in N.J.S.A. 40:14B-3(6), and the Passaic Valley Sewerage District as defined at N.J.S.A. 58:14-1.

The Department is proposing a definition for the term “disturbance.” “Disturbance” means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting or removing of vegetation. The Department is proposing to prohibit disturbance in certain “riparian zones” and “steep slopes” as described at proposed N.J.A.C. 7:15-5.25(g)2, (g)6 and (h)5. This definition is consistent with the term as defined in the Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38.

The Department is proposing the deletion of the definition of “drawings and/or plans” from the rule as the Department is specifying submission of a site plan under proposed N.J.A.C. 7:15-3.2(a) and 5.25(h).

The Department is proposing a definition for the term “dwelling unit” consistent with the term as defined in the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, for clarity. The proposed amendments require that flow generated by a dwelling unit be calculated.

The Department is proposing a new definition for the term “DWM,” which means the Division of Watershed Management or its successor in the Department. The Division of Watershed Management is the successor of the Office of Regulatory Policy.

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The Department is proposing a definition for the term “effluent limitation” consistent with the definition of this term in the NJPDES rules, N.J.A.C. 7:14A, for clarity. An “effluent limitation” is a discharge limit from a NJPDES permit or is imposed as an interim enforcement limit pursuant to an administrative order.

The Department is proposing a new definition for the term “endangered species.” Endangered species refers to the list of wildlife endangered species that is promulgated under the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-13 et seq., at N.J.A.C. 7:25-4.13. With respect to wildlife, N.J.A.C. 7:25-4.2 defines “endangered species” as “a species whose prospects for survival within the State are in immediate danger due to one or many factors: a loss of or change in habitat, overexploitation, predation, competition, disease. An endangered species requires immediate assistance or extinction will probably follow.” The term endangered species also includes any wildlife species or subspecies appearing on any Federal endangered species list. The Federal endangered species list promulgated pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq. is found at 50 CFR 17.11. “Endangered species” does not include endangered plant species identified on the Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq. or endangered species or subspecies of plant designated as listed, proposed, or under review by the Federal government pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq. as these plant species have not been mapped by the Department and the Department is not placing the burden of identifying all endangered plant species on applicants. However, where plant species have been identified and mapped on the Department’s Natural Heritage Priority Sites database, the habitats of endangered plant species will be identified and protected like endangered wildlife species. The New Jersey list of endangered species is found at N.J.A.C. 7:25-4.13. To obtain a copy of the most current endangered species list, contact the Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division of Fish and Wildlife’s web address, <http://www.nj.gov/dep/fgw/> or by writing to the Division of Fish and Wildlife at PO Box 400, Trenton, New Jersey 08625-0400.

The Department is proposing to amend the definition of the term “environmentally sensitive areas.” This expanded definition lists specific areas mapped as endangered or threatened wildlife species habitat on the Department’s Landscape Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, wetlands and riparian zones, as land areas to be identified in a WQM plan.

The Department is proposing a new definition for “equivalent dwelling unit,” which means the development equivalent, in terms of either the mass of nitrate or the volume of wastewater generated, of the typical residential dwelling unit upon which the nitrate dilution analysis was based. The term is used at N.J.A.C. 7:15-5.25 for the evaluation of future development relative to the nitrate planning standard in ground water of 2.0 mg/L. The typical residential dwelling unit generates 30 pounds of nitrate per year or 500 gallons of wastewater per day. The concept of an equivalent dwelling unit was developed in order to equate the typical residential dwelling unit to non-residential types of development. The mass basis of equivalency

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is used where there is a NJPDES permit with enforceable effluent limits for nitrate for a discharge to ground water. The flow basis of equivalency is used for all other applications.

The Department is proposing to delete the term “Federal Act” as described above at the definition of “Clean Water Act.”

The Department is proposing to delete the definition “freshwater wetlands” from the rule because the Department is proposing a new definition for the term “wetlands” which will incorporate areas defined as wetlands under the rules and enabling statutes for the New Jersey Coastal Wetlands Act, N.J.S.A. 13:9A-1 et seq.; the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.; and the Pinelands Protection Act, N.J.S.A. 13:18-1 et seq. This new definition captures all wetlands of the State and is not limited to freshwater wetlands as defined under the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. The Department believes the more comprehensive definition of wetlands reflects the various types of wetlands that the areawide WQM plans were originally designed to protect.

The Department is proposing definitions for the terms “head of tide” and “tidal watercourse” for clarity. The “head of tide” is the point at which portions of the waterbody upstream are no longer influenced by tidal movements. “Tidal watercourse” means a watercourse that is distinguished by periodic rise and fall of the water surface resulting from the gravitational interaction of the earth, the moon, and the sun. These definitions are consistent with the definitions of these terms in the Department’s GIS metadata which describes how a head of tide is determined along a tidal watercourse. The term “head of tide” is used in proposed N.J.A.C. 7:15-3.5(b)4vii and viii to describe the boundary utilized to determine which demonstrations are required for projects involving the utilization of reclaimed water for a beneficial reuse to be processed as a WQM plan revision. The term “tidal watercourse” is used within the definition of “head of tide.”

The Department is proposing definitions for the terms “Highlands Council,” “Highlands planning area,” “Highlands preservation area,” and “Highlands Region,” for clarity. These definitions are consistent with the definitions of these terms in the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38. The “Highlands Council” is a public body established by the Highlands Water Protection and Planning Act (Highlands Act) at N.J.S.A. 13:20-4 to 6 to exercise powers and duties conferred by the Highlands Act. New N.J.A.C. 7:15-3.10 is proposed to address water quality management planning coordination with the Highlands Council. The “Highlands Region” is described in the Highlands Act at N.J.S.A. 13:20-7 and consists of two sections, the “Highlands preservation area” and the “Highlands planning area.” The Highlands Act defines the “Highlands preservation area” as an area which receives special protection under the Highlands Act. The “Highlands planning area” means that portion of the Highlands Region not included in the “Highlands preservation area.” The Department is proposing these definitions to ensure that areas in the Highlands preservation area receive the special protections afforded to them under the Highlands Act though the administration of this chapter.

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The Department is proposing new definitions for the term “HUC 11” or “hydrologic unit code 11” and “HUC 14” or “hydrologic unit code 14.” These terms refer to a specific set of hydrologic areas as delineated within New Jersey by the United States Geological Survey (USGS). The hydrologic code system starts with the largest possible drainage area and progressively smaller subdivisions of the drainage area are delineated and numbered in a nested fashion. A drainage area or watershed with a hydrologic unit code designation with 11 numbers, or “HUC 11,” contains several smaller drainage areas or subwatersheds with a hydrologic unit code designation with 14 numbers or “HUC 14.” There are currently 152 “HUC 11” watershed delineations in New Jersey. There are more than 900 “HUC 14” subwatersheds in New Jersey.

The Department is proposing a definition for the term “impervious surface” which describes a surface covered with a material that has made the surface resistant to infiltration by water. The Department is proposing this definition because the term “impervious surface” is used to describe the types of materials that help define the terms “disturbance” and “redevelopment” and is used at proposed N.J.A.C. 7:15-5.25(g) and (h) to describe types of disturbance that may be allowed in riparian zones and steep slopes. This definition of “impervious surface” is consistent with the definition established by the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38.

The Department is proposing a definition for the term “individual subsurface sewage disposal system,” which means a system for the disposal of sanitary sewage into the ground. These systems are designed and constructed to treat sanitary sewage, usually for a single family residence. Areas which do not have sanitary sewers must rely on individual subsurface sewage disposal systems to treat wastewater. This definition is consistent with the term as defined in the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A.

The Department is proposing a new definition for the term “infill area” to describe an existing lot (or lots) as of the effective date of these rules, situated between two lots that were improved as of the effective date of these rules, where sanitary sewers exist immediately adjacent to that property and the existing zoning for these lots at the time of application would not allow development that could generate more than 2,000 gallons per day of wastewater as calculated in accordance with N.J.A.C. 7:14A-23.3. The Department will require that any lots zoned for single family residential development to use a wastewater flow projection of 300 gallons per day, or the flow calculation required for residential dwellings of three bedroom units or larger. The concept of “infill area” only applies to sewer service area designations that were withdrawn under proposed N.J.A.C. 7:15-8.1. The Department allows sewer service for infill lots.

The Department is proposing a definition for the term “Integrated Water Quality Monitoring and Assessment Report,” which is the biennial report prepared by the Department, pursuant to Section 305(b) of the Clean Water Act 33 U.S.C. § 1315(b) and includes the List of Water Quality Limited Segments required under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d). This report inventories and assesses the quality of the waters of the State.

UPDATED AS OF JUNE 4, 2007

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This report replaces the “State Water Quality Inventory Report” as the principal water quality assessment component of the Statewide Water Quality Management Plan to assess water quality.

The Department is proposing a definition for the term “intermittent stream” to help define what streams are subject to riparian zones.

The Department is proposing a definition for the term “Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife” or “Landscape Maps” consistent with the definition provided in the Department’s Notice of Revision and Updating of Freshwater Wetlands Technical Manual to Incorporate Version 2.0 of the Landscape Maps (36 N.J.R. 1129(a)). The Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife are the Department’s maps identifying habitat areas necessary for endangered, threatened and other priority wildlife species. The maps provide a starting point for those beginning the process of determining whether or not a property may contain habitat for endangered or threatened species. The maps rank habitat patches based upon the status of the species present. The ranks are as follows: Rank 5 is assigned to patches containing one or more occurrences of at least one wildlife species listed as endangered or threatened on the Federal list of endangered and threatened species; Rank 4 is assigned to patches with one or more occurrences of at least one State endangered species; Rank 3 is assigned to patches containing one or more occurrences of at least one State threatened species; Rank 2 is assigned to patches containing one or more occurrences of at least one non-listed State priority species (nongame wildlife species that are considered by the Department to be species of special concern as determined by a panel of experts, and wildlife species of regional concern in regional conservation plans such as Partners in Flight Bird Conservation Plans, North American Waterbird Conservation Plans, United States Shorebird Conservation Plan, etc.); and Rank 1 is assigned to patches that meet habitat-specific suitability requirements, such as minimum size criteria for endangered, threatened or priority wildlife species, but that do not intersect with any documented occurrences of such species. Under this chapter, water quality planning decisions will be based on the Landscape Maps that identify endangered or threatened species habitat with a Rank of 3, 4 or 5. The Landscape Maps were developed using the application of scientific methods, under the review of a scientific panel of experts. The report entitled New Jersey’s Landscape Project provides a complete description of the method for developing the landscape maps and additional information on mapping methodology. This report is available at the following website www.nj.gov/dep/fgw/ensphome.htm or by contacting the Department at the address below. The Department’s Landscape Maps may be updated periodically and may be obtained via file download from the above website or through the Interactive iMapNJ website: www.nj.gov/dep/gis/imapnj/imapnj.htm or by writing to the Division of Fish and Wildlife, Endangered and Nongame Species Program at:

The Landscape Project
NJ Division of Fish and Wildlife
Endangered and Nongame Species Program
P.O. Box 400
Trenton, NJ 08625-0400

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The Department is proposing a definition for the term “lead planning agency” consistent with the definition of this term in the Stormwater Management rules, N.J.A.C. 7:8. Under the rule, regional stormwater management plans shall be submitted by a lead planning agency as a proposed amendment to an areawide WQM plan under existing N.J.A.C. 7:15-3.4(b)5. For clarity, the Department is defining that a “lead planning agency” may be one or more public entities with stormwater management planning authority.

The Department is proposing a definition for the term “linear development,” consistent with the definition of this term in the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A. “Linear development” means land use activities such as roads, drives, railroads, infrastructure, transmission lines and rights-of-way. The basic function of a linear development is to connect two points. Under proposed N.J.A.C. 7:15-5.25(g)6 and (h)5, linear development is a type of activity which may be excepted from riparian buffer and steep slope requirements as long as the applicant demonstrates that there is no alternative to placing the linear development in these areas.

The Department is proposing the deletion of the definition for “multi-county joint meeting” from the rule. This term will not be used in the rules since this type of entity, a joint meeting membership which includes municipalities in two counties or more, will have no bearing on the types of analyses and products that will be submitted to the Department under the proposed county-wide wastewater management planning requirements.

The Department is proposing a new definition of the term “Natural Heritage Priority Sites” to mean areas identified by the Department to be critically important habitat, including habitat of threatened, endangered and rare plant and animal species, for the conservation of biological diversity within New Jersey. Natural Heritage Priority Sites contain some of the best and most viable occurrences of endangered and threatened species and natural communities in New Jersey, but they do not cover all known habitat for such species. The New Jersey Natural Heritage Program identifies these most significant natural areas through a comprehensive inventory of important species and representative ecological communities. Natural Heritage Priority Sites are identified in the Natural Heritage Database administered by the Department’s Division of Parks and Forestry pursuant to N.J.A.C. 7:5C-1.4, which makes delineations of Natural Heritage Priority Sites available to the public as GIS files or as hard copy maps.

The Department has proposed to amend the term “non-point source” to “nonpoint source” and propose a new definition of this term. The new definition is consistent with the spelling and definition of the term in the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A. The new definition more accurately describes the term and the types of activities, factors and conditions the term encompasses.

The Department is proposing to delete the term “ORP” as described above at the definition of “Division of Watershed Management.”

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The Department is proposing a definition for the term “permitted flow” similar to the definition of this term in the NJPDES rules, N.J.A.C. 7:14A, except that at the end of the definition, the phrase “most stringent” is proposed to be replaced with the phrase “whichever is less.” Permitted flow is the maximum allowable flow for a treatment works as stated in a facility’s NJPDES permit or TWA, whichever is less. Permitted flow is usually expressed in million gallons per day or other appropriate unit of flow such as gallons per day for a treatment works. This term is used, but not defined, in the existing rule.

The Department is proposing a new definition for the term “planning flow” to describe the daily wastewater flow which is estimated or anticipated to be contributed by wastewater generating facilities for their wastewater service area. Planning flows are computed by using the projected flow criteria values in N.J.A.C. 7:14A-23.3 for treatment works that discharge to surface water and certain dischargers to ground water, or in N.J.A.C. 7:9A-7.4 for wastewater facilities that discharge to ground water primarily through subsurface sewage disposal systems without additional treatment. The Department is proposing this definition because the term is used widely throughout the rules as part of the description of general wastewater service area designations for discharges to ground water.

The Department is proposing to amend the definition of “point source” to recognize that landfill leachate collection systems also can be a point source from which pollutants may be discharged.

The Department is proposing a definition for the term “process wastewater” consistent with the definition of this term in the NJPDES rules, N.J.A.C. 7:14A. “Process wastewater” means water which, during the manufacturing process, comes in direct contact with any product or raw material. The discharge of “process wastewater” from projects requiring an industrial treatment works is an activity that may be deemed exempt from wastewater service area withdrawal under proposed N.J.A.C. 7:15-8.1(b)4.

The Department is proposing definitions for the terms “public water supply” and “purveyor” or “water purveyor” consistent with these terms as defined in the Water Supply Allocation Permit Program rules, N.J.A.C. 7:19. A “purveyor” or “water purveyor” runs or operates a “public water supply” which provides potable water for public consumption and has at least 15 service connections or regularly serves at least 25 individuals. These types of water systems need to be included within any analysis of water supply. A “water purveyor” is a governmental unit that has regulatory or planning jurisdiction over wastewater, water supply or land use in proposed amendments to N.J.A.C. 7:15-5.22(a)1.

The Department is proposing a new definition for the term “reclaimed water for beneficial reuse” or “RWBR.” “Reclaimed water for beneficial reuse” means water which is to be reused for non-potable uses instead of using potable water or diverted surface or ground waters, where restricted access or public access reuse requirements as specified in a NJPDES permit are met. The Department encourages “RWBR” wherever feasible and the discussion of

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“RWBR” can be found at the summary concerning N.J.A.C. 7:15-3.5(b)4vii and viii and 5.25(d)3 and (f)3.

The Department is proposing a definition for the term “redevelopment” which means the construction of structures or improvements on areas which previously contained structures or other improvements. The Department is proposing this definition because the term “redevelopment” is used at proposed N.J.A.C. 7:15-5.25(g) and (h) to describe types of redevelopment that may be allowed in riparian zones and steep slopes.

The Department is proposing to delete the term “regional wastewater management plan area” from the rule, as this term has become obsolete. Under the existing rules, a “regional wastewater management plan area” refers to a wastewater management plan for an area that includes land in two or more municipalities. As these proposed amendments create county-wide wastewater management plan areas or chapters covering individual municipalities, the concept of a regional wastewater management plan area covering multiple municipalities no longer exists and this term is not used.

The Department is proposing a new definition for the term “restricted access reclaimed water for beneficial reuse.” “Restricted access reclaimed water for beneficial reuse” means water where public access or exposure is minimal and worker exposure is controlled. For example, “restricted access reclaimed water for beneficial reuse” includes sewer jetting, street cleaning, dust control, or irrigation of restricted access locations at treatment works facilities, but does not include irrigation of public places such as parks or golf courses. This classification of reuse is not required to meet the same standards as required where there is a high possibility of exposure to the general public, however, in each instance, “restricted access reclaimed water for beneficial reuse” shall be required to meet effluent limitations established in a NJPDES permit or at least secondary treatment. Certain “restricted access reclaimed water for beneficial reuse” projects are deemed to be consistent with the areawide WQM plans and these activities are discussed in N.J.A.C. 7:15-4.2(c).

The Department is proposing a new definition for the term “riparian zone” which is the land area that acts as a transition between the aquatic and uplands ecosystems. The Department is proposing at N.J.A.C. 7:15-5.25(g) to establish minimum widths of riparian zones based on stream classification. These widths vary from 300 feet, 150 feet and 50 feet depending on the location, status and classification of the adjoining stream. These widths are consistent with the “riparian zones” proposed in the new Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The definition specifies how the area is to be measured along different types of water bodies and water features including linear fluvial or tidal waters, non-linear fluvial waters, non-linear tidal waters, and amorphously-shaped features. A more thorough and detailed discussion on “riparian zones” can be found later in this summary concerning N.J.A.C. 7:15-5.25(g) as well as in the summary of the proposed new Flood Hazard Area Control Act Rules at 38 N.J.R. 3950(a).

UPDATED AS OF JUNE 4, 2007

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The Department is proposing a definition for the term “sewage” consistent with the definition of this term in the NJPDES rules, N.J.A.C. 7:14A, for clarity. “Sewage” is widely used in the existing rule and proposed rule amendments but was not previously defined.

The Department is proposing a definition for the term “sewer service area” to describe the land area from which wastewater generated is designated to flow to a domestic or industrial treatment works as identified in an adopted areawide WQM plan. Each domestic or industrial treatment works has a separate sewer service area. Individual subsurface sewage disposal systems do not have sewer service areas. The Department is proposing to define “sewer service area” because the term is widely used in the existing rules and proposed rule amendments but was not previously defined.

The Department is proposing to delete the definition of “site specific allocation” as this term is no longer used to describe a wasteload allocation for a specific pollutant in the proposed amendments at N.J.A.C. 7:15-6.3.

The Department is proposing to delete the definition of “State Water Quality Inventory Report” as this report has been replaced by the “Integrated Water Quality Monitoring and Assessment Report” as the principal water quality assessment component of the Statewide Water Quality Management Plan to assess water quality.

The Department is proposing a new definition for the term “steep slope,” which means any slope equal to or greater than 20 percent as measured over any minimum run of 10 feet. Steep slopes are determined based on contour intervals of two feet or less. The proposed rule restricts development on steep slopes. For further discussion of the significance of steep slopes and proposed standards to limit water quality impacts from these areas see the summary concerning proposed N.J.A.C. 7:15-5.25(g)6 and (h)7.

The Department is proposing definitions for the terms “stormwater” and “stormwater runoff” consistent with the definitions of these terms in the Stormwater Management rules, N.J.A.C. 7:8, for clarity. “Stormwater” is water resulting from precipitation that runs off of the land’s surface, is transmitted subsurface, or is captured by separate facilities or conveyed by snow removal equipment. “Stormwater runoff” is the water flow on the surface or in storm sewer systems resulting from precipitation. Stormwater and stormwater runoff are used throughout N. J. A. C. 7:15.

The Department is proposing to delete the definition of the term “stormwater point source” as this term is no longer used to distinguish whether these types of discharges are considered to be point or nonpoint sources (from repealed N.J.A.C. 7:15-6.3(a)7). Proposed amendments at N.J.A.C. 7:15-6 addressing the ranking of water quality limited segments no longer include the term stormwater point sources.

The Department is proposing a new definition for the term “suitable habitat.” Suitable habitat provides for the breeding, feeding, resting, or sheltering of any threatened and/or

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endangered animal species and is depicted in the Department's "Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife," which is also defined in these rules. Suitable habitat is a term used with respect to mapping requirements at N.J.A.C. 7:15-5.17, delineation of sewer service areas under the provisions of N.J.A.C. 7:15-5.24 and at N.J.A.C. 7:15-5.26, which sets forth the requirements for a habitat suitability determination.

The Department is proposing a new definition for the term "threatened species" which refers to the list found in the rules promulgated pursuant to the Endangered and Nongame Species Conservation Act at N.J.A.C. 7:25-4.17 that define the status of indigenous nongame wildlife species of New Jersey. The category of "threatened" is defined at N.J.A.C. 7:25-4.1 as "a species that may become endangered if conditions surrounding it begin to or continue to deteriorate." The term "threatened species" is used in the proposed definition of "Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife". Mapping of suitable habitat for threatened species with Ranks 3, 4 or 5 on the Landscape Maps is required at N.J.A.C. 7:15-5.17(a)8. For further discussion of the significance of threatened species habitat and proposed standards to limit water quality impacts from these areas, see the summary concerning proposed N.J.A.C. 7:15-5.24 and 5.26. To obtain a copy of the most current threatened species list, contact the Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division of Fish and Wildlife's web address, <http://www.nj.gov/dep/fgw/>, or by writing to the Division of Fish and Wildlife at PO Box 400, Trenton, New Jersey 08625-0400.

The description of the definition of "tidal watercourses" is located within the discussion concerning definition of "head of tide" above.

The Department is proposing to delete the definition of "TMDL project work plan" consistent with the proposed repeal of Subchapter 7 where the term was used. The term "TMDL project work plan" was never actually used in N.J.A.C. 7:15-7.2(o) but the concept of a "project work plan" where entities other than the Department could develop a TMDL under an approved plan was in this subsection. This concept is proposed for repeal and more information regarding the TMDL development and approval process is contained in the summary concerning proposed N.J.A.C. 7:15-6.3 and 6.4.

The Department is proposing to repeal and replace the definition of "total maximum daily load" or "TMDL" for clarity and consistency between Department programs and USEPA. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards. It is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources and includes a margin of safety and consideration of seasonal variations. TMDLs are formally established pursuant to Section 303(d) of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. The preparation and adoption of a TMDL is described at proposed N.J.A.C. 7:15-6.3 and 6.4.

The Department is proposing definitions for the terms "trout maintenance waters" or "TM waters," and "trout production waters" or "TP waters," consistent with the definitions of these terms in the Surface Water Quality Standards, N.J.A.C. 7:9B.

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The Department is proposing a definition for the term “undeveloped and underdeveloped areas” to mean those areas that are either unimproved or contain existing improvements but could be further developed in a manor that would create additional wastewater flow without the need to obtain a variance, according to existing zoning. An example of an underdeveloped area would be a 30-acre tract of land that contains a residential structure and is located in an area that, according to zoning, could have one residence every three acres. This tract could theoretically support up to an additional nine residences. This term is used because it is a mapping requirement at N.J.A.C. 7:15-5.17 and at N.J.A.C. 7:15-5.25(c) and (e) where it is used in determining the environmental build-out and analyzing the number of allowable equivalent dwelling units, respectively.

The Department is proposing to amend the definition of “upgrade” for clarification. An “upgrade” only applies to modifications of domestic or industrial treatment works intended to improve effluent quality and does not include the construction or modification of any wastewater facilities that would allow increases in discharge, wastewater, loadings, sewer service areas or collection systems. Under N.J.A.C. 7:15-3.1(b)1 wastewater facility upgrades that need NJPDES discharge permits are required to undergo a consistency determination review. Under N.J.A.C. 7:15-4.2(a)1, upgrades of domestic or industrial treatment works that do not exceed existing flows identified in areawide WQM plans are deemed consistent with areawide WQM plans and this chapter. However, upgrades needed to comply with the combined sewer overflows (CSOs) policy at N.J.A.C. 7:14A-11.12 are specifically identified as not consistent with the WQM plans and this chapter pursuant to proposed N.J.A.C. 7:15-4.2(a)5 and must obtain an amendment.

The Department is proposing a definition of “urbanized municipalities” to mean those where 90 percent of the municipality’s land area appears as “Urban Lands” as designated in the New Jersey Department of Environmental Protection’s 1995/97 and 2002 Land Use/Land Cover geographical information systems database as amended and updated, available as a digital data download from the Department at www.state.nj.us/dep/gis , based on Level I of the Anderson Classification System (Anderson et al, 1976, modified by the New Jersey Department of Environmental Protection, 1999). This term is used at proposed N.J.A.C. 7:15-5.25(c), where it is used to identify areas that are not subject to the environmental build-out analysis and at proposed N.J.A.C. 7:15-5.25(d), where it is used with respect to calculating wastewater generation potential in sewer service areas.

The Department is adding the acronym “WLA” and proposing to amend the definition of “wasteload allocation” to be consistent with the definition of this term in the Surface Water Quality Standards, N.J.A.C. 7:9B. The existing definition of the term “wasteload allocation” is brief and simply defines a wasteload allocation as that portion of a total maximum daily load that is allocated to a point source. In addition to future point sources of pollution, “categories of point source” pollution are proposed to be added to the definition in this chapter as this is a more accurate description of what could be found in a wasteload allocation. The proposed amendments account for the fact that point sources now include stormwater point sources (those

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stormwater discharges regulated under the Clean Water Act), which may be addressed as a category of point source for the purpose of allocating wasteload, based on use of best management practices to land uses.

The Department is proposing a definition of the term “wastewater.” The term “wastewater” is used throughout the existing rules and proposed rule amendments but was not previously defined. The term “wastewater,” as used in this chapter, does not include stormwater or stormwater runoff conveyed through a separate storm sewer system.

The Department is proposing a definition of the term “wastewater facilities.” The Department is proposing to define “wastewater facilities” because the term is widely used in the existing rules and proposed rule amendments but was not previously defined. The term “wastewater facilities” also appears in the proposed definitions of the terms “planning flow,” “upgrade” and “wastewater.”

The Department is proposing to amend the definitions of “wastewater management plan area” or “WMP area,” and “wastewater management planning agency,” by removing the reference to “or other person” from both definitions as an entity that may have wastewater management plan responsibility for a WMP area. The proposed amendments limit those entities that may have WMP responsibility to counties or municipalities. Accordingly, reference to other entities that may have this responsibility is no longer appropriate.

The Department is proposing a new definition for the term “wastewater management plan update” or “WMP update.” A WMP update is the periodic re-adoption of the wastewater management plan with modifications as necessary from the pre-existing plan to meet the requirements of this chapter for an entire WMP area. The Department is proposing to define “wastewater management plan update” because the term is widely used in the existing rule and proposed rule amendments but was not previously defined.

The Department is proposing a new definition for the term “wastewater service area” which means a sewer service area, an area approved for wastewater facilities with planning flows of less than 20,000 gallons per day which discharge to ground water, and general service area for wastewater facilities with planning flows of less than 2,000 gallons per day which discharge to ground water. The Department is proposing to define “wastewater service area” because the term is widely used in the existing rules and proposed rule amendments but was not previously defined. Under the proposed amendments, areas approved for wastewater facilities with planning flows of less than 20,000 gallons per day which discharge to ground water will cease to exist after (six years from effective date of these rules).

The Department is proposing to delete and replace the definition of “water quality based effluent limitations” to be consistent with the definition in the NJPDES rules, N.J.A.C. 7:14A.

The Department is proposing to delete and replace the definition of “water quality limited segment” for clarity. A water quality limited segment is a waterbody which does not meet or is

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not expected to meet one or more of the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B, applicable to such a waterbody after implementation of technology-based or more stringent effluent limitations or pollution control requirements. A water quality limited segment requires the development of one or more TMDLs. A water quality limited segment can be an entire waterbody or a segment of a waterbody where it is known that water quality does not meet or is not expected to meet Surface Water Quality Standards by the next listing cycle. Water quality limited segments are identified pursuant to Section 303(d) of the Federal Clean Water Act and implementing Federal and State regulations, and this clarification is consistent with the Federal regulations at 40 CFR 130.7.

The Department is proposing a comprehensive definition of the term “wetlands” because the term is used in the existing rules and proposed rule amendments at N.J.A.C. 7:15-3.1, 3.2, 5.17(a)2, 5.24(b)4, 5.24(e)2 and 5.25(c). This definition captures all wetlands of the State and is not limited to freshwater wetlands as defined under the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. The Department believes this more comprehensive definition of wetlands reflects the various types of wetlands that the areawide WQM plans were originally designed to protect. The definition is consistent with the definition at N.J.A.C. 7:22-10.2, the Financial Assistance Programs for Environmental Infrastructure Facilities rules.

N.J.A.C. 7:15-1.6 Program forms and information; Internet web site

Proposed new N.J.A.C. 7:15-1.6 provides information for contacting the Department to obtain or submit forms or information. Proposed N.J.A.C. 7:15-1.6(a) provides contact information to obtain forms or information from the Division of Watershed Management including the Division’s internet web address (www.state.nj.us/dep/watershedmgt). Proposed N.J.A.C. 7:15-1.6(b) provides information for submitting applications or correspondence to the Division of Watershed Management, including a location address for courier and hand deliveries.

Proposed N.J.A.C. 7:15-1.6(c) clarifies that application review deadlines or other time periods under this chapter will not begin if applications or other materials are sent or delivered to the Department at an address other than those specified in subsections (a) and (b). For example, the review of a request for a voluntary transfer of wastewater management planning responsibility from the county board of chosen freeholders to a municipality under proposed N.J.A.C. 7:15-5.13 will not commence unless the application is either sent to the proper address or until received by the Division of Watershed Management.

Proposed N.J.A.C. 7:15-1.6(d) provides additional Department contact information for other relevant Department information sources such as the Department of Environmental Protection’s website, www.state.nj.us/dep, and the address and phone contact information for the Department’s Office of Maps and Publications.

N.J.A.C. 7:15-1.7 Conservation restriction form and recording requirements

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Proposed new N.J.A.C. 7:15-1.7 sets forth the conservation restriction form and recording requirements for restrictions required pursuant to N.J.A.C. 7:15-3.5(b)4x. Conservation restrictions are required to ensure that approved development densities meeting the Ground Water Quality Standards, N.J.A.C. 7:9C, are maintained in perpetuity. This section ensures that the conservation restrictions are in the proper form, properly recorded and timely so that they are enforceable. Proposed N.J.A.C. 7:15-1.7(a) requires that the conservation restriction be maintained in the chain of title. This recording requirement is consistent with the New Jersey Supreme Court case, *Island Venture Associates v. NJDEP*, 179 N.J. 485 (2004), and is necessary to ensure that restrictions are enforceable against the successors in title.

Proposed N.J.A.C. 7:15-1.7(b) sets forth the form and recording requirements of the conservation restriction. Proposed N.J.A.C. 7:15-1.7(b)1 requires that the conservation restriction be in a form and terms specified and approved by the Department as appropriate to the site and in accordance with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq. This provision also makes an allowance for a conservation restriction to allow existing agricultural practices to continue under a conservation restriction, provided appropriate best management practices are in place to protect water quality. This provision will provide opportunities for agriculture to continue as a land use and thereby continue to offer benefits such as a rural occupations and lifestyle, locally grown produce and scenic vistas. Proposed N.J.A.C. 7:15-1.7(b)2 requires that the conservation restriction be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq. Proposed N.J.A.C. 7:15-1.7(b)3 requires that the conservation restriction run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof.

Proposed N.J.A.C. 7:15-1.7(c) requires proof that the conservation restriction has been recorded in the office of the county clerk or registrar of deeds and mortgages of the county in which the project or activity is located. Proof that the conservation restriction was recorded must be submitted to the Department prior to the Department granting any approvals under this chapter. Submittal of proof that the conservation restriction has been recorded, will ensure the permanent protection not only of the area being preserved, but will protect water resources by ensuring that additional development beyond the carry capacity of the land will not occur.

Subchapter 2. Planning Requirements

N.J.A.C. 7:15-2 identifies the written provisions of the continuing planning process (CPP) as the Statewide WQM Plan and this chapter, describes the CPP components required by the Water Quality Planning Act, N.J.S.A 58:11A-1 et seq., the Federal Water Pollution Control Act, and the Federal regulations at 40 CFR 130.5, and identifies WQM planning responsibilities of the Department and designated planning agencies. The Department is proposing to readopt Subchapter 2 with several amendments as described below.

N.J.A.C. 7:15-2.1 Continuing planning process (CPP)

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The Department is proposing to change the reference to the “State Water Quality Inventory Report” to the “Integrated Water Quality Monitoring and Assessment Report” at N.J.A.C. 7:15-2.1(a)6. This change reflects the current title of this report. The State’s Integrated Water Quality Monitoring and Assessment Report contains what was formerly the State Water Quality Inventory Report along with additional water quality assessment data. The Department is also proposing to delete the unnecessary parentheses around the statement that the report is the principal water quality assessment component of the Statewide WQM Plan.

N.J.A.C. 7:15-2.2 Relationship between the Statewide, areawide and county Water Quality Management Plans

The Department is proposing to amend this section by updating references to the Department offices. The Department is additionally proposing to update the reference to the Statewide Water Quality Management Plan in the note to N.J.A.C. 7:15-2.2(a), now codified as paragraph (a)1, to reflect the current name of this plan.

N.J.A.C. 7:15-2.3 Role of the Department

The Department is proposing to add the county boards of chosen freeholders as entities to which the Department shall act as a resource at N.J.A.C. 7:15-2.3(a)6. The Department plans to assist the county boards of chosen freeholders in fulfilling responsibilities under proposed N.J.A.C. 7:15-5.4.

The Department is proposing to change the reference to the “biennial State Water Quality Inventory Report” to the “Integrated Water Quality Monitoring and Assessment Report” at N.J.A.C. 7:15-2.3(a)11 to reflect the current title of this report. The “Integrated Water Quality Monitoring and Assessment Report” is prepared biennially.

Subchapter 3. Plan Assessment, Amendment and Adoption

N.J.A.C. 7:15-3 implements the requirement in the New Jersey Water Quality Planning Act at N.J.S.A. 58:11A-10 that “all projects and activities affecting water quality in any planning area shall be developed and conducted in a manner consistent with the adopted areawide WQM plan.” The Commissioner is also prohibited from granting any permit that is in conflict with an adopted areawide WQM plan. The means to determine if a project or activity for which a permit, approval, certification or registration is sought from the Department is consistent with the areawide WQM plans and this chapter is through a consistency determination. This subchapter identifies projects and activities requiring detailed “consistency determination review,” identifies Statewide and areawide WQM Plan components used in consistency reviews and sets forth the procedures for consistency determination reviews. The Department is proposing to further clarify the types of projects, activities or Department permits that must undergo a consistency determination review. Additionally, the Department is proposing to include in its consistency determination reviews additional environmental criteria consistent with the criteria being

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proposed in Subchapter 5. Applicants will be required to submit information for review under these criteria as part of their complete application for a consistency determination review.

Existing Subchapter 3 establishes procedures for amendment and revision of Statewide and areawide WQM Plans where necessary or desirable. Only the Department can process amendments that address effluent limitations, total maximum daily loads, State or Federal programs, or actions regulated by the Solid Waste Management Act. There are several paths that may be followed to modify an areawide WQM plan, depending on the type and size of a proposed project or activity triggering the WQM plan change. The simplest modifications are WQM plan revisions which do not require a formal public comment period and are available for the updating of incorrect information, the establishment of certain types of alternate assignments of wastewater management planning responsibility and for certain specified minor changes that do not involve significant impacts to environmentally sensitive areas or other natural resources. All other modifications to WQM plans are processed as WQM plan amendments, which again vary in type or scope depending on the type and size of the proposed project or activity. Expedited amendments, which have a shortened public comment period compared to other amendments, apply to certain categories of projects such as public schools or other specific public purpose projects or expansions of existing sewer service areas where a portion of the project is already within a sewer service area. Individual WQM plan amendments are allowed for proposals that involve wastewater service area modifications of under 100 acres and the disposition of less than 20,000 gallons per day (gpd) of wastewater or for DTW expansions that do not discharge to surface waters and have a design capacity of less than 20,000 gpd. All other amendments require the preparation of wastewater management plans or wastewater management plan updates that encompass entire wastewater management planning areas of municipal size or larger and address wastewater management options for the entire planning area.

As more fully explained in the section by section summary that follows, the Department is proposing to amend Subchapter 3 in various ways.

N.J.A.C. 7:15-3.1 Water quality management plan consistency requirements

N.J.A.C. 7:15-3.1(b) lists projects and activities that require a formal consistency determination review. Projects and activities requiring a formal consistency determination review are those for which a Department permit is necessary and that have the greater potential to adversely affect water resources, such as new surface or ground water discharges that require a NJPDES discharge permit, new or modified public community water systems, and projects requiring permits administered by the Division of Land Use Regulation, such as for flood hazard, waterfront development, and wetlands. Some projects or activities are unlikely to have significant impacts to water resources and a formal consistency determination review is unnecessary. Current N.J.A.C. 7:15-3.1(c) specifies and identifies projects and activities that, while not required to undergo a formal consistency determination review, must not conflict with a WQM Plan. The Department has reevaluated this list of projects and activities and determined that it should be revised to adequately capture the projects and activities that could have an affect

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on water quality or other relevant provisions of an adopted WQM plan or this chapter. Accordingly, the Department is proposing to amend and add new language to N.J.A.C. 7:15-3.1(b).

The Department is proposing to amend N.J.A.C. 7:15-3.1(b)1 to include expansions and upgrades along with new or significant modifications to existing NJPDES-permitted discharges to surface or ground water, as these activities have the potential to increase pollutant load to receiving waters. This paragraph is additionally amended to add the heading of the Pollutant Discharge Elimination System rules for clarity.

The cross-reference to N.J.A.C. 7:14A-12 in N.J.A.C. 7:15-3.1(b)2 is proposed to be changed to N.J.A.C. 7:14A-22 to reflect the current codification for Treatment Works Approvals and the name of the Pollutant Discharge Elimination System rules. Exceptions to this requirement to obtain formal consistency determinations for treatment works are provided at N.J.A.C. 7:15-4.3(c).

The Department is proposing to amend N.J.A.C. 7:15-3.1(b)3 to replace the reference to the Coastal Area Facility Review Act with the more inclusive term Coastal Permit Program rules, thereby including in this paragraph the coastal wetland fill permits currently addressed at N.J.A.C. 7:15-3.1(b)4 and the Waterfront Development Permits currently addressed at N.J.A.C. 7:15-3.1(b)8. In addition, the Department is proposing to identify those Coastal Permit Program general permits, in addition to individual permits, that require a formal consistency determination. Previously, all actions regulated under CAFRA and some actions regulated under the Coastal Wetlands program required a formal consistency determination pursuant to N.J.A.C. 7:15-3.1(b)3 and 4. The Department is proposing to limit the type of activities that require a formal consistency determination to those that have the potential to significantly impact water quality. Thus, the Department will still require a formal consistency determination for general permits under N.J.A.C. 7:7-7.5 and 7.13 for the expansion of amusement piers and construction of support facilities at existing commercial marinas since these activities increase potable water usage and wastewater discharges and may require additional or enlarged infrastructure. Similarly, the Department will continue to require formal consistency determinations for general permits under N.J.A.C. 7:7-7.8 for the development of a single home or duplex, since this will require both water supply and wastewater treatment infrastructure. Landfall of utilities (N.J.A.C. 7:7-7.16) has the potential to require extensive disturbance for both the initial installation of a connective network and permanent access points for future maintenance and repair, creating additional areas of compacted and impervious surface and therefore, the Department is proposing to require a formal consistency determination for this activity. In addition, the Department will continue to require a formal consistency determination for a general permit for construction of certain structures related to tourism pursuant to N.J.A.C. 7:7-7.26 since these activities have a wide array of potential impacts that could affect water quality such as water supply and wastewater treatment infrastructure, increased impervious surface, and increased nonpoint source pollutant loading. On the other hand, the Department is not seeking formal consistency determinations for general permits for projects and activities that do not involve sewage generating development, such as beach and dune maintenance, bulkhead construction on a

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manmade lagoon, or placement of gabions on a single family lot. The environmental impacts of such activities will be addressed through the applicable permitting program.

The Department is proposing to amend N.J.A.C. 7:15-3.1(b)4 to delete the outdated reference to Type "B" wetlands permits. As explained above, affected coastal permits, such as Type "B" coastal wetlands permits under N.J.A.C. 7:7-2.2, are proposed to be covered under N.J.A.C. 7:15-3.1(b)3. The Type "B" permits described a limited universe of individual fill permits and the Department will continue to require a consistency determination for these activities. The Department is further proposing to amend N.J.A.C. 7:15-3.1(b)4 to specifically identify the types of individual freshwater wetlands permits, open water fill permits, and transition area waivers under the Freshwater Wetlands Protection Act rules that require a consistency determination to ensure that water quality requirements in the Statewide and areawide WQM Plans have been addressed. In addition to any action that requires an individual permit, general permits under N.J.A.C. 7:15-7.7A-5.2, 5.2A, 5.6, 5.7, 5.10A, 5.10B, 5.10C, 5.11 and 5.11A are included. These include general permits for the placement of underground utility lines because this activity has the potential to disturb large tracts of land, both at initial installation and in order to provide future access for maintenance and repair; actions in non-tributary wetlands because these areas assist in regulating baseflow and are often within significant riparian zone areas; actions in headwaters because they have the potential to impact water quality as they are origins of stream flow that will transport chemicals and particulates downstream; road crossings, even minor ones, because they result in increased sedimentation, total suspended solids, and oil-laden runoff into the water body, and create barriers against the migration of fish and aquatic species; outfall structures, because they create a point source that promotes channelization, erosion and sedimentation, provide a direct path for pollutants to enter waterways and sensitive resource areas, and cause further increase of impervious surfaces; and intake structures because they directly or indirectly affect surface and ground water supplies. The Department is not proposing to require formal consistency determinations for general permits for projects and activities that do not involve sewage generating structures, such as airport sight line clearing and installation of water monitoring devices, as the environmental impacts of these types of activities are addressed in the applicable permitting process.

The Department is proposing to amend N.J.A.C. 7:15-3.1(b)8 to delete language related to waterfront development activities, as these are now covered under N.J.A.C. 7:15-3.1(b)3 as proposed, and replace it with new language that identifies major Highlands development as a type of project or activity that must receive a consistency determination review. Major Highlands development is currently required to undergo a consistency determination through the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38-2.4, so this provision simply reinforces that requirement.

The Department is proposing to amend N.J.A.C. 7:15-3.1(b)9 to clarify that projects that must obtain a certification from the Department for the construction of 50 or more realty improvements under the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq. require a formal consistency determination. The current rule requires such a determination for such improvements regulated under the cited Act.

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The Department is proposing a new N.J.A.C. 7:15-3.1(b)11 to require a consistency determination for nonpublic and public noncommunity water supply systems within the Department's jurisdiction, except for repair or replacement with no expansion of service area or capacity. The Department is further proposing a new N.J.A.C. 7:15-3.1(b)12 to require consistency determinations for new or modified public community water supply systems, except for repair or replacement that does not increase service area or capacity. N.J.A.C. 7:15-3.1(b)11 and 12 require a formal consistency determination for all types of water supply systems that have the potential to affect water resources. Additional water supply demand may be associated with water supply connections serving new areas or with larger capacity, which may create or add to a deficit in water availability in the affected area.

The Department is proposing a new N.J.A.C. 7:15-3.1(b)13 to require formal consistency determinations for wells that are associated with development, such as potable wells and geothermal wells, or are otherwise significant withdrawals such as irrigation wells. In this way wells can be assessed relative to the water availability in the affected area. In accordance with N.J.A.C. 7:15-3.1(c), all other wells must be consistent, but do not need a formal consistency determination.

The Department is proposing a new N.J.A.C. 7:15-3.1(b)14 to ensure that consistency determinations are obtained for new or increased water usage certifications. Water usage may affect the water availability in the affected area. For example, water taken from surface waters or ground water can affect baseflow and, therefore, water quality and aquatic life support.

The Department is proposing new N.J.A.C. 7:15-3.1(b)15 to require consistency determinations for water supply diversions, except for those diversions that are temporary, such as for construction. Water supply diversions, like water usage certifications, can affect baseflow, with associated impacts on water quality and aquatic life support. Temporary diversions, while still required to be consistent in accordance with N.J.A.C. 7:15-3.1(c), do not warrant a formal consistency determination because they are not permanent, by definition.

The Department is proposing new N.J.A.C. 7:15-3.1(b)16 to require consistency determinations for projects requiring flood hazard area (stream encroachment) permits, except those for bank stabilizations that use only live plantings or vegetation-derived products such as biologs. Bank stabilization projects that use soil-bioengineering as described at section 650.1601(d) (2) of Chapter 16 of the USDA Natural Resource Conservation Service (NRCS) Engineering Field Handbook, published December 1996 are not required to obtain a consistency determination. Copies of the NRCS Engineering Field Handbook can be obtained from local NRCS offices. Soil bioengineering is a method of bank stabilization that utilizes live plants, such as cut, un-rooted branches, as the main structural component. Other natural materials such as rocks and tree stumps can also be used to augment the stability of the vegetation. Bank stabilizations improve water quality by reducing channelization and sedimentation into the water body. Bank stabilizations utilizing only vegetation result in no permanent footprint of disturbance or engineered structures that could later fail, degrade or otherwise result in scrap and

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refuse and, therefore, do not adversely affect water quality. Should the handbook be updated after this proposal is adopted, the Department will decide at that time whether to incorporate the new handbook into these rules and will promulgate an amendment to this portion of the rule, if appropriate. In addition, the Department is proposing to make an exception for all permits-by-rule under N.J.A.C. 7:13-7 of the proposed Flood Hazard Area Control Act Rules. Activities covered under N.J.A.C. 7:13-7 are not expected to significantly impact water quality and the Department has determined that these activities shall not require a formal consistency determination.

The Department is proposing new N.J.A.C. 7:15-3.1(b)17 to require a consistency determination for those projects triggering a Water Quality Certificate in the Hackensack Meadowlands. This provision, along with proposed N.J.A.C. 7:15-3.1(b)3 and 4, encompass the types of coastal and wetland projects or activities that warrant a formal consistency determination because of the potential to impact water resources.

The Department is proposing new N.J.A.C. 7:15-3.1(b)18 to require a consistency determination for Class I through III dams. These categories of dams are of sufficient magnitude that they may constitute a water quality or quantity concern. The associated impoundment of water could alter the water quality impact of nutrient levels as well as increase temperature and could reduce baseflow in the waterbody below the dam, which can result in concentration of pollutants and loss of dilution for existing discharges. Class IV dams are those that create impoundments that have a drainage area of 150 acres or less and are not likely to have the potential impacts noted above. These dams are still required to be consistent, though not by formal determination, in accordance with N.J.A.C. 7:15-3.1(c).

The Department is proposing a new N.J.A.C. 7:15-3.1(c), which provides that all projects and activities must be consistent, even if a formal consistency determination under N.J.A.C. 7:15-3.1(b) is not required. N.J.A.C. 7:15-3.1(c) currently lists projects and activities that do not require a formal consistency determination. The Department is deleting this list because it is not necessary. Those projects and activities that have the potential to significantly affect water resources will require a formal consistency determination under N.J.A.C. 7:15-3.1(b), and those projects or activities that are deemed consistent are specified at N.J.A.C. 7:15-4.2. Current N.J.A.C. 7:15-3.1(c)16 stipulates that any other activity not addressed in N.J.A.C. 7:15-3.1(b) or N.J.A.C. 7:15-4.2 is encompassed by N.J.A.C. 7:15-3.1(c). Proposed N.J.A.C. 7:15-3.1(c) mirrors the current N.J.A.C. 7:15-3.1(c)16, making a lengthy recitation of affected permit types unnecessary.

N.J.A.C. 7:15-3.1(e) is proposed to be amended to clarify that the portions of the Statewide WQM Plan that are to be used in making a consistency determination are those components of the Statewide WQM Plan specified or adopted under this rule. The Statewide WQM Plan includes many rules that are incorporated by reference and other program information that, taken together with these rules, serve as the State's Continuing Planning Process (CPP). However, it is not expected that the consistency determination review for projects and activities would require review against all of the standards contained in these other

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rules or program plans, just because they are part of the CPP. The consistency determination review should only be conducted against those portions of the rules in the CPP that provision is clearly made for in this rule through codification in this chapter. For example, the Surface Water Quality Standards (SWQS) are a required component of a CPP and are incorporated by reference into the Statewide WQM Plan. The SWQS are used in many of the Department's programs, such as the regulation of discharges under NJPDES. While the SWQS are integral to these rules, like TMDLs, they are not appropriate for direct comparison with a proposed project or activity to evaluate consistency of the project or activity. However, where the SWQS are incorporated into this rule, such as the requirement to meet the antidegradation standards at proposed N.J.A.C. 7:15-5.25(d), then this standard must be met.

The Department is proposing to amend N.J.A.C. 7:15-3.1(g) to add the option of seeking a WQM plan revision as an action an applicant may take if a project or activity is deemed inconsistent with the plan. This option would accommodate the circumstance in which the proposed project or activity is one that qualifies as a revision under N.J.A.C. 7:15-3.5, such as a change in sewer service area that meets the criteria for a revision. In addition, the Department is proposing to add a cross-reference to N.J.A.C. 7:15-3.9(a) to allow an appeal of a consistency determination under this chapter where the consistency determination is made independent of another Department permit decision. In many cases, a consistency determination will be made as part of a permit application and an applicant will appeal the Department's finding with respect to consistency as part of the permit decision. However, if a consistency determination is made prior to a permit decision, the consistency determination may be challenged, in the absence of a permit decision.

N.J.A.C. 7:15-3.2 Procedures for consistency determination reviews

N.J.A.C. 7:15-3.2(a) currently identifies the submission requirements for a consistency determination, which is limited to a narrative description of the project and its proposed wastewater generation and management type, a USGS quad map showing overall location and any site plan drawings, if appropriate to the type of project or activity for which a consistency determination is sought. The Department is proposing to amend N.J.A.C. 7:15-3.2(a) to update the requirements in accordance with other proposed amendments and to acknowledge that separate procedures apply to consistency determinations in the Highlands preservation area. The Department is proposing to amend N.J.A.C. 7:15-3.2(a) to establish information requirements that will identify the applicant, the description, location and extent of the project, a certification of conformance with the municipal zoning upon which the applicable WMP was based, specifics on wastewater management and water supply needs of the project, a site plan of the development which depicts the relationship of the development to wetlands, waterbodies, and steep slopes. This information is needed to assess if the proposed project is aligned with the wastewater management options identified in the adopted plan, including that the amount of wastewater generated by the proposed project conforms with the projections based on the zoning in place when the plan was adopted and upon which the environmental build-out analysis was based and that the method of wastewater management has been determined to meet water quality standards; the water supply needs of the project can be met in consideration of water availability; and the

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proposed project is not located within an environmentally sensitive area or steep slopes subject to required local ordinance protection and/or State regulation, for example, wetlands, and riparian zones.

Under proposed N.J.A.C. 7:15-3.2(a)12, when an applicant intends to demonstrate that a project or activity site was not withdrawn from a wastewater service area because it is infill development pursuant to N.J.A.C. 7:15-8.1(b)1, the applicant must include documentation that the site meets the definition of infill development. This includes documentation on the lawfully existing public sewer line in the right-of-way adjoining the project or activity site lot; proof the sewer lines existed on the date that wastewater service area was withdrawn; and proof that the total flow projection from the lot or lots between the previously connected properties does not exceed 2,000 gallons per day will be required.

Under proposed N.J.A.C. 7:15-3.2(a)13, if the applicant seeks to demonstrate that its project or activity is part of a residential development or subdivision of fewer than six dwelling units pursuant to proposed N.J.A.C. 7:15-8.1(c)2, the applicant shall include information on the lot size and date of creation and previous development on the site and contiguous parcels will be needed.

A consistency determination may be made as part of a permit application or separately from a permit application. A permit application may require many of the information items required at N.J.A.C. 7:15-3.2(a). If a consistency determination request is made separately, all of the information must be provided as a complete application for a consistency determination; if a consistency determination request is made as part of a permit application, only the information not already submitted as part of the permit application must be provided for the consistency determination.

The Department is proposing an amendment at N.J.A.C. 7:15-3.2(b) to update this subsection by using the terms “applicant for a consistency determination” and “application” instead of reference to the term “narrative description” or to subsection (a), consistent with the terminology changes proposed to the rest of this section. This subsection clarifies that the Department may require an applicant for a consistency determination to provide additional information on water quality impacts and a site specific pollution control plan if the project might have negative water quality impacts.

The Department is proposing to expand the factors and components it will consider in making a consistency determination at N.J.A.C. 7:15-3.2(c). The Department is proposing to change the references to domestic treatment works (DTW) to “treatment works” at N.J.A.C. 7:15-3.2(c)1iii and iv in order to recognize that all treatment works types are relevant in the consistency determination, not just DTW. Further, at N.J.A.C. 7:15-3.2(c)1iii, the Department is also proposing to clarify it is concerned with the “available capacity” of all treatment works proposed to accommodate the wastewater flows from proposed projects or activities. At N.J.A.C. 7:15-3.2(c)1vii, the Department will consider use of Best Management Practices for pollution control “in accordance with the Stormwater Management rules, N.J.A.C. 7:8.” At

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N.J.A.C. 7:15-3.2(c)1viii, the Department proposes to delete the phrase “environmentally sensitive areas” and replace it with “riparian zones and steep slopes”. The Department intends to focus on these areas when considering an area as suitable or unsuitable for development. At N.J.A.C. 7:15-3.2(c)1x, the Department will consider funding conditions under Section 201 of the Federal Clean Water Act. For example, these grant conditions for funding under Section 201 of the Federal Clean Water Act may prohibit connections of sewage generating structures located in wetlands and floodplains to funded sewerage facilities. As part of the consistency determination review at N.J.A.C. 7:15-3.2(c)1xi and xii, the Department will also consider the implications of any adopted TMDL and water supply availability, as these are integral components of WMPs.

The Department is proposing to amend N.J.A.C. 7:15-3.2(c)2 to link the timeframe for a consistency determination to the timeframe established in rules for the applicable permit if the latter is not 90 days. In addition, the Department proposes to delete the provision that allowed for one time 30-day time extension of the 90-day period because this provision has never been used.

The Department is proposing new N.J.A.C. 7:15-3.2(d) that cross-references to applicable sections of the Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38-9.2 and 9.3, and N.J.A.C. 7:38-11.2, 11.3 and 11.7, which specify the contents and procedures for consistency determinations in the Highlands preservation area.

N.J.A.C. 7:15-3.4 Water quality management plan amendment procedures

The Department is proposing to amend N.J.A.C. 7:15-3.4(b)4 to correct terminology and to reflect recodification of the provisions for water quality limited segments and TMDLs. Since the List of Water Quality Limited Segments is the same as a list of segments where TMDLs will be developed, the latter phrase is deleted. Also, a “schedule” for development of TMDLs is a more accurate description than a project priority list. The Department is also proposing to delete the reference to an interested party review process on proposed amendments involving the List of Water Quality Limited Segments and TMDLs, as this particular option has not been exercised and is not expected to be needed. The various appropriate public participation opportunities related to developing the List of Water Quality Limited Segments and TMDLs are described in proposed amendments to Subchapter 6.

The Department is proposing to amend N.J.A.C. 7:15-3.4(c) to delete a reference to N.J.A.C. 7:15-3.4(j) among the types of amendments that are processed only by the Department. In the existing rules, N.J.A.C. 7:15-3.4(j) is a reserved section. The Department is proposing new language at N.J.A.C. 7:15-3.4(j) to address proposed plan amendments in the Highlands, discussed further below.

The Department is proposing to delete existing N.J.A.C. 7:15-3.4(e) because it contains outdated provisions for the initial establishment of plan amendment procedures by designated planning agencies. The Department is proposing new language at N.J.A.C. 7:15-3.4(e) that will

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continue existing plan amendment procedures of the designated planning agencies, allow for amending such procedures, and provide that the Department's procedures apply where there are no approved designated planning agency procedures.

The Department is proposing to amend N.J.A.C. 7:15-3.4(g)1 to correct the name and mailing address of the entity within the Department to which plan amendment applications must be submitted.

The Department is proposing to amend N.J.A.C. 7:15-3.4(g)2 to require that applications for WQM plan amendments include the information necessary to determine compliance with the criteria established at proposed N.J.A.C. 7:15-5.24 and 5.25, and to provide a cross reference to the procedure at N.J.A.C.7:15-3.2(j) applicable to plan amendments in the Highlands preservation area.

The Department proposes amendments at N.J.A.C. 7:15-3.4(g)1 through 3 to clarify that a request for an amendment requires submittal of an amendment application, rather than an amendment request.

The Department is proposing to amend N.J.A.C. 7:15-3.4(g)7 to provide that notice will be placed in one newspaper of general circulation, instead of two, when the Department determines to hold a non-adversarial public hearing on an amendment. In the Department's experience, publication in one newspaper has been sufficient for purposes of secondary notification for a public hearing.

The Department is proposing to amend N.J.A.C. 7:15-3.4(g)9 to add that, where ordinances are required to make the demonstrations required under proposed N.J.A.C. 7:15-5.25, these must be submitted to the Department prior to adoption of the amendment. Because of the length of time involved with ordinance adoption, the proposed rules allow that an amendment may be proposed before the ordinances are adopted, but the adoption of the amendment will not proceed without the adopted ordinances.

The Department is proposing to delete and reserve N.J.A.C. 7:15-3.4(h), which describes projects and activities that qualify for an expedited amendment process and outlines the expedited process procedure. The expedited amendment process is no longer needed because the projects and activities that would have been processed under this procedure (public facilities and sewer service area expansions where only a portion of a site is already located within a sewer service area), are proposed to qualify for WQM plan revisions if the proposed activity would result in minimal environmental impacts (see the summary of proposed amendments to N.J.A.C. 7:15-3.5(b)4). If these types of projects or activities would have more than minimal environmental impacts, the proposed project or activity is more appropriately subject to the analyses and public participation process associated with an amendment.

The Department is proposing to amend N.J.A.C. 7:15-3.4(i) to reference the correct citation in the NJPDES rules regarding effluent limitations.

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The Department is proposing new N.J.A.C. 7:15-3.4(j) to cross reference the Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38-11, which govern the filing process for all proposed WQM plan amendments in the Highlands preservation area that require a Highlands Preservation Area Approval. Because the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-33, consolidates into a single Highlands permitting review program related aspects of various regulatory programs, including those of the Water Quality Planning Act, the Highlands rules at N.J.A.C. 7:38 incorporate the appropriate WQM plan amendment filing procedures for projects for which Highlands Preservation Area Approval is sought. However, once a WQM plan amendment has been reviewed under the Highlands rules, the decision making criteria remain in the Water Quality Management Planning rules, so the Department must use N.J.A.C. 7:15-3.4(g)3 through 11 to make a decision on whether or not to propose and/or approve a WQM plan amendments in the Highlands preservation area.

The Department is proposing to amend N.J.A.C. 7:15-3.4(k) to correct organizational references and to make minor language edits for clarification.

The Department is proposing to delete N.J.A.C. 7:15-3.4(l)1 which establishes a preference for expanding or upgrading existing regional DTW to the construction of additional DTW as the Department recognizes that expanding regional sewage treatment plants is not automatically a preferable, and it is appropriate to consider alternatives and their impacts before selecting a wastewater treatment alternative.

The Department is proposing to amend N.J.A.C. 7:15-3.4(l)2 and merge this provision with the N.J.A.C. 7:15-3.4(l) paragraph. Existing N.J.A.C. 7:15-3.4(l)2 stipulates that a sewer service area change is not allowed where a sewer ban is in effect, unless the change is found to be cost effective, environmentally sound and feasible. The Department is proposing to delete this exception as well as amend the rule to provide that a sewer service area change is not allowed when the applicable WMP is not up-to-date. These additional restrictions on sewer service area changes are intended to support the overall objective of these proposed amendments to maintain up to date WMPs as the appropriate base for decision making regarding projects or activities requiring a Department permit. The Department is further proposing to amend N.J.A.C. 7:15-3.4(l) to update the cross-reference to the treatment works approval provisions in the NJPDES rules at N.J.A.C. 7:14A-22.17.

N.J.A.C. 7:15-3.5 Water quality management plan review, revision, and certification

At proposed N.J.A.C. 7:15-3.5(b), the Department specifies that an application for a revision must be submitted in writing to the Department and must comply with the requirements proposed at N.J.A.C. 7:15-3.5(d), which are summarized below. The Department is proposing to amend N.J.A.C. 7:15-3.5(b)4 to provide that the determination that WQM plan revisions effecting substantial changes will not result in significant individual or cumulative impacts to environmentally sensitive areas or other natural resources, will be based on the Department's

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assessment that the projects or activities meet the environmental standards at proposed new N.J.A.C. 7:15-5.24 and 5.25.

In general, projects that qualify as revisions will not require detailed analysis to demonstrate compliance with the criteria at N.J.A.C. 7:15-5.24 and 5.25. In most cases, compliance with the substantive requirements of that section can be determined by the Department's review of existing mapping and information available to the Department and the public at large. However, where compliance cannot be conclusively determined by the Department's review of existing information, the Department will either determine to process the proposed revision as an amendment or obtain additional information on the project from the applicant necessary to enable the Department to determine compliance with the standards at N.J.A.C. 7:15-5.24 and 5.25. This site specific information may include a nitrate dilution analysis, a Letter of Interpretation pursuant to the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, or information regarding threatened and endangered species habitat. For further discussion of the type of site specific information the Department may require, see the summary of proposed N.J.A.C. 7:15-5.24 and 5.25 below.

N.J.A.C. 7:15-3.5(b)4 is also proposed to be amended to cross reference to new N.J.A.C. 7:15-3.10 which addresses coordination with the Highlands Council.

N.J.A.C. 7:15-3.5(b)4i is proposed for amendment to limit revisions for industrial treatment works expansions where there is no change in the wastewater service area or discharge type (for example, a change from a surface water discharge to a ground water discharge), that do not involve a discharge to "an impaired" waterbody segment for which a TMDL has been proposed or adopted, adding "and that provide a demonstration that adequate water supply is available to support the expansion." In making such water supply demonstration, the most current version of the New Jersey State Water Supply Plan is to be utilized. Additionally, if the discharge is to a listed (impaired) waterbody and the discharge contains any of the parameters that are the basis for the listing, the expansion may be allowed under the revision procedures if the expansion is consistent with the wasteload allocations set forth in an adopted TMDL developed for the affected waterbody for the listed parameters in the discharge. Industrial treatment works expansions that cannot meet these requirements cannot be adequately assessed under the revision procedures for compliance with the standards at N.J.A.C. 7:15-5.25 and must be reviewed as amendments.

The Department is proposing to amend N.J.A.C. 7:15-3.5(b)4ii to limit the circumstance in which a revision is allowed for a sewer service area transfer between two domestic treatment works to that in which all affected wastewater management plans are up to date. Unless the WMPs are up to date, and include current analyses of wastewater management, water supply, proper delineation of sewer service area and the other demonstrations required at N.J.A.C. 7:15-5.24 and 5.25, it will not be possible to readily determine if a revision for a sewer service area transfer meets the standards at N.J.A.C. 7:15-5.24 and 5.25.

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The Department is proposing to amend N.J.A.C. 7:15-3.5(b)4iii to allow “existing” public schools and institutions utilizing discharge to ground water which propose an increase to the planning flows of 8,000 gpd or less (changed from 20,000 gpd or less) to qualify for revisions if they use the same general type of treatment works regardless of whether they are currently NJPDES regulated. The Department’s intent with this provision is to reduce the applicant’s administrative burden only for identified public need projects, where those projects have limited environmental impacts.

The Department is proposing to amend N.J.A.C. 7:15-3.5(b)4iv. This category of revision currently allows for increases in wastewater flow from an existing permitted discharge to ground water treatment facility with a designated flow of less than 20,000 gallons per day to increase the designated flow to more than 20,000 gallons per day, provided, through the restrictions at N.J.A.C. 7:15-3.5(b)4v, certain criteria are met, such as the amount of the increase is under 8,000 gallons per day, the increase in area served is less than 100 acres, and the revision does not create a significantly new pattern of sewered development. The proposed amendments clarify that under this provision, only an expansion of less than 8,000 gallons per day is permitted and expands the revision category to include any existing NJPDES permitted facility and not only those that will discharge more than 20,000 gallons per day after the revision. For example, a wastewater facility currently discharging 5,000 gallons per day would be able to propose an expansion to 12,999 gallons per day as a revision under the category. The less than 8,000 gallon per day limitation is based on the treatment works approval provisions in the NJPDES rules at N.J.A.C. 7:14A-22.4(a)1 and 2 that do not require a treatment works approval for projected flows of less than 8,000 gallons per day. The facility size is not specified, but through the restrictions at N.J.A.C. 7:15-3.5(b)4v, the limitations that the increase in area served is not to exceed 100 acres, and that the revision shall not create a significantly new pattern of sewered development, are applicable. In addition, the restrictions proposed at subparagraph (b)4v (explained further below) that require that the affected treatment facility must have sufficient capacity to accommodate the wastewater estimated to be generated in the build-out analysis for the approved service area in accordance with an up to date WMP, also applies. Because of the limitations placed on this revision category, the analyses required for an amendment would be unnecessary, as discussed further with respect to the proposed amendments to N.J.A.C. 7:15-3.5(b)4v.

The Department is proposing to amend N.J.A.C. 7:15-3.5(b)4v to limit the areas where expansion of sewer service area can be processed as a revision. Previously, revisions could be granted under this subparagraph for any project that resulted in an expansion of the sewer service area to contiguous lots, where the expansion involved less than 100 acres, contributed less than 8,000 gallons per day of additional wastewater and did not create a significant new pattern of sewered development. The Department has determined that these types of projects should only be processed as a revision if the WMP is up to date, to avoid reliance on outdated WMPs and to ensure the revision does not compromise the assessment of current and future wastewater management needs. Where a WMP is up to date, there has been adequate consideration of cumulative impacts of wastewater management decisions. For further discussion of the importance of an updated WMP as the basis for decision making refer to the summary of

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proposed N.J.A.C. 7:15-8. Under the proposed subparagraph, the applicant must now also demonstrate that the receiving domestic treatment works has sufficient capacity under the projected build-out. Therefore, if the receiving sewage treatment plant (STP) has capacity, the Department will review proposed sewer service area expansions of less than 100 acres and less than 8,000 gallons per day as a revision. The Department's review will include an assessment of any impacts to environmentally sensitive areas and, where a more detailed review of the water resources impacts is necessary, a WQM plan amendment would be required instead of a revision.

The Department is proposing a new N.J.A.C. 7:15-3.5(b)4vi to allow WQM plan revisions to be processed where WMPs are not in compliance with the schedule at N.J.A.C. 7:15-5.23 for projects utilizing individual subsurface sewage disposal systems where the project involves less than 100 acres and generates less than 8,000 gallons per day of wastewater flow. If the proposed development is residential, the 8,000 gallons per day is roughly equivalent to 22 residential units. Revisions under this category will still be required to analyze the effects of the ground water discharge on nitrate concentration as proposed at N.J.A.C. 7:15-5.25(e). The Department will not process revisions for this type of activity when the WMP is up-to-date because as part of the update, a nitrate dilution model was applied to the WMP area based on certain land uses such as increased density in some areas which are balanced by reduced density in other parts of the WMP area. It would contravene the wastewater analysis in the WMP if revisions to an up-to-date WMP were allowed. The nitrate dilution analysis requirement is consistent with proposed N.J.A.C. 7:15-5.25(h)2. The Department believes that by applying the nitrate dilution model to proposed projects of this size, potential environmental impacts will be minimized. However, in accordance with the overall revision criteria at N.J.A.C. 7:15-3.5(b)4, if the Department cannot make the finding that there are no significant environmental impacts, the Department may require additional information to make this finding, or require a WQM plan amendment. This proposed new subparagraph will allow development on individual subsurface sewage disposal systems equivalent to development allowed in sewer areas under proposed N.J.A.C. 7:15-3.5(b)4v (which allows sewer service area expansions of less than 100 acres and generating less than 8,000 gallons per day of wastewater) to also qualify for a WQM plan revision. The Department has selected 8,000 gallons per day as a threshold because flows of 8,000 gallons per day or more from a single property require a Treatment Works Approval (TWA). Currently, the Department does not require WQM plan amendments for projects that use individual subsurface sewage disposal systems. However, since a nitrate dilution analysis is now required for all developments of six or more residential units or greater than 2,000 gallons per day for commercial development on individual subsurface sewage disposal systems, a new threshold for plan revisions for development on individual subsurface sewage disposal systems is necessary. The threshold is proposed to be equivalent of the threshold for plan revisions for sewer service area expansions of less than 100 acres and generating less than 8,000 gallons per day of wastewater.

The Department is proposing to expand the list of projects that may qualify for processing as a plan revision to encourage Reclaimed Water for Beneficial Reuse or "RWBR." RWBR involves taking water that would otherwise be considered a waste product, giving it a specialized level of treatment, and using the resulting high-quality reclaimed water for public

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access (such as a golf course) and/or restricted access (such as at a treatment plant) uses. This high-quality reclaimed water can be used for non-potable applications such as irrigation in place of potable water or as a supplement to potable water. RWBR reduces demands on valuable ground water supplies by recycling some of the water already drawn; helps reduce pollutant loading to surface waters; may postpone costly investment for development of new water sources and supplies; and can save money. Therefore, the Department is proposing to add N.J.A.C. 7:15-3.5(b)4vii and viii to encourage RWBR by allowing a WQM plan revision instead of a WQM plan amendment to be processed for a project proposing the utilization of RWBR under the conditions described below.

Under proposed N.J.A.C. 7:15-3.5(b)4vii, a RWBR project that reduces either existing or proposed wastewater discharges to surface waters below the head of tide or ground water discharges located within HUC 14 drainage areas which are located wholly below the head of tide, may be processed as a WQM plan revision. Stream flow and ground water levels below the head of tide are controlled by tidal effects; thus a reduction of discharge because of a RWBR project will have no discernible impact on stream baseflow within tidal watersheds. Where any new discharge will be authorized by a facility's individual NJPDES discharge permit, a publicly noticed dedicated meeting for the proposed activity, which conforms to the requirements of N.J.A.C. 7:14A-15.12, will be required as part of the permitting process. Therefore, the public notification and opportunity for comment normally provided through the WQM plan amendment process will be provided through the permit process before a project would be approved and built.

In areas above the head of tide, a wastewater discharge, whether to surface or ground waters, may make up a substantial portion of baseflow in freshwater streams. Further, since the discharge adds to or maintains baseflow, reduction of it may not only affect ecological resources but may impact the safe or dependable yield of downstream water supply withdrawals and reservoirs. Therefore, for RWBR projects that would reduce discharges to surface waters above the head of tide or ground water discharges located within HUC 14 drainage areas, any part of which is above the head of tide, proposed N.J.A.C. 7:15-3.5(b)4viii requires additional analysis of the impact of reducing those discharges on ecological, water supply and other downstream uses. Accordingly, the Department is proposing that additional criteria must be met in order for this type of RWBR proposal to be processed as a WQM plan revision. A RWBR project proposed to discharge to a waterbody above the head of tide must not only reduce existing wastewater discharges but must also demonstrate through an evaluation: (1) that there is no new or increased exceedance of the water availability in any HUC 11 in accordance with the assessment of water availability contained in the New Jersey State Water Supply Plan pursuant to N.J.A.C. 7:15-3.5(b)4viii(1); and (2) that the RWBR activity does not cause an adverse effect on any downstream designated uses, such as a water supply via surface water intakes or water volume expected for dilution purposes at sewage treatment plants or necessary to maintain aquatic life support pursuant to N.J.A.C. 7:15-3.5(b)4viii(2). Meeting these criteria will ensure no impact to baseflow and minimal water quality impact while still facilitating the benefits that result from reclaiming wastewater. RWBR for non-potable uses such as irrigation can significantly reduce water supply demands on surface and ground water at times of the year

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when water use peaks, which often coincides with the lowest baseflow in streams, particularly during hot and dry summer months.

The Department is proposing a new category of project that can qualify for a revision at N.J.A.C. 7:15-3.5(b)4ix that would enable a failing septic system with no feasible repair or replacement alternative to connect to sewerage facilities if the facilities are contiguous to the property. Such de minimis extensions of sewer service are beneficial because they eliminate a source of pollution without compromising the integrity of the wastewater management planning process as envisioned in these proposed amendments.

The Department is proposing a new category of clustered development that can qualify for a plan revision at N.J.A.C. 7:15-3.5(b)4x. Under this subparagraph, a clustered development in a wastewater service area designated for discharges to ground water may be processed as a revision, provided the applicant places a conservation restriction prepared in accordance with N.J.A.C. 7:15-1.7 protecting a minimum of 70 percent of the site from future development; the proposed clustered development is located to maximize continuity of the preserved area without encroachment on Natural Heritage Priority Sites or habitat patches identified as Rank 3, 4, or 5 on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife, and that existing agricultural uses allowed on the restricted portion of the site implement Best Management Practices by implementing the findings of a Conservation Management Plan or a Natural Resources Management Plan developed by the U.S.D.A. Natural Resources Conservation Service. Where individual subsurface sewage disposal systems are proposed, N.J.A.C. 7:15-3.5(b)4x(1) requires that the density standard necessary to achieve the 2.0 mg/L nitrate planning standard in N.J.A.C. 7:15-5.25(e) and (h)2 is met for the overall project site and the ground water quality criterion of 10 mg/L for nitrate is met at the edge of the developed portion of the clustered residential development. By allowing such clustered development to proceed under the simplified revision process, development that minimizes the deleterious effects of sprawl is encouraged without sacrificing water resources protection as envisioned in these proposed rule amendments.

The Department is proposing new N.J.A.C. 7:15-3.5(d) to specify the information that must be submitted to ensure the Department has sufficient information as part of a revision application to allow a determination with respect to conformance with N.J.A.C. 7:15-5.24 and 5.25. If the Department cannot determine whether a proposed change to a WQM plan qualifies for a revision based on information available to it, the Department will notify the applicant of any additional information it needs to determine if the modification qualifies as a revision. If the applicant provides the necessary information to demonstrate that the proposal qualifies as a revision, the Department will proceed to process the application as a revision. Otherwise, if the application qualifies to be processed as an amendment, the Department will consider the application under the amendment process, which will require the applicant to provide documentation that satisfies the requirements at N.J.A.C. 7:15-5.24 and 5.25. N.J.A.C. 7:15-3.5(d) also provides that if the project qualifies for a revision, the Department will solicit comment from affected agencies. This will enhance the Department's ability to make an informed decision regarding the proper disposition of a revision application. The Department is

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proposing to establish 21 days as the comment period for these agencies.

The Department is proposing to recodify N.J.A.C. 7:15-3.5(d) through (f) as N.J.A.C. 7:15-3.5(e) through (g).

N.J.A.C. 7:15-3.6 Coordination with Coastal Zone and Hackensack Meadowlands programs

The Department is proposing to amend N.J.A.C. 7:15-3.6(a) to update the name “Hackensack Meadowlands Development Commission” to its current name “New Jersey Meadowlands Commission.” The Department is also proposing to amend N.J.A.C. 7:15-3.6(a) to delete reference to N.J.A.C. 7:7E-1.5(a) to be consistent with changes made to the Coastal Zone Management rules.

The Department is proposing to amend N.J.A.C. 7:15-3.6(d)1 to change the cross-reference from N.J.A.C. 7:15-3.4(b)4 to (b)6 and to add a cross-reference to N.J.A.C. 7:15-3.4(b)5 to correspond with previous amendments adopted effective May 5, 1997 and February 2, 2004. These amendments add regional stormwater management plans and amendments to the Statewide WQM Plan as amendments that the New Jersey Meadowlands Commission will be asked to comment upon. The Department is also proposing to update the name “Hackensack Meadowlands Development Commission” to its current name “New Jersey Meadowlands Commission.”

The Department is proposing to amend N.J.A.C. 7:15-3.6(d)2 by adding N.J.A.C. 7:15-3.4(b)4, Lists of Water Quality Limited Segments and schedules for TMDL development, to the types of WQM plan amendments for which the need to meet the consultation requirement with the New Jersey Meadowlands Commission at N.J.S.A. 13:17-9(c) will be addressed through the proceedings governing those processes. The amendment procedures for listing Water Quality Limited Segments and TMDLs were previously added to these rules as Subchapters 6 and 7 on May 5, 1997. However, N.J.A.C. 7:15-3.6(d)2 was not amended at that time to cross-reference these procedures. Additionally, the Department is deleting the cross-reference to N.J.A.C. 7:15-3.4(j) because this subsection is no longer applicable to the New Jersey Meadowlands Commission.

N.J.A.C. 7:15-3.7 Coordination with Pinelands program

The Department is proposing to amend N.J.A.C. 7:15-3.7(b) to require that in addition to amendments, Pinelands Commission comments be sought for all WQM plan revisions for projects within the jurisdiction of the Pinelands Commission. Cross-references to the amendment procedures in N.J.A.C. 7:15-3.4(b)4 or (c) and 3.4(d)2 are deleted as they are incorrect and now unnecessary.

The Department is proposing to amend N.J.A.C. 7:15-3.7(c) by adding N.J.A.C. 7:15-3.4(b)4, Lists of Water Quality Limited Segments and schedules for TMDL development, to the

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types of WQM plan amendments that need comments from the Pinelands Commission. The amendment procedures for listing Water Quality Limited Segments and TMDLs were previously added to these rules as Subchapters 6 and 7 on May 5, 1997. However, the acknowledgement that Pinelands Commission comments would only be sought through these processes was inadvertently not added to N.J.A.C. 7:15-3.7(c) at that time. Additionally, the Department is deleting the cross-reference to N.J.A.C. 7:15-3.4(j) because this subsection is no longer applicable to the Pinelands Commission.

N.J.A.C. 7:15-3.8 Validity of site specific water quality management plan amendments and revisions

Existing N.J.A.C. 7:15-3.8 is headed “Validity of water quality management plan amendments.” There are various types of WQM plan amendments. Site specific plan amendments are one type; wastewater management plans are another type. The validity of previously adopted or submitted wastewater management plans is addressed at N.J.A.C. 7:15-5.2, so to clarify the content of this section, the Department proposes to add “site specific” to the section heading. In addition, the Department is proposing to amend the section heading to reflect the inclusion of revisions.

Existing N.J.A.C. 7:15-3.8(a) establishes a one-year time limit for procedural challenges to WQM plan amendments adopted under this chapter. This provision has been relocated to N.J.A.C. 7:15-3.9(i), which addresses appeals of Department decisions. The Department is proposing to amend this subsection to specify the validity of adopted and pending site specific WQM plan amendments “and revisions” as discussed above.

Existing N.J.A.C. 7:15-3.8(b) establishes a time limit of October 2, 1990 to commence procedural challenges to WQM plan amendments adopted prior to October 2, 1989. As these dates are long past, this provision is proposed to be deleted. Proposed new N.J.A.C. 7:15-3.8(b) would allow site specific plan amendments that have been reviewed sufficiently, such that the Department has filed notice of them for publication in the New Jersey Register or notice has already been published in the New Jersey Register, to continue to be processed under the requirements of this chapter in effect before the effective date of these amendments. These projects have made a good faith effort to become consistent with the areawide WQM plan and may have performed an analysis under EO 109 that indicates that the proposed project would not significantly affect water resources. If the proposed plan amendment is not adopted and is re-submitted as a new or modified amendment, it would be subject to the rules in effect at the time of re-submission.

Proposed N.J.A.C. 7:15-3.8(c) specifies that WQM plan revisions that have been submitted to the Department but not adopted prior to the effective date of these rules shall be subject to the requirements of the rules in effect after the effective date of these amended rules.

Proposed N.J.A.C. 7:15-3.8(d) would allow site specific amendments and revisions that were adopted prior to the effective date of these rules to remain valid for a period of six years

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from their adoption date or until the sewer service area or wastewater service area is revoked under N.J.A.C. 7:15-8.1, whichever is later.

Proposed N.J.A.C. 7:15-3.8(e) provides that site specific amendments and revisions adopted after the effective date of these amended rules will be valid for a period of six years. Limiting the validity period to six years in N.J.A.C. 7:15-3.8(e) is based on the fact that WMP updates are to be prepared and submitted to the Department every six years. Consequently, if a WMP agency adheres to the schedule for WMP update in the rule, these site specific amendments and revisions should be included within a full WMP or WMP update within a six year period.

N.J.A.C. 7:15-3.9 Appeals of Department Decisions

Presently, N.J.A.C. 7:15-3.9 makes no allowance for an appeal of a consistency determination when that determination is made independent of a Department permit action. The Department is proposing to amend N.J.A.C. 7:15-3.9(a) to allow an applicant to request an adjudicatory hearing to contest a Department decision regarding a consistency determination under N.J.A.C. 7:15-3.1 and 3.2. The proposed changes also include increasing from 20 days to 30 days the timeframe in which the request for an adjudicatory hearing must be submitted. This change brings the timeframe in line with other Department permitting regulations such as NJPDES permits for appeals of permits. In addition, the Department is proposing to update the mailing address of the Department's Office of Legal Affairs from CN 402 to P.O. Box 402 and add the street address for shipping deliveries. The Department is also proposing that a copy of the request be submitted to the Division of Watershed Management to ensure timely notification to the WQM program that a request has been made. This program notification is consistent with other rules requirements.

N.J.A.C. 7:15-3.9(b) is proposed for amendment consistent with (a) above, to increase from 20 days to 30 days the timeframe within which the request for an adjudicatory hearing must be received by the Department after an applicant receives written notification of the Department's decision.

The Department is proposing to amend N.J.A.C. 7:15-3.9(g) to clarify that, when a Department permit decision has been made and the applicant is challenging the permit decision, the appeal of a consistency determination must be made as part of any challenge to the permit decision and not through a separate adjudicatory hearing on the consistency determination decision.

At new N.J.A.C. 7:15-3.9(i), the Department is proposing that any appeal to contest any WQM plan amendment or revision on the ground of noncompliance with the procedural requirements of this chapter must begin within one year from the adoption date of the plan amendment or revision. This requirement was previously located at N.J.A.C. 7:15-3.8(a)

N.J.A.C. 7:15-3.10 Coordination with Highlands Council

UPDATED AS OF JUNE 4, 2007

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The Department is proposing a new rule at N.J.A.C. 7:15-3.10 concerning coordination of WQM planning with the Highlands Council. The rule would provide for the same coordination and review by the Highlands Council of WQM plans in the Highlands Region as provided the Pinelands Commission for WQM plans in the Pinelands Area and the Pinelands National Reserve.

Proposed N.J.A.C. 7:15-3.10(a) requires the Department to seek comments from the Highlands Council on any proposed WQM plan amendment or revision in the Highlands Region. The Department will seek these comments prior to making a decision pursuant to N.J.A.C. 7:15-3.4(g)2iii to proceed further with the amendment request by publishing a preliminary notice in the New Jersey Register or prior to making a decision regarding adopting a revision pursuant to N.J.A.C. 7:15-3.5(e). Applicants are also required to seek comments from the Highlands Council when developing their proposed plan amendments under N.J.A.C. 7:15-5.22(a)1.

Proposed N.J.A.C. 7:15-3.10(b) acknowledges that certain actions taken by the Department or USEPA related to the Statewide and areawide WQM plans have other processes and procedures in place. For these actions, such as rulemaking, the Highlands Council comments would be addressed through the appropriate proceeding or program.

Subchapter 4. Water Quality and Wastewater Management Policies and Procedures

N.J.A.C. 7:15-4 identifies projects and activities that are deemed consistent with the areawide Water Quality Management plans. This subchapter also identifies treatment works that are considered to be inconsistent with the areawide WQM plans and thus require amendments to areawide Water Quality Management plans to be eligible for Department permits or for financial assistance under the Clean Water Act or N.J.A.C. 7:22. Subchapter 4 allows construction of individual residential septic systems and certain other small domestic treatment works in depicted future sewer service areas if future connection to the treatment works identified in the WQM plan is guaranteed (individual wastewater management plans may impose additional requirements: see N.J.A.C. 7:15-5.19). The subchapter also limits financial assistance for domestic treatment works under the Clean Water Act or N.J.A.C. 7:22 to Wastewater Management Agencies identified in Water Quality Management plans.

N.J.A.C. 7:15-4.2 Projects and activities deemed to be consistent with WQM plans and this chapter

N.J.A.C. 7:15-4.2(a) identifies treatment works which are deemed consistent. Proposed N.J.A.C. 7:15-4.2(a)5 allows that improvements to conveyance systems necessary to comply with combined sewer overflows (CSOs) policy at N.J.A.C. 7:14A-11.12 be deemed consistent. The provision does not apply to wastewater facility expansions or upgrades.

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N.J.A.C. 7:15-4.2(b) is proposed to be amended to update the cross-reference of N.J.A.C. 7:14A-2.2 to N.J.A.C. 7:14A-6.14 to reflect the current codification for NJPDES Emergency Permits.

New N.J.A.C. 7:15-4.2(c) is proposed to deem consistent restricted access reclaimed water for beneficial reuse activities for sewer jetting, street cleaning, dust control and irrigation of restricted access locations at treatment works facilities. These activities have de minimus impacts on the environment and are adequately reviewed under the NJPDES program.

N.J.A.C. 7:15-4.3 Treatment works not identified in Water Quality Management Plans

Existing N.J.A.C. 7:15-4.3(a) identifies treatment works that are considered to be inconsistent with the areawide WQM plan and require an amendment. The Department is proposing to amend N.J.A.C. 7:15-4.3(a) by adding the revision process as a means by which an inconsistent treatment works may be addressed.

Existing N.J.A.C. 7:15-4.3(a)1 identifies treatment works that are deemed inconsistent if not identified in the existing areawide WQM plans and are not sewers or pumping stations. The Department is proposing to amend N.J.A.C. 7:15-4.3(a)1 to include significant indirect users (SIU), as defined in the NJPDES rules at N.J.A.C. 7:14A-1.2, as another category of projects, like sewers and pumping stations, which it does not deem inconsistent in this section. SIU treatments works do not directly discharge to the ground water or surface water but rather convey wastewater to other domestic or industrial treatment works. As such their flows and effluent impacts are addressed as part of the evaluation of the receiving treatment works in the planning process.

The Department is proposing to amend N.J.A.C. 7:15-4.3(a)1ii to replace “2,000 gallons per day or larger” with “greater than 2,000 gallons per day.” This change is for clarification and will make the rule consistent with the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, where permits are required for discharges greater than 2,000 gallons per day, and the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, which regulate discharges to ground water of 2,000 gallons per day or less.

N.J.A.C. 7:15-4.3(c)1 is proposed to be amended to update the cross-reference of N.J.A.C. 7:14A-12.4 to N.J.A.C. 7:14A-22.4 to reflect the current codification for activities where a treatment works approval is not required.

N.J.A.C. 7:15-4.3(c)3 is proposed to be amended to clarify that although industrial treatment works that do not handle process waste water or sanitary sewage are considered consistent, these dischargers must comply with any wasteload allocation established in an adopted TMDL. If such an industrial treatment works is not in compliance with the established wastewater allocation it will be considered inconsistent with the WQM plan.

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The Department is proposing to delete the existing language at N.J.A.C. 7:15-4.3(c)4. Existing N.J.A.C. 7:15-4.3(c)4 cross-references N.J.A.C. 7:15-5.18(c)6ii, which allows general wastewater service areas for planning flows of less than 20,000 gallons per day which discharge to ground water. The Department is proposing to delete N.J.A.C. 7:15-5.18(c)6ii rendering N.J.A.C. 7:15-4.3(c)4 unnecessary.

Additionally, N.J.A.C. 7:15-4.3(c)4ii applied to general ground water discharge service areas that were designated in WMPs adopted either prior to October 2, 1989 or that met the procedural or substantive WMP requirements of this chapter and were adopted in the early 1990s. Any WMPs adopted under these provisions should have been updated pursuant to N.J.A.C. 7:15-5.23. If the WMP was not updated, the general wastewater service area was at least updated to the general designation for wastewater service areas for planning flows of less than 20,000 gallons per day which discharge to ground water, through a Statewide amendment adopted on September 9, 1997. These areas will be withdrawn under proposed N.J.A.C. 7:15-8.1(a), rendering any DTW proposed in these general service areas for discharge to ground water inconsistent and any need for this designation language invalid.

At new N.J.A.C. 7:15-4.3(c)4 and 5, the Department is proposing to add permanent holding tanks that comply with N.J.A.C. 7:14A-22.13(c), discharges to ground water of non-contact cooling water and discharges to ground water of filter backwash from potable water treatment plants to be considered consistent because these types of activities, by their nature, have little or no consequence with respect to areawide WQM plan issues. For example, installing a permanent holding tank to correct a failed septic system problem, discharging non-contact cooling water, and filtered backwash water from potable water treatment plants should result in little or no harm to water resources. Therefore, these activities are deemed consistent and no further review will be required under these rules.

N.J.A.C. 7:15-4.4 Individual subsurface sewage disposal systems and other small domestic treatment works in sewer service areas

The Department is proposing to amend N.J.A.C. 7:15-4.4(a)1 to specify that individual subsurface sewage disposal systems for individual residences may be constructed where the cumulative amount of wastewater to be generated by the project or activity does not exceed 2,000 gallons per day or five residential dwelling units. This amendment will make this section consistent with proposed Subchapter 8. For areas covered by this provision, the Department is proposing that wastewater capacity for a project be determined on a cumulative, project-wide basis, so that any project that has a total wastewater design capacity of more than 2,000 gpd, whether proposing single or multiple wastewater discharges, will require the adoption of an amendment or revision to the areawide WQM plan before permits for that project can be issued by the Department.

The Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, provide standards for the proper location, design, construction, alteration and operation of septic systems on a site-by-site basis. However, these standards do not consider the cumulative effect

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of these discharges on ground water quality and they do not consider the affect of the development they serve on nonpoint source pollutant loading, water supply sustainability, and sensitive environmental resources. These concerns are intended to be addressed in the WQM plans and their component WMPs. Therefore, proposed N.J.A.C. 7:15-4.4(a)1 in conjunction with proposed N.J.A.C. 7:15-8 will assure that the impacts of multiple individual subsurface sewage disposal systems discharges on water resources and other environmental features will be appropriately considered. For further discussion, please see the summary for Subchapter 8.

The Department is proposing to amend N.J.A.C. 7:15-4.4(a)2 to replace “less than 2,000 gallons per day” with “2,000 gallons per day or less” for clarity and for consistency with the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, where permits are required for discharges greater than 2,000 gallons per day, and the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, which regulate discharges to ground water of 2,000 gallons per day or less.

The Department is proposing to amend N.J.A.C. 7:15-4.4(b) to clarify that individual subsurface sewage disposal systems identified in a wastewater management plan shall only be constructed where legally enforceable guarantees such as ordinances are provided “at the local government level” that the depicted future sewer service area will be used when conveyance facilities become available.

N.J.A.C. 7:15-4.4(c) is proposed to be amended to update the cross-reference of N.J.A.C. 7:14A-12.21 to N.J.A.C. 7:14A-22.17 to reflect the current codification for sewer connection bans.

N.J.A.C. 7:15-4.5 Eligibility for financial assistance

N.J.A.C. 7:15-4.5 is proposed to be repealed and held in reserve. Existing N.J.A.C. 7:15-4.5 specifies that financial assistance under the Clean Water Act or N.J.A.C. 7:22, for the planning, design, or construction of DTW shall only be awarded to wastewater management agencies identified in a Statewide or areawide WQM Plan. This section is no longer consistent with the current policy of the Environmental Infrastructure Trust (EIT) program which administers this financial assistance. The EIT program provides money for a variety of project types beyond DTW construction activities and to a variety of both public and private entities.

Subchapter 5. Wastewater Management Planning Requirements

N.J.A.C. 7:15-5 details the requirements for wastewater management plans and the designation of wastewater management planning agencies and their area of wastewater management planning responsibility. Wastewater management plans are planning documents that have regulatory force when adopted as amendments to areawide WQM plans. Wastewater management plans describe present and future wastewater management at a municipal or regional level. The Department is proposing to significantly amend this subchapter, as detailed below.

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N.J.A.C. 7:15-5.1 Wastewater management plan requirement for water quality management plan amendments and revisions

N.J.A.C. 7:15-5.1 identifies WQM plan amendments that require the preparation or amendment of a wastewater management plan as a prerequisite before that amendment can be adopted. Currently, N.J.A.C. 7:15-5.1(a) identifies the conditions when the Department would require an amendment, N.J.A.C. 7:15-5.1(b) establishes the amendment thresholds that would trigger the need for a WMP or WMP update, and N.J.A.C. 7:15-5.1(c) identifies exceptions to the requirements in N.J.A.C. 7:15-5.1(a) and (b). N.J.A.C. 7:15-5.1(d) and (e) condition the Department's processing of an amendment that would require an up to date WMP.

The Department is proposing to restructure and amend N.J.A.C. 7:15-5.1 through repeal and new rule, to specify that, with limited exception, the Department will only consider applications for amendments and revisions to wastewater management plans when the applicable wastewater management plan is up to date, and will only adopt amendments and revisions that conform with the requirements of the chapter. This change is consistent with, and furthers, the Department's goal to assure that wastewater management decisions are based upon up to date wastewater management plans. By limiting the circumstances where the Department will process amendments, the Department hopes to create a strong incentive for keeping plans up to date.

The Department is proposing to identify, at proposed N.J.A.C. 7:15-5.1(a), the limited situations in which the Department will allow amendments and revisions when the WMP is not up to date. Previously, the Department did not require that a WMP be updated or up to date before it processed a revision. Under this proposal, the Department will continue to process certain revisions. Thus, N.J.A.C. 7:15-5.1(a) provides that the Department will process revisions under N.J.A.C. 7:15-3.5(b)1 through 3, 4i, 4iii and iv, or 4vi through x. These projects are generally small in scope with no anticipated detrimental environmental impacts, or are activities that are believed to have environmental benefits that should be encouraged. As provided at N.J.A.C. 7:15-5.1(a)2, the Department will also allow amendments for State or Federal projects or activities or those projects that are regulated under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. when the WMP is not up to date. Projects proposed by State or Federal authorities or those regulated under the Solid Waste Management Act are currently exempt from triggering a WMP or WMP update at N.J.A.C. 7:15-5.1(c) and the Department has determined that it should continue to allow these project types by amendment where the WMP is not up to date. Projects proposed under the auspices of State and Federal authorities, such as State run correctional facilities or the Fort Dix/McGuire Air Force base, are for the overall public benefit and should not be delayed if the WMP entity has not provided and maintained an up to date WMP. The Department did not carry over the third exemption at N.J.A.C. 7:15-5.1(c), an exemption for expedited amendments at N.J.A.C. 7:15-3.4(h), as the Department has deleted that subsection. Many projects that would have qualified for an expedited amendment are now considered revisions.

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The Department is proposing at N.J.A.C. 7:15-5.1(b) to require that amendments and revisions shall only be adopted where they are in compliance with the provisions of this chapter. This provision is presently included in N.J.A.C. 7:15-5.1(a).

N.J.A.C. 7:15-5.2 Validity of previously adopted or submitted wastewater management plans

N.J.A.C. 7:15-5.2, which defines the validity of wastewater management plans adopted between June 1, 1985 and October 2, 1989, is proposed to be repealed as it is out of date. Proposed N.J.A.C. 7:15-5.2 provides a framework establishing a transition period until all WMPs are up to date with the schedule at N.J.A.C. 7:15-5.23. It provides appropriate grace periods for achieving compliance with the requirement for an up to date WMP. The proposed new section avoids unnecessary disruption by providing a limited period for submission of an updated WMP or an entirely new WMP to replace the existing WMP before the withdrawal of wastewater service area as proposed at N.J.A.C. 7:15-8.1 occurs.

N.J.A.C. 7:15-5.2(a) provides that, where a WMP is current in accordance with the schedule at N.J.A.C. 7:15-5.23, the wastewater service area designations in the WMP shall remain in effect for either six years from the date the plan was adopted, or one year from the effective date of the proposed rule, whichever is later. WMPs that have been recently adopted will have been subject to a detailed environmental review under the provisions of EO 109. Therefore, the Department has determined that reliance on wastewater service area designations in WMPs that were recently adopted for the full six years anticipated in the schedule is appropriate. Where the timeframe for update of a WMP will occur at the time of this readoption, the one year extension will provide the WMP agencies with sufficient time to prepare an update in conformance with the provisions of the proposed rule amendments.

At N.J.A.C. 7:15-5.2(b), the Department is proposing that WMPs filed as of the effective date of the proposed rule may continue to be processed under the provisions of the current rule, provided the Department does not find, as a result of its review of the submission, that it should be disapproved or returned because it fails to comply with EO 109 and/or the existing rules. This will allow applicants that have proceeded in good faith to update their WMP to rely on the current requirements. If the Department determines that a WMP filed as of the effective date of the proposed rules complies with the current rules and EO 109, it can adopt the amendment. If adopted, the wastewater service area designations in the amendment shall remain in effect for a period of six years. The WMP agency will be required to conform the WMP to the provisions of the proposed rules, including the standards at N.J.A.C. 7:15-5.24, 5.25 and 5.26, when it is updates the WMP pursuant to N.J.A.C. 7:15-5.23.

The Department is proposing new N.J.A.C. 7:15-5.2(c) to establish that, where a WMP is not up to date as of the effective date of the proposed rule, the wastewater service area designations in the WMP or the sewer service area provisions of an areawide Water Quality Management plan, where no WMP exists, shall remain in effect for a period of nine months. At proposed N.J.A.C. 7:15-5.2(d), the Department further provides that, if there is a timely

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submission, the wastewater service area designations in the WMP or the sewer service area provisions of an areawide Water Quality Management plan where no WMP exists, will continue to remain in effect until the Department either adopts the WMP or disapproves or returns the WMP. The Department believes this nine-month period provides sufficient time for an applicant to prepare a WMP that conforms with the proposed new rule provisions, without unduly prolonging the period of time during which an out of date WMP must be relied upon for decision making. By way of illustration, the Department prepared portions of a hypothetical WMP for Howell Township in Monmouth County. Using the digital composite zoning available for that county, and the GIS coverages generally available, the Department delineated the maximum extent of sewer service area in accordance with proposed N.J.A.C. 7:15-5.24, and completed several of the analyses at N.J.A.C. 7:15-5.25 including the environmental build-out analysis, comparison with wastewater treatment capacity, and septic density calculation, in less than two weeks. The Department recognizes that coordinating with and compiling information from municipalities and entities responsible for sewage treatment will require time, but based upon the Department's experience, the Department believes that nine months will provide an adequate timeframe to allow counties to collate zoning information, if such information is not already available, and other information required under these rules.

The Department is proposing new N.J.A.C. 7:15-5.2(e) to specify that failure of the WMP agency to make a timely submission of a WMP or WMP update will result in withdrawal of wastewater service area as described in proposed N.J.A.C. 7:15-8.1. The Department believes that this measure will provide the necessary incentive for timely water quality management planning, as discussed in the summary at N.J.A.C. 7:15-8.1.

New N.J.A.C. 7:15-5.2(f) specifies that the general wastewater service area designations for wastewater facilities with planning flows less than 20,000 gallons per day which discharge to ground water may not be established or reestablished as part of a new or updated WMP. Removing this general wastewater service area designation is consistent with this rule proposal which requires the need for each domestic or industrial treatment works to be identified and accounted for through the environmental build-out and impacts analysis at proposed N.J.A.C. 7:15-5.25, making a general wastewater service area that does not contain this specific information inadequate. However, WMPs that are current in accordance with N.J.A.C. 7:15-5.23 with a general wastewater service area designation for wastewater planning flows of less than 20,000 gallons per day which discharge to ground water that are not proposed for withdrawal under proposed N.J.A.C. 7:15-8.1, may continue to contain this wastewater service area designation until the next WMP update is required under N.J.A.C. 7:15-5.23. It is the Department's intent to allow domestic or industrial treatment works that discharge less than 20,000 gallons per day to ground water in these areas to remain a valid wastewater discharge option, or an activity that would not receive an inconsistent determination, until such time as the wastewater service areas are withdrawn due to a lack of an updated WMP prepared pursuant to the schedule in N.J.A.C. 7:15-5.23, or an updated WMP is prepared.

N.J.A.C. 7:15-5.3 Wastewater management planning agencies, wastewater management plan areas and wastewater management plan responsibility: general statement

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N.J.A.C. 7:15-5.3 provides basic information regarding wastewater management planning agencies, their areas and responsibilities. The Department is proposing to amend N.J.A.C. 7:15-5.3(a) to delete the phrase “or other person” from the description of those who may act as a wastewater management planning agency. Wastewater management planning agencies are proposed under these rule amendments to be either counties or municipalities, which are both governmental agencies (refer to the summary for N.J.A.C. 7:15-5.4 for further explanation of the change in wastewater management planning responsibility).

At N.J.A.C. 7:15-5.3(b), the Department is proposing to delete references to N.J.A.C. 7:15-5.5 and 5.7 as they identify options for WMP agencies (Passaic Valley Sewerage Commissioners and Joint Meetings, respectively) that are proposed to be repealed (see the summary of proposed amendments to N.J.A.C. 7:15-5.5 and 5.7). Because the Department is proposing, at N.J.A.C. 7:15-5.6 and 5.8, that entities other than the WMP agency must provide to the WMP agency information necessary for preparation of the WMP, the Department is proposing to amend N.J.A.C. 7:15-5.3(b) to identify that these entities have the responsibility to prepare and submit information, as established in N.J.A.C. 7:15-5.6 and 5.8, to the WMP agency. These entities include sewage authorities, who will be required to provide wastewater infrastructure information to WMP agencies, and municipalities, who will be required to provide local land use information and, as appropriate, ordinances that must be adopted to demonstrate compliance with the standards at proposed N.J.A.C. 7:15-5.25. The Department is also proposing to add to the definition of “wastewater management plan responsibility,” at N.J.A.C. 7:15-5.3(b)3, the responsibility to provide comments on proposed revisions to wastewater management plans. This proposed additional WMP agency responsibility will ensure that revisions will be subject to comment from WMP agencies, as is currently the case for amendments pursuant to N.J.A.C. 7:15-5.3(b)2. Because revisions include a minimal upfront public comment process, it is important that the wastewater management planning agency provide comments on the implications of a revision so that the Department can make an informed decision in consideration of local concerns regarding a proposed revision.

The Department is proposing to amend N.J.A.C. 7:15-5.3(d) to be consistent with other changes in this subchapter regarding wastewater management planning authority by deleting references to sections of the current rule that identify entities other than counties or municipalities as wastewater management planning agencies. This amendment clarifies that the designation of counties as WMP agencies in this rule, except as allowed through alternative assignments stipulated at proposed amended N.J.A.C. 7:15-5.13, supersedes any conflicting statements regarding WMP authority in WMPs that were adopted prior to the effective date of these proposed rules.

The Department is proposing to amend N.J.A.C. 7:15-5.3(f), which grandfathers plans adopted prior to the effective date of the current rule, to reference all of N.J.A.C. 7:15-5.2. Wastewater management plans, to the extent they have not been updated since October 2, 1989, will remain in effect only in accordance with the provisions of proposed amendments to N.J.A.C. 7:15-5.2(a) through (d).

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The Department is proposing at new N.J.A.C. 7:15-5.3(g) to allow that a WMP may be submitted for a portion of the WMP area as long as that portion addresses an entire municipality or municipalities. This provision allows a county to submit a WMP covering a subset of the municipalities in the county in the event one or more of the municipalities is not forthcoming with the information necessary to submit satisfactory documentation and analyses for that municipality. In this way, municipalities that fulfill their obligations will not be penalized, through the withdrawal of wastewater service area under N.J.A.C. 7:15-8.1, for the failure of one or more than one municipality to provide needed information for effective planning.

N.J.A.C. 7:15-5.4 Responsibility of county boards of chosen freeholders

Existing N.J.A.C. 7:15-5.4 through 5.8 establish the hierarchy of WMP authority designation. In the current hierarchy, preference begins with the designated planning agency, the entity responsible under the Water Quality Planning Act for the water quality management planning area. N.J.A.C. 7:15-5.4 provides that designated planning agencies may request wastewater management plan responsibility for their planning areas. Where such responsibility is not requested, N.J.A.C. 7:15-5.5 through 5.8 assign wastewater management plan responsibility to governmental units in this order: Passaic Valley Sewerage Commissioners (PVSC), for its statutory district; sewerage and municipal authorities, for their statutory districts; joint meetings, for service areas in member municipalities; and municipalities, within their boundaries. Municipalities and municipal authorities that do not perform sewerage-related functions, because they are wholly within the jurisdiction of another agency with wastewater management plan responsibility, are exempt. Further, N.J.A.C. 7:15-5.6 assigns wastewater management plan responsibility for locations within two or more authority districts to assure that overlapping responsibility does not exist, (giving priority to county utilities authorities and regional sewerage authorities). As a result of this hierarchy, the Department works with 161 entities in developing WMPs.

Under the present rules, some of the entities such as the Passaic Valley Sewerage Commissioners, joint meetings, sewerage authorities and municipal utilities authorities bear responsibility for the preparation of WMPs. These entities are adept at the construction, operation and maintenance of wastewater collection, conveyance and treatment systems, and their mission is to provide sewerage treatment to those areas that the municipality or municipalities they serve identify as sewer service areas. However, these entities lack the land use planning and zoning authority required to ensure that the future wastewater generated within a sewer service area does not exceed the reasonable capacity of the sewage treatment plants they operate. Recognizing that only a finite amount of pollutants can be discharged into any surface or ground water without impairing water quality (also referred to as assimilative capacity), there is a limit to the area that can be served by any treatment plant. These entities also have little to no input or authority over areas to be served by septic systems. Consequently, land use planning and zoning consideration and oversight are essential to the preparation of a WMP. Based solely on land use planning authority, municipalities would emerge as the best candidates to prepare WMPs. However, expanding the number of WMP agencies from the current 161 to 566 would

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not allow the Department to cultivate a close working relationship with the WMP agencies. Further, at this scale, a regional perspective for addressing environmental issues of a regional scale would be lost.

To achieve greater efficiency, consistency and a regional perspective, the Department is proposing to change this approach. The Department is proposing to amend N.J.A.C. 7:15-5.4 to designate each county board of chosen freeholders as the primary wastewater management planning agency, except as provided at proposed N.J.A.C. 7:15-13, which describes the circumstances under which an alternative assignment can be made (refer to the summary of N.J.A.C. 7:15-5.13 for further explanation). This approach is expected to achieve positive results with respect to the efficiency and effectiveness of the planning efforts and administrative processing because, with fewer WMP agencies, it will be possible for the Department to work more closely with the planning entity and assist in the development of a satisfactory plan. In addition, counties are already responsible for developing or reviewing components of a WMP, such as county master plans, and are well positioned to integrate all the information necessary to update a WMP. Further, the counties will be able to provide a regional perspective to the plan elements.

The Water Quality Planning Act envisioned that counties would be the most suitable entity to perform water quality management planning because they could provide for a regional assessment of water resource impacts (N.J.S.A. 58:11A-4). Further, most counties already possess the Geographic Information System expertise necessary to conduct a build-out analysis as envisioned in this rule. Counties also possess general land use planning authority under the County Planning Act (N.J.S.A. 40:27-2). Counties provide a unique opportunity to accomplish this task due to their close working relationship with municipalities. Putting this responsibility with 21 counties rather than 566 municipalities will allow the Department to devote more resources and time to each WMP agency assuring that any questions/issues that arise can be responded to quickly and efficiently. The counties' lack of direct zoning authority is overcome by enabling the independent adoption of municipal chapters in a countywide WMP (See N.J.A.C. 7:15-5.13). Therefore, at N.J.A.C. 7:15-5.4 these rules reassign WMP responsibility to counties. It should be noted that several counties, including Sussex, Somerset, Monmouth, Ocean, Atlantic, Cape May and Cumberland, currently are already designated as the WMP entity for their jurisdiction.

To further facilitate the completion of wastewater management plans, the Department has in the past and will continue to make grant funds available to counties to accomplish water quality management planning. Under the 604(b) Water Quality Planning Pass-Through Grant Program for Federal Fiscal Year 2004/State Fiscal Year 2005, the Middlesex County Planning Department received \$88,600 to comprehensively review and revise the Middlesex County Wastewater Management Plan and the Sussex County Department of Engineering and Planning received \$24,565 to amend the Sussex County Wastewater Management Plan. Jefferson Township received grant funds to begin development of an onsite wastewater treatment management plan and North Bergen received funds for an infiltration and inflow study for a total of \$218,000 in grant funding in Federal Fiscal Year 2004/State Fiscal Year 2005. Additionally,

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in Federal Fiscal Year 2005/State Fiscal Year 2006, Bass River Township in Burlington County received \$10,000 to prepare a WMP, while West Milford Township and Jefferson Township received grant funds to develop onsite wastewater treatment management plan for a total of \$178,000 in grant funding in Federal Fiscal Year 2005/State Fiscal Year 2006. The Department will continue to make these 604(b) Water Quality Planning Pass-Through Grant funds available to counties to prepare their wastewater management plans. Additionally, the Department will make \$1,000,000 available as grants-in-aid from the Corporate Business Tax –Watershed funds to assist counties in carrying out their new wastewater management planning responsibility. When these funds are combined with the 604(b) funds, each county is expected to receive a total of \$57,000 to aid in WMP preparation.

N.J.A.C. 7:15-5.5 Responsibility of Passaic Valley Sewerage Commissioners

N.J.A.C. 7:15-5.7 Responsibility of joint meetings

The Department is proposing to repeal N.J.A.C. 7:15-5.5, which pertains to assignment of WMP responsibility to the Passaic Valley Sewerage Commissioners (PVSC), and N.J.A.C. 7:15-5.7, which pertains to assignment of WMP responsibilities to joint meetings, because these entities are no longer assigned primary WMP responsibilities under N.J.A.C. 7:15-5.4 as described above.

N.J.A.C. 7:15-5.6 Responsibility of sewerage authorities and municipal authorities

N.J.A.C. 7:15-5.6, which addresses the responsibility of sewage authorities and municipal authorities, is retained but the Department is proposing to amend it to reflect the new role for these entities as providers of information to the WMP agencies, rather than being the WMP agencies themselves. Specifically, N.J.A.C. 7:15-5.6(a) assigns to PVSC, joint meetings, sewage authorities and municipal authorities that provide sewage service the responsibility to provide information to the WMP agencies, upon request by the WMP agency. The information specified to be provided is needed to prepare a complete WMP and to carry out the analyses and make the demonstrations required in N.J.A.C. 7:15-5.25. For example, sewage authorities and municipal authorities will be required to provide information to the WMP agency about the treatment facilities they are responsible for, such as the permitted capacity, capacity committed to as yet unconnected users, and the legal or financial commitment of allocation of remaining capacity among the municipalities that constitute the sewer service area. This information is essential to the proper management and operation of treatment facilities and, as such, should be readily available to the responsible entity. Other information, such as the stream study required when a new or expanded treatment facility is proposed under N.J.A.C. 7:15-5.25(d)3, are most appropriately carried out by the entity responsible for the treatment facility.

The Department is proposing to delete language regarding the former hierarchy of WMP agencies and overlapping areas of responsibility at N.J.A.C. 7:15-5.6(b), (d), (e) and (g) because it is no longer applicable under the proposed framework of WMP responsibility to counties. Recognizing that wastewater treatment authorities may have service areas that go beyond a single municipality or county, the Department is proposing to add new language at N.J.A.C.

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7:15-5.6(e) to provide that, where multiple wastewater treatment authorities exist in a WMP area, or where the district of a wastewater treatment authority lies within more than one WMP area, the information specified in N.J.A.C. 7:15-5.6(a) must be provided by all wastewater treatment authorities in the WMP areas to each WMP agency.

N.J.A.C. 7:15-5.8 Responsibility of municipalities

The Department is proposing to delete and replace N.J.A.C. 7:15-5.8(a) to stipulate the information that municipalities must provide, upon request, to the WMP agency. Under N.J.A.C. 7:15-5.8(a)1, a municipality may be required to provide copies of adopted ordinances related to water conservation (N.J.A.C. 7:15-5.25(f)3iii), stormwater management (N.J.A.C. 7:15-5.25(g)1), riparian zone protection (N.J.A.C. 7:15-5.25(g)3), steep slope protection (N.J.A.C. 7:15-5.25(g)6), or at N.J.A.C. 7:15-5.8(a)3, a septic management plan in order to demonstrate compliance with N.J.A.C. 7:15-5.25(e)3. Additional information required at proposed N.J.A.C. 7:15-5.8(a)2, includes a map of public water supply service areas within the municipality while N.J.A.C. 7:15-5.8(a)4 and 5, may include zoning maps and associated ordinances or population and employment projections. Urbanized municipalities, or those that appear as 90 percent urban according to the Department's GIS system Land Use/Land Cover codes based on Level I of the Anderson Classification System, are required to submit population and employment projections as further described at N.J.A.C. 7:15-5.25(c), while all other municipalities that are not "urbanized municipalities" are required to provide a zoning map and associated ordinances which is also further explained at N.J.A.C. 7:15-5.25(c). These non-urbanized municipalities may need to change their zoning and associated ordinances as a result of the analyses in N.J.A.C. 7:15-5.25(a)-(c), therefore any modifications to these documents would also be required to be submitted to the WMP agency. Development or knowledge of this information is part of the existing responsibilities for municipal government and, as such, this information can readily be provided to the WMP agency. Other ordinances or similar instruments may be required to be provided as part of an adopted TMDL or watershed restoration plan. Because of municipal authority and responsibility related to land use, municipalities are the appropriate entity to provide these documents.

N.J.A.C. 7:15-5.8(b) through (d) are proposed to be deleted because the concept of having "sewage-related functions" was only relevant under the assignment hierarchy under the current rule to identify municipalities that were responsible for wastewater functions. Under this provision, the Department found that all municipalities performed "sewerage-related functions" and thus were responsible for wastewater management planning, if no other entity was higher in the WMP responsibility hierarchy. In the context of the new paradigm of wastewater management plan responsibility, it is not applicable or necessary to reestablish that all municipalities perform "sewerage-related functions" under this proposal.

N.J.A.C. 7:15-5.8(e) is proposed for deletion because the concept that no municipality has wastewater management plan responsibility in any WMP area for which another governmental unit has wastewater management plan responsibility is now addressed in N.J.A.C. 7:15-5.13.

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N.J.A.C. 7:15-5.9 Alternative assignment of wastewater management plan responsibility: general statement

N.J.A.C. 7:15-5.10 Wastewater management plan responsibility as condition for financial assistance

N.J.A.C. 7:15-5.11 Wastewater management plan responsibility for complete wastewater service area

N.J.A.C. 7:15-5.12 Joint wastewater management plan responsibility

The Department is proposing to repeal N.J.A.C. 7:15-5.9 through 5.12 as these sections are no longer necessary under the proposal for wastewater management plan responsibility. Assignment of alternative wastewater management responsibility is set forth in new N.J.A.C. 7:15-5.13.

N.J.A.C. 7:15-5.13 Alternative assignment of wastewater management plan responsibility

N.J.A.C. 7:15-5.13 currently addresses the process for voluntary reassignment of wastewater management planning responsibility. The Department is proposing to limit the assignment of wastewater management planning responsibility to municipalities, and as a result, is proposing to significantly amend this section, through repeal and a new rule.

The Department is proposing new N.J.A.C. 7:15-5.13(a) to stipulate that alternative assignment of wastewater management planning responsibility must be adopted as a revision under N.J.A.C. 7:15-3.5. The Department is proposing new N.J.A.C. 7:15-5.13(b) to provide that a municipality may request wastewater management planning responsibility in the event the county in which it is located fails to submit or stipulates it does not intend to submit a WMP or WMP update according to the schedule at N.J.A.C. 7:15-5.23. In the request, the municipality must certify that it has provided the information required at N.J.A.C. 7:15-5.8, for example, by submitting a letter from the municipal clerk explaining what was done and when, to ensure that the reason for a county's failure to submit is not due to the municipality's failure to provide the required information. This provision provides a necessary alternative for wastewater management planning in the event a county does not make a timely submission of a WMP or WMP update. The Department will consult with the applicable county to determine if the county intends to make a timely submission before making a determination on the request for assignment of WMP responsibility. If the county indicates it intends to submit a WMP, the Department will not approve the request for alternative assignment. Municipalities are the logical alternative for assignment of WMP responsibility because they are the source of much of the information needed for WMP development and they have the authority to implement measures, including ordinances and septic management plans, needed to make the demonstrations required at N.J.A.C. 7:15-5.25.

The Department is proposing new N.J.A.C. 7:15-5.13(c) to provide that a municipality that assumes wastewater management plan responsibility under this section will have 90 days from the date of adoption of the revision to submit the WMP. This will allow a municipality,

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acting in good faith and making a timely submission, to retain wastewater service areas until the proposed WMP is adopted or is disapproved or returned. The Department believes the 90 day period for submission is sufficient because the municipality should have already prepared the information it would submit to a county for WMP preparation and a municipality represents a smaller area in which to conduct the required analyses.

N.J.A.C. 7:15-5.14 Wastewater management plan partition by municipality

Existing N.J.A.C. 7:15-5.14, District boundaries and related information; joint meeting membership, is proposed for repeal because this section describes information that is required to be submitted for the initial round of developing wastewater management plans, which is now obsolete.

Proposed N.J.A.C. 7:15-5.14(a) identifies each municipality as a separate chapter in the county wastewater management plan and provides that each chapter must address the entire municipality in order to be adopted as a chapter in the county-wide wastewater management plan. This requirement prevents partial compliance with the rule. For example, even if the municipality has adopted ordinances required in a sewer service area to maintain that sewer service area designation, if it has failed to address development outside of the sewer service area and its impact on ground water quality, nonpoint source pollution and water supplies, the municipal chapter cannot be adopted in a WMP.

Successful adoption of a wastewater management plan may require municipalities to adopt steep slope, riparian zone, and stormwater management ordinances, and may require an adjustment of zoning ordinances to achieve the nitrate dilution standard or to ensure that future sewage generated in a sewer service area does not exceed the capacity of the assigned wastewater treatment facility. County boards of chosen freeholders do not have the authority to enact the required ordinances. To ensure that even if one municipality fails to adopt the required ordinances, the rest of the wastewater management plan can be adopted, the Department is proposing N.J.A.C. 7:15-5.14(b). This subsection clarifies that each municipality is considered independently through its chapter in the WMP and allows each municipal chapter to be adopted, returned or disapproved accordingly, regardless of the progress of the county-wide WMP. This proposed amendment is not intended to prevent counties from planning on a regional basis and filing a WMP to cover the entire county. It is intended to provide an alternative to penalizing municipalities that are participating in the process where county-wide compliance is not possible because of a recalcitrant municipality. It also allows for the circumstance where a municipality becomes the WMP agency under proposed N.J.A.C. 7:15-5.13 due to inactivity of a county wastewater management planning agency.

N.J.A.C. 7:15-5.14(c) makes clear that where a specific municipal chapter in the wastewater management plan has not been submitted and adopted as required by the schedule at N.J.A.C. 7:15-5.23, the withdrawal of wastewater service area designations under N.J.A.C. 7:15-8.1 shall only apply to those municipalities whose chapters are missing.

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N.J.A.C. 7:15-5.15 Contents of wastewater management plans; general statement

N.J.A.C. 7:15-5.15 describes the contents of a WMP in general fashion. The Department is proposing to amend N.J.A.C. 7:15-5.15(a) to require submission in electronic form in addition to paper form. Most of the analyses for WMPs are expected to be done using digital technology, therefore, electronic submissions are appropriate. However, there remains a need to maintain a hardcopy of the documentation to allow access to the WMP to those without electronic technology. Thus, the Department will continue to require written descriptions. In addition, the Department is proposing to require maps of public water supply service areas, data required to conduct environmental analyses and assessments described in proposed N.J.A.C. 7:15-5.24 and 5.25 and information requirements at N.J.A.C. 7:15-8.

The Department is proposing to amend N.J.A.C. 7:15-5.15(b) to specify that information on all treatment works and individual subsurface sewage disposal systems will be required in a WMP in order to complete analyses and assessments described in proposed N.J.A.C. 7:15-5.25 and requirements at N.J.A.C. 7:15-8.

N.J.A.C. 7:15-5.16 Existing jurisdictions, wastewater service areas, and treatment works

N.J.A.C. 7:15-5.16 sets forth information required relative to wastewater service areas. The Department is not proposing substantial amendments to this section. Specific amendments include changes proposed to N.J.A.C. 7:15-5.16(a)2, where the Department is proposing to delete the reference to the 20-year sewer service area because the delineation of sewer service area is no longer tied to a time frame, as further described in N.J.A.C. 7:15-5.24 and 5.25. At N.J.A.C. 7:15-5.16(a)2i, water service areas of public utilities are added as areas that must be delineated within a WMP. At N.J.A.C. 7:15-5.16(a)2ii, the Highlands preservation area and Highlands planning area are added as areas that must be delineated within the WMP area. The Department is proposing to amend N.J.A.C. 7:15-5.16(a)3ii to include within this provision facilities with a design capacity of greater than 2,000 gallons per day, instead of the current 2,000 gallons per day or larger, consistent with other changes in this proposal. At N.J.A.C. 7:15-5.16(a)8ii, the threshold for identification of service areas is reduced from 20,000 gpd to 2,000 gpd to reflect that the Department is proposing to eliminate the general service area concept described at N.J.A.C. 7:15-5.2(f). The Department is proposing to delete N.J.A.C. 7:15-5.16(a)9 because it was also relevant to the general service areas of up to 20,000 gpd. N.J.A.C. 7:15-5.16(f) is proposed to be amended to clarify that certain terms should not be construed to indicate a sewer service area is existing or present if it is not already permitted. There are also minor changes and recodifications to provide clarity throughout the section.

N.J.A.C. 7:15-5.17 Mapping features requirements

N.J.A.C. 7:15-5.17 currently identifies environmental features that are to be mapped in a WMP. The section heading is proposed to be amended to reflect that some of the features that need to be mapped are not limited to those that are generally thought of as environmental. In general, the Department is proposing amendments to N.J.A.C. 7:15-5.17(a)8 through 14 to

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include features that it requires to be included in a WMP. These include items such as information from the Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife, Natural Heritage Priority Sites, riparian zones, steep slopes, current composite zoning, and undeveloped and underdeveloped areas, all of which are defined at N.J.A.C. 7:15-1.5. Additional features required to be included in a WMP are municipal parcel mapping, if it is available, existing water service areas as defined at N.J.A.C. 7:10-11.5(c)6 as the geographical area within which a water system operates for the provision of water, and all areas where sanitary or combined sewer collection and conveyance systems exist.

At N.J.A.C. 7:15-5.17(a)2 the Department is proposing to delete the option of using the National Wetlands Inventory maps if Department wetlands maps are not available. The Department wetlands and estuarine wetlands map are now available for the entire State. Therefore, this alternative is no longer necessary.

The Department is amending N.J.A.C. 7:15-5.17(a)7 to replace, as a required feature, the surface waters as mapped on the USGS quadrangle maps with the surface waters mapped on the Department's GIS hydrography coverage. This feature is needed to identify the location of riparian zones, which are required to be excluded when delineating the sewer service at N.J.A.C. 7:15-5.24 (riparian zones that are Special Water Resource Protection Areas as specified at N.J.A.C. 7:8-5.5), and calculating the potential to generate additional wastewater under the environmental build-out analysis at N.J.A.C. 7:15-5.25(c) (all riparian zones as defined at N.J.A.C. 7:15-1.5). Using this source as the basis for identifying surface waters is different than the basis for identifying surface waters used to determine where a Special Water Resource Protection Area (SWRPA) exists under the Stormwater Management rules at N.J.A.C. 7:8-5. Those rules specify use of USGS quadrangle maps and the SCD soil survey maps. The use of the GIS coverage will provide a sufficient level of detail for planning purposes in the delineation of sewer service area and the environmental build-out calculations and allows these analyses to be conducted in a cost effective and efficient manner. Where the accurate location of the SWRPA is needed, such as for site specific amendments at N.J.A.C. 7:15-5.25(h), identifying SWRPAs must be in accordance with the Stormwater Management rules at N.J.A.C. 7:8.

N.J.A.C. 7:15-5.18 Future wastewater jurisdictions, wastewater service areas, and domestic treatment works

N.J.A.C. 7:15-5.18 requires each wastewater management plan to include a build-out analysis based on current municipal land use and zoning ordinances and identify appropriate wastewater management alternatives to support existing and proposed development.

N.J.A.C. 7:15-5.18(a) requires that wastewater management plans address the anticipated wastewater management needs over a 20-year period. The Department is proposing to require the wastewater management plans to address the wastewater needs over a 20-year period for urbanized municipalities or at build-out for all other municipalities. Due to the length of time involved in wastewater facility planning, it is important to identify and begin realistic planning as soon as possible; therefore, the Department has determined it is appropriate to key anticipated

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needs to build-out, or 20 years. The 20-year period for urbanized municipalities is appropriate as these municipalities are nearly built-out currently and most of the future development will be infill and redevelopment. This infill and redevelopment will generally have a de minimus impact on the existing wastewater facilities serving these areas. For non-urbanized areas, build-out may be achieved in more or less than 20 years, based on the current rate of growth, and generally involves development of currently undeveloped and underdeveloped areas. For these areas, assessing the wastewater and water supply needs at build-out is essential to ensure that planned future development is consistent with protection of water quality.

The Department is proposing to amend N.J.A.C. 7:15-5.18(a)1 to delete the stated preference for meeting wastewater management needs with existing and new comprehensive regional DTWs. A regional DTW is not necessarily a preferred alternative due the increased environmental impacts associated with regional DTW, such as loss of stream base flow due to conveyance of wastewater out of basin and increased support for sprawl development. However, regional management of DTW remains a preferred option because this is an efficient and effective means to ensure proper operation and maintenance of DTWs.

The Department is proposing to amend N.J.A.C. 7:15-5.18(a)2 to require the analysis of alternatives, in accordance with N.J.A.C. 7:15-5.25(c) and (d), for all new or proposed expansions of a wastewater treatment facility or sewer service area. Currently, the analysis of alternatives is discretionary.

N.J.A.C. 7:15-5.18(b) identifies land use and zoning considerations that must be considered in determining if there will be adequate wastewater services in the future. The Department proposes to amend this paragraph to except urbanized municipalities from the requirements related to zoning because the analyses based on zoning are not relevant in urbanized municipalities, as discussed in N.J.A.C. 7:15-5.25(c) through (g). Based on the Department's experience in implementing these rules, and proposed amendments to this rule, the Department is deleting some of these items and amending others. The Department is proposing to delete N.J.A.C. 7:15-5.18(b)2. This paragraph requires that wastewater service areas and wastewater treatment facilities provide adequate wastewater service for land uses allowed in municipal or county master plans. However, planning identified in municipal and county master plans often does not agree with the municipal zoning ordinances that are in effect. Since development proposals are governed by zoning ordinances, it is appropriate to base wastewater management planning on the development potential allowed under the zoning ordinances. Therefore, the Department does not require information on future land uses shown on the municipal or county master plans.

N.J.A.C. 7:15-5.18(b)3 requires that wastewater management plans identify any relevant zoning ordinances, municipal or county master plans upon which the wastewater management plan was based. The Department is proposing to amend N.J.A.C. 7:15-5.18(b)3 to delete the requirement to identify the master plans on which the wastewater management plan is based for the same reasons the Department is proposing to delete N.J.A.C. 7:15-5.18(b)2; wastewater management plans are to be based on existing municipal zoning ordinances, not municipal or

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county master plans.

The Department is proposing to delete N.J.A.C. 7:15-5.18(b)4, as wastewater management plans in non-urbanized municipalities will be based on wastewater needs at build-out, not the likelihood of development that will occur in 20 years.

The Department is proposing to delete references to master plans at N.J.A.C. 7:15-5.18(b)5, 6 and 8 (recodified at N.J.A.C. 7:15-5.18(b)3, 4 and 6) for the reasons described above.

Wastewater management plans relating to the Highlands Region are subject to requirements of proposed N.J.A.C. 7:15-3.10. As such, N.J.A.C. 7:15-5.18(b)7, which is proposed for recodification at N.J.A.C. 7:15-5.18(b)5, is amended to add the Highlands Region to the list of areas governed by other requirements.

N.J.A.C. 7:15-5.18(b)8, which is proposed to be recodified as N.J.A.C. 7:15-5.18(b)6, is proposed to be amended to delete the reference to master plans for consistency with changes discussed above. While this paragraph allows for justifiable inconsistencies between existing zoning and the provisions of the wastewater management plan, zoning that is inconsistent with the analyses set forth at proposed N.J.A.C. 7:15-5.25(e) will need to be modified prior to WMP adoption.

N.J.A.C. 7:15-5.18(c) through (e) have been modified to reflect the approach set forth in N.J.A.C. 7:15-5.25(d)1, that urbanized municipalities are to use population projections to estimate their wastewater management needs, while all other municipalities must base their wastewater management needs on build-out.

N.J.A.C. 7:15-5.18(c)1ii presently requires mapping of existing, expanded or new domestic treatment works if they would have a design capacity of greater than 20,000 gallons per day and discharge to ground water. The Department is proposing to amend this provision so that the threshold for mapping of wastewater treatment facilities that discharge to ground water is now a design capacity greater than 2,000 gallons per day. The requirement to identify wastewater treatment facilities with a design capacity greater than 2,000 gallons per day is consistent with the rest of the rule proposal and with the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, where permits are required for discharges greater than 2,000 gallons per day and the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, which regulate discharges to ground water of 2,000 gallons per day or less. The general wastewater service area designation of discharge to ground water with a design capacity of 20,000 gallons per day or less set forth in the current rule at N.J.A.C. 7:15-5.18(c)6 will no longer be allowed. This change will ensure that sewer service areas for facilities with a design capacity greater than 2,000 gallons per day but less than 20,000 gallons per day discharging to ground water meet the requirements at proposed N.J.A.C. 7:15-5.24 and will ensure the full analysis of the impacts of these facilities on water resources in accordance with proposed N.J.A.C. 7:15-5.25.

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The Department is proposing to delete N.J.A.C. 7:15-5.18(c)6. This paragraph provides for the identification of areas to be served by individual subsurface sewage disposal systems or DTWs that would have a design capacity of less than 20,000 gallons per day which discharge to ground water. The Department is proposing to eliminate general service areas for wastewater treatment facilities that discharge to ground water and have a planning flow of less than 20,000 gallons per day. Areas using DTWs with a design capacity of less than 20,000 gallons per day are known under the current rules as “general service areas.” The Department will no longer allow this category of wastewater service area in these rules, and so this provision is no longer necessary. Elimination of this category will have no impact on wastewater service areas identified in WMPs that are current in accordance with N.J.A.C. 7:15-5.23 until such time as the WMP expires or the required WMP update is completed, as discussed at N.J.A.C. 7:15-5.2.

In addition, the Department is proposing to recodify N.J.A.C. 7:15-5.18(c)7 as (c)6, and to change the phrase “less than 2,000 gallons per day” to “2,000 gallons per day or less” to be consistent with the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, which require permits for discharges greater than 2,000 gallons per day, and the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, which regulate discharges to ground water of 2,000 gallons per day or less. The phrase “subsurface disposal system” is corrected to “individual subsurface sewage disposal system.”

The Department is proposing to update the cross-references to the Surface Water Quality Standards, N.J.A.C. 7:9B, and the Ground Water Quality Standards, N.J.A.C. 7:9C, at N.J.A.C. 7:15-5.17(d)6.

To clarify that the Department is only seeking estimated average planning flow at N.J.A.C. 7:15-5.18(d)8, the Department proposes to add the word “planning” before “flow” and to cross-reference N.J.A.C. 7:15-5.25(d). The projected wastewater flow is to be the estimated average planning flow calculated in accordance with N.J.A.C. 7:15-5.25(d). Similar amendments are made at N.J.A.C. 7:15-5.18 (e)3.

The Department is proposing to amend N.J.A.C. 7:15-5.18(f) to more clearly define how to calculate average domestic flow from new development, exclusive of industrial flows. This subsection provides that average domestic flow must be calculated using the projected flow criteria found at N.J.A.C. 7:14A-23.3 or N.J.A.C. 7:9A-7.4 as applicable for the type of wastewater facilities proposed. N.J.A.C. 7:9A, Standards for Individual Subsurface Sewage Disposal Systems, governs wastewater facilities discharging 2,000 gallons per day or less to ground water. This subsection will also provide, that for DTWs that discharge to surface waters, wastewater flows shall be expressed as a 30-day average, consistent with how wastewater flows are calculated and expressed in NJPDES discharge to surface water permits. DTWs that discharge to ground water are required to calculate flows as a daily maximum flow in accordance with how wastewater flows are calculated and expressed in NJPDES discharge to ground water permits. These changes are intended to provide for greater consistency between these rules and other programs administered by the Department.

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N.J.A.C. 7:15-5.19 Individual subsurface sewage disposal systems and other small domestic treatment works in sewer service areas

N.J.A.C. 7:15-5.19 allows the construction of individual subsurface sewage disposal systems on a temporary basis within adopted sewer service areas provided a legally enforceable guarantee exists that requires the use of these systems to be discontinued once sewer service becomes available. The Department is proposing that N.J.A.C. 7:15-5.19(b) be amended to clarify that the legally enforceable guarantees are to be provided at the local government level.

N.J.A.C. 7:15-5.20 Specifications for text and graphics

Existing N.J.A.C. 7:15-5.20 sets forth the specifications for text and graphics that are included in the wastewater management plan. The Department is proposing at N.J.A.C. 7:15-5.20(a) that all text and graphics contained in wastewater management plans (WMPs), WMP updates, and WQM plan amendment and revision applications must be submitted both in hard copy and electronic formats. The electronic format will make it easier to share wastewater management plan information with interested parties. Electronic mapping will also make it easier for the Department, designated planning agencies and wastewater management planning agencies to manipulate information to perform the analyses required at proposed N.J.A.C. 7:15-5.25. The Department retains the required hard-copy submission to assist the review of wastewater management plans by interested parties without access to electronic equipment and for Department review when electronic access is not available or convenient. The Department shares WMP and WMP related documents with other governmental units; therefore, a minimum number of five hard-copies must be submitted in the required format and the Department will notify applicants when additional hard copies will be required based on the particulars of the proposal and need for coordination with a greater than normal number of offices. If an applicant needs additional information regarding electronic submittals, it can be obtained by calling the Department's Division of Watershed Management, Bureau of Watershed Regulation at (609) 984-6888.

At N.J.A.C. 7:15-5.20(b) the Department is proposing to require that all hard copy maps submitted to the Department as part of a WMP, WMP update, WQM plan amendment or revision meet the Department's mapping standards at N.J.A.C. 7:1D Appendix A and shall be in New Jersey State Plane Feet using the North American Datum of 1983 (NAD83) and use 1:24,000 scale United States Geological Survey quadrangle maps as a base map. These standards have been adopted as Appendix A under the Department's General Practice and Procedure rules at N.J.A.C. 7:1D and include the United States National Map Accuracy Standards (NMAS) which were issued by the U.S. Bureau of the Budget, Revised June 17, 1947 and can be obtained at <http://rockyweb.cr.usgs.gov/nmpstds/nmas.html>, for accuracy in producing maps for publication. The NMAS includes standards for map accuracy such as horizontal accuracy, vertical accuracy, map accuracy by comparing positions of points whose locations or elevations are shown and can be compared with positions determined to have a higher accuracy, conformance with latitude and longitude boundaries, and statements of

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compliance with the accuracy standards. Applicants may provide additional maps to supplement the required mapping at different scales.

Mapping information for wastewater management plans shall also be submitted in digital form compatible with mapping standards at N.J.A.C. 7:1D Appendix A. The digital maps shall be accurate, at a minimum, to a scale of 1:12,000. The Department recommends that the creation of new digital mapping information for wastewater management plans be prepared in a format that conforms to the “New Jersey Department of Environmental Protection Geographic Information System Mapping and Digital Data Standards” guidance document, as amended or updated, as prepared by the Department’s Bureau of Graphic Information and Analysis. The “New Jersey Department of Environmental Protection Geographic Information System Mapping and Digital Data Standards” guidance document includes the New Jersey Department of Environmental Protection standards for digital data transfer, metadata, and New Jersey basemaps which meet NMAAS for hardcopy (Mylar) basemaps. Applicants that provide maps meeting these specifications will allow the Department to make the mapping components of adopted wastewater management plans available to the public through the Department’s website on an immediate and on-going basis. Additional guidance on these specifications is found in the “New Jersey Department of Environmental Protection Geographic Information System Mapping and Digital Data Standards” guidance document available at www.state.nj.gov/dep/gis. Information included in wastewater management plans obtained from the Department’s GIS system does not have to be submitted back to the Department in electronic format, since that information is already available to the Department.

The Department is proposing to amend N.J.A.C. 7:15-5.20(b)2 to provide that wastewater service areas are to be identified based on a 20-year period in urbanized municipalities and build-out for all other municipalities, because of the distinction made in wastewater flow generation potential for urbanized and non-urbanized municipalities, as described in N.J.A.C. 7:15-5.18(a) and 5.25(c). Additionally, the Department is deleting the cross reference to N.J.A.C. 7:15-5.18(c)6 because it is proposed for repeal. The Department is also proposing to amend N.J.A.C. 7:15-5.20(b)3 to be consistent with the proposed amendment to the section heading at N.J.A.C. 7:15-5.17, Mapping features requirements. Additional environmental features to be identified as potentially having restrictions due to other rules include suitable habitat for endangered and threatened species as identified on the Department’s Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife as Rank 3, 4 and 5, Natural Heritage Priority Sites, riparian zones, and steep slopes.

N.J.A.C. 7:15-5.20(c) specifies that other mapping required by N.J.A.C. 7:15-5.16 through 5.18 is needed and may be included on other maps already prescribed, or on additional maps. This section is being modified to refer to N.J.A.C. 7:15-5.24 and 5.25, as well as N.J.A.C. 7:15-5.16 through 5.18, for consistency with the rule proposal, and may allow inclusion of multiple types of information on one or more of the required main maps if the information provided is easily legible.

N.J.A.C. 7:15-5.21 Geographic overlap between wastewater management plans prohibited

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The Department is proposing to repeal N.J.A.C. 7:15-5.21. This section, which addresses geographic overlap between WMPs, is no longer necessary based on proposed changes to wastewater management plan responsibility.

N.J.A.C. 7:15-5.22 Consultation and consent for wastewater management plans

N.J.A.C. 7:15-5.22 lists those agencies and entities that must be consulted during the wastewater management planning process. The Department is proposing to specify that applicants should consult with these affected parties when preparing a wastewater management plan update as well as a WMP at N.J.A.C. 7:15-5.22(a). The Department is proposing at N.J.A.C. 7:15-5.22(a)1 to add governmental units that have regulatory or planning jurisdiction over water supply and water purveyors to the list of entities that must be consulted. Water supply entities will have critical information concerning public water supply service areas, existing allocations and future water supply demand that is essential to performing the water supply evaluation required by proposed N.J.A.C. 7:15-5.25(f). This paragraph also is proposed to be amended to add the Highlands Council to the list of agencies that must be consulted during the preparation of a wastewater management plan or WMP update for wastewater management planning areas that are located in the Highlands Region. The Highlands Act directs the Highlands Council to develop a Highlands Regional Master Plan. It would be to an applicant's benefit to determine the consistency of any proposals with the Highlands Regional Master Plan before submitting any wastewater management plan proposals in the Highlands Region to the Department for approval.

N.J.A.C. 7:15-5.22(a) currently directs consultation with entities that do or may treat wastewater as a result of wastewater management planning. The Department is proposing to add cross-references to N.J.A.C. 7:15-5.24 and 5.25 at N.J.A.C. 7:15-5.22(a)1 and 2i, since the delineation of existing and proposed sewer service areas is addressed in these sections.

The Department is proposing at N.J.A.C. 7:15-5.22(c) to specify that wastewater management plans relating to the Highlands Region are subject to the requirements of consultation with the Highlands Council as set forth in proposed N.J.A.C. 7:15-3.10.

N.J.A.C. 7:15-5.23 Schedule for submission of wastewater management plans

N.J.A.C. 7:15-5.23 establishes a schedule for the submission and update of wastewater management plans. Currently, this section sets out a schedule for initial submission of WMPs, phased in over time, and requires an updated wastewater management plan to be submitted at least every six years from the date of the previous submission. The Department is proposing to amend N.J.A.C. 7:15-5.23(a) to require the WMP agency to submit a WMP update every six years from the date the last WMP was adopted, unless the Department approves a revision under N.J.A.C. 7:15-3.5 providing an alternative schedule for WMP submission under N.J.A.C. 7:15-5.23(e) or (f). Further, for areas where there is no WMP or where the WMP was adopted more than six years prior to the effective date of the rule, N.J.A.C. 7:15-5.23(a) stipulates that the

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WMP is not up to date. Basing the schedule on the adoption of the WMP and not the date the WMP was submitted, will make it easier to track and calculate due dates in the future. In addition, this amendment will allow the WMP to be in effect for the full six years. Under the current rules, a WMP would be in effect for less than six years, since it did not account for the time lost in the review and public noticing process which occurs after submission and prior to adoption. This change is intended to result in greater efficiency and predictability.

Existing N.J.A.C. 7:15-5.23(b) is proposed for deletion because this subsection is out of date. This subsection will be replaced with proposed N.J.A.C. 7:15-5.23(b), which requires the submission of wastewater management plans within nine months of the effective date of this amendment, unless a wastewater management plan was adopted within the past six years. For municipal governments that accept wastewater management planning responsibility through alternative assignment, a wastewater management plan must be submitted within one year of the effective date of these rules or in accordance with a schedule established pursuant to N.J.A.C. 7:15-5.23(e), or an alternative schedule pursuant to N.J.A.C. 7:15-5.23(f).

Existing N.J.A.C. 7:15-5.23(c) contains a table that established the initial wastewater management plan submittal dates. All initial wastewater management plans were to be submitted by October 2, 1994. As the timeframes established in this table are long past due and this rule proposes to replace the submission schedule as discussed in proposed N.J.A.C. 7:15-5.23(a) and (b), the Department is proposing to delete existing N.J.A.C. 7:15-5.23(c). The Department is proposing a new N.J.A.C. 7:15-5.23(c), which provides notice that wastewater service areas shall be withdrawn in accordance with N.J.A.C. 7:15-8.1 whenever wastewater management planning agencies fail to comply with the schedule in subsections (a) and (b) or an alternative schedule established under subsections (e) or (f).

The Department is proposing to delete N.J.A.C. 7:15-5.23(d) as this subsection relates to the responsibility of wastewater management planning agencies in relation to the compliance schedule in subsection (c). Under the new paradigm of WMP responsibility, proposed, this subsection will no longer apply. The Department is proposing a new N.J.A.C. 7:15-5.23(d), which provides that each municipal wastewater management plan chapter established through an alternative assignment of WMP responsibility under N.J.A.C. 7:15-5.13 and adopted in accordance with the schedule established at subsection (e) or (f) shall be current for a period of six years unless the WMP chapter becomes part of a county-wide WMP. Where a municipal WMP chapter is incorporated into a county-wide WMP, the municipal WMP chapter shall assume the same six-year WMP update schedule as the county-wide WMP in accordance with the schedule at subsection (a).

The Department is proposing to amend N.J.A.C. 7:15-5.23(e) to reflect that the Department will only process alternative assignments of wastewater management planning responsibility in accordance with N.J.A.C. 7:15-5.13. Additionally, under these rules as amended, the Department will not allow for automatic expansions of WMP areas upon WMP adoption. Therefore, the Department is proposing to delete the last sentence in this subsection, which includes a cross-reference to automatic expansions under N.J.A.C. 7:15-5.11(b).

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The Department is proposing to amend N.J.A.C. 7:15-5.23(f) to reflect that alternative assignments of wastewater management planning responsibility will only be processed as revisions. In addition, the Department is proposing to simplify the language regarding changes to alternative schedules. Also, the Department is proposing to add a cross-reference to N.J.A.C. 7:15-5.25(a) through (g) at N.J.A.C. 7:15-5.23(f)3 as the Department anticipates that the analyses and assessments required under that section may require additional time.

The Department is proposing to delete N.J.A.C. 7:15-5.23(g) as it is repetitive of subsection (f).

The Department is proposing to recodify N.J.A.C. 7:15-5.23(h) as (g) and amend this subsection by requiring a wastewater management planning agency to submit a written progress report within 30 days instead of 90 days, upon a request by the Department. This amendment is being made to help ensure that wastewater management plans are completed in a timely manner.

The Department is proposing to recodify N.J.A.C. 7:15-5.23(i) as (h) and modify recodified N.J.A.C. 7:15-5.23(h)3 to delete reference to municipal and county master plans consistent with proposed amendments at N.J.A.C. 7:15-5.18(b).

The Department is proposing to clarify that WMP updates must include maps and descriptions of wastewater service areas at N.J.A.C. 7:15-5.23(h)1. In addition, the Department is proposing a new N.J.A.C. 7:15-5.23(h)4 to require that wastewater management plan updates must demonstrate compliance with the new evaluation criteria proposed at N.J.A.C. 7:15-5.24 and 5.25(a) through (g). The amendment will help to ensure that all WMPs and project proposals identify the conditions where extension of sewer service is not appropriate and follow the specific design and performance standards in proposed N.J.A.C. 7:15-5.24 and 5.25(a) through (g) that will be protective of the State's water resources.

The Department is proposing to recodify N.J.A.C. 7:15-5.23(j) as (i) and is proposing to amend this subsection to provide that a WMP agency may submit a WMP update earlier than required under N.J.A.C. 7:15-5.23(a) through (f).

N.J.A.C. 7:15-5.24 Delineation of sewer service areas

The Department is proposing a new N.J.A.C. 7:15-5.24 to identify the conditions where extension of sewer service is not appropriate. N.J.A.C. 7:15-5.24(a) sets forth the general policy that large contiguous areas of environmentally sensitive resources, coastal planning areas where the extension of sewers would be inconsistent with New Jersey's Coastal Zone Management program and special restricted areas that are prone to natural hazards such as flooding, wave action and erosion should not be included in sewer service areas. The limitations on the extension of sewer service in these areas are consistent with the Department's mandate to protect the ecological integrity and natural resources of New Jersey, including water, threatened and endangered species, wetlands and unique and rare assemblages of plants. Centralized

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wastewater is inappropriate for these areas because it subsidizes and otherwise encourages the development of these resources at a density that is inconsistent with their protection and the environmental protection mandate of the Department. Further, the extension of sewer service into floodplains, coastal high hazard areas, erosion hazard areas and beaches would serve to increase the density of development in those areas, thereby placing more residents and property at risk of injury or damage during storm events. The Department has determined that the appropriate wastewater management alternative for these areas is individual subsurface sewage disposal systems that discharge less than 2,000 gallons per day, typically thought of as septic systems. Therefore, though excluded from the extension of sewer service, these areas have a wastewater management alternative that will promote a density of development consistent with the conservation of these resources.

N.J.A.C. 7:15-5.24(a) also makes clear that the wastewater management planning agency is under no obligation to provide centralized sewer service simply because a land area does not meet the specific criteria for exclusion at N.J.A.C. 7:15-5.24. In determining the appropriate wastewater management alternative for a particular area, the WMP agency must also consider the planning objectives and character of the area and additional environmental conditions that may make centralized sewer service inappropriate. In addition, the WMP agency must consider if the increased concentration of development centralized sewer service allows is consistent with other local and regional planning land use planning objectives. For example, if a county or local master plan objective is to maintain the rural character of an area, the extension of centralized sewer service into that area could promote a density of development that conflicts with the local master plan. Finally, this section also allows the WMP agency to consider other environmental protection objectives including, but not limited to, the protection of water supply sources. The rule allows the WMP agency to make these localized planning decisions.

N.J.A.C. 7:15-5.24(b) establishes the criteria for delineating a sewer service area boundary in consideration of environmentally sensitive areas. The Department selected four environmental features to be used in determining if centralized sewer service is inappropriate for an area: threatened and endangered species habitats, Natural Heritage Priority Sites, Category One stream buffers, and wetlands. These four environmental features are unique and sensitive features whose protection is central to the Department's mandate to protect ecological integrity and water quality.

At N.J.A.C. 7:15-5.24(b)1, the Department has identified endangered and threatened species listed by the Department pursuant to the Endangered and Nongame Species Conservation Act of 1973, N.J.S.A. 23:2A-1 et seq., as a factor in determining if centralized sewer is appropriate. Endangered species are those species whose prospects for continued survival in New Jersey are in immediate danger because of a loss or change in habitat, over-exploitation, predation, competition, disease, disturbance or contamination. Threatened species are those that may become endangered if conditions critical to their survival continue to decline. For many endangered and threatened species, the loss of habitat and increasing human disturbance are the single biggest threat to their continued survival. Habitat protection for these species is critical to maintaining the biological diversity and ecological integrity of the State. Similarly, at N.J.A.C.

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7:15-5.24(b)2, the Department has identified Natural Heritage Priority Sites as areas into which the extension of sewers is inappropriate. Natural Heritage Priority Sites are identified by the Department in the Natural Heritage Database pursuant to N.J.A.C. 7:5C-1.4. Natural Heritage Priority Sites represent the best habitats for rare plant and animal species and natural community assemblages. These areas are considered to be top priorities for the preservation of biological diversity in New Jersey. If these sites become degraded or destroyed, New Jersey will lose unique components of its natural heritage. The extension of public wastewater infrastructure into endangered and threatened species habitats and Natural Heritage Priority Sites will serve to encourage development and the loss of these unique and fragile components of New Jersey's ecosystem.

Wetlands play an important role in flood attenuation, base flow maintenance, and water quality enhancement in addition to providing critical habitat functions, and, therefore, the Department has identified wetlands as environmentally sensitive areas at N.J.A.C. 7:15-5.24(b)4. Wetlands are presently regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. These two statutes have greatly curtailed the destruction of wetlands and the amount of development expected in these areas.

In addition, the Department has identified special water resource protection areas along Category One waters as environmentally sensitive areas at N.J.A.C. 7:15-5.24(b)3. Category One waters are designated for special antidegradation protection due to their special characteristics including exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries significance (N.J.A.C. 7:9B). The Department has taken steps to protect riparian corridors adjacent to Category One waters and their tributaries to insulate these resources from degradation associated with development. In February 2004, the Department adopted new Stormwater Management rules (N.J.A.C. 7:8) that established a special water resource protection area (300-foot buffer) adjacent to Category One waters and their tributaries. On October 2, 2006, the Department proposed new Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) that will establish riparian buffers along all waterways depending on their classification. See 38 N.J.R. 3905(a). The establishment of the special water resource protection area has greatly reduced the amount of development that can be expected to occur within these areas. The importance of both wetlands and special water resource protection areas in maintaining water quality, and the existing regulatory constraints applied to development in these areas, makes dense development inappropriate and thus these areas are not appropriate for designation as sewer service areas. Based upon the above, the Department determined that these environmentally sensitive features must be considered in determining areas that are appropriate for sewer service.

The Department identified threatened and endangered species habitats, Natural Heritage Priority Sites, wetlands and special water resource protection areas to define sewer service areas in this rule because the extent of each can be determined through the application of an existing Geographic Information System (GIS) coverage provided by the Department. The Department expects that the preparation of wastewater management plans and wastewater management plan

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updates will be largely driven by the application of GIS tools. A GIS system is computer based and uses digital mapping information referenced to a common set of state plane coordinates. Features within the system are stored as their own coverage or layer. For example, land use and land cover, roads, zoning, threatened and endangered species habitats, streams and wetland coverages are all stored independently. The GIS system allows the user to select different coverages and layer them over each other to perform land use planning analyses. The GIS system also offers tools that allow new coverages to be created by combining features from different coverages, such as using one coverage as a template to remove part of another coverage, similar to the way cloth is cut to make clothing using a pattern, or the way cardboard is cut to make a box using a die. Another tool in the GIS system can be used to combine coverages, in essence gluing them together and drawing a new line around the composite. The GIS system can also be used to calculate the area included or excluded by performing these functions. For example, GIS can be used to determine the acres available for development in any sewer service area, by subtracting out the already developed, or urban land use cover. The actual amount of development that could occur in the future can then be calculated by applying a zoning layer to the resulting developable area. From there, a wastewater flow can be assigned to all future development, by development type (see N.J.A.C. 7:14A-23.3 or 7:9A-7.4), generating an estimate of future wastewater treatment needs for that service area.

Using the GIS tools described, it is relatively easy for a wastewater management planning agency to delineate sewer service areas using this GIS data. While there may be other environmental features that should be excluded from sewer service, such as steep slopes and scenic resources, a reliable GIS coverage for these features does not exist. Though not required by this rule, these additional environmental constraints may be considered by the wastewater management planning agency in delineating sewer service areas.

At N.J.A.C. 7:15-5.24(b), the Department identifies environmentally sensitive areas that are not appropriate for sewer service area as any contiguous area of 25 or more acres that contains any or all of the four features described above. As described above the GIS system can be used to merge the four selected environmental features into a new coverage that can be used to delineate the environmentally sensitive areas that meet this threshold.

In developing these rules, the Department considered simply removing all threatened and endangered species habitats, Natural Heritage Priority Sites, wetlands and special water resource protection areas from sewer service areas. However, simply removing these features using the Department's GIS data layers results in sewer service areas that are fragmented and filled with small areas that would have to be excluded from the sewer service area. This pattern of sewered development would not enable the application of municipal zoning powers to achieve a consistent and orderly pattern of development, and would not facilitate center-based development, thus making it difficult to achieve the objectives of local master plans.

To address these issues, the Department developed a repeatable method for sewer service area mapping by merging the GIS coverages of the four selected environmental features. Areas would then be excluded from the sewer service area based on the size of a contiguous area, or

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polygon, encompassing one or more of these features in the merged coverage. The Department evaluated polygons of various acreage thresholds ranging from five acres to 100 acres to assess the amount of environmentally sensitive area that would remain included in a sewer service area and thus subject to increased development pressure and intensity. For the purposes of this analysis, the Department eliminated the Highlands preservation area and the Pinelands from consideration, because both of these areas are subject to additional restrictions on the extension of sewer service. In the remaining areas of the State, the existing adopted sewer service area encompasses approximately 1,817,000 acres. That sewer service area includes approximately 386,000 acres of these four environmentally sensitive areas based on the GIS overlays identified in the rule at N.J.A.C. 7:15-5.24(b). Selecting thresholds of 5, 25, 50 and 100 acres resulted in the removal of 94, 82, 74 and 65 percent of environmentally sensitive features from existing sewer service areas, respectively.

To gain a more complete picture of the impact associated with each of these thresholds on environmentally sensitive areas, the Department also assessed those areas outside of existing sewer service areas that could potentially be added to the sewer service area under each threshold. It should be noted that the potential for these areas to be added was simply based on the application of the size threshold to the merged coverage of environmentally sensitive areas, and did not determine whether adequate wastewater treatment capacity existed in the area, or whether there was sufficient upland, developable area to warrant the extension of sewers. In other words the Department did not consider the length of pipe required to reach the nearest existing sewer pipe and whether enough development could be supported to offset the costs of that sewer line extension. The evaluation was only intended to assess a worst case scenario of potential impact under each of the size thresholds on the four environmentally sensitive areas used in the merged coverage. The evaluation area (that area of the State outside of the Highlands Preservation Area and Pinelands) includes approximately 963,000 acres that are located outside of existing sewer service areas, of which approximately 674,000 acres include at least one of the four selected environmentally sensitive features. Applying the same 5-, 25-, 50- and 100-acre thresholds to the areas outside of sewer service area resulted in the exclusion of 99, 95, 92 and 88 percent of those features respectively from being included in future sewer service areas.

Based on this analysis, the Department decided that 25 acres was the appropriate size threshold. This decision is based on a policy decision that at least 90 percent of the environmentally sensitive features should be excluded from sewer service area, but that the threshold should be large enough to permit the reasonable application of zoning. When combining the two analyses described above the 5-, 25-, 50- and 100-acre thresholds excluded 97, 90, 85 and 80 percent of the environmental features respectively. The policy decision is also guided by the following principals: that smaller habitat patches are more easily replaced; that the inclusion of larger amounts of environmentally sensitive land in the sewer service area would likely lead to inefficient infrastructure investment as many of these areas are subject to additional regulation; and that the area selected must be large enough to permit the reasonable application of zoning. Applying a larger threshold resulted in the inclusion of additional environmental resources in the sewer service area that would have failed to provide for the conservation of ecological integrity, and would have resulted in the unrealistic future development expectations

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and the inefficient expenditure of public funds on wastewater infrastructure. Using a 25-acre threshold will leave smaller fragments of environmentally sensitive areas within the delineated sewer service area; however those areas may continue to be regulated under other statutes administered by the Department, such as the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. Future wastewater projections will also be adjusted to account for regulated areas through the environmental build-out analysis at N.J.A.C. 7:15-5.25.

At N.J.A.C. 7:15-5.24(b)1, the Department has identified endangered and threatened species listed by the Department pursuant to the Endangered and Nongame Species Conservation Act of 1973, N.J.S.A. 23:2A-1 et seq., as a factor in determining if centralized sewer is appropriate. Endangered species are those species whose prospects for continued survival in New Jersey are in immediate danger because of a loss or change in habitat, over-exploitation, predation, competition, disease, disturbance or contamination. Threatened species are those that may become endangered if conditions critical to their survival continue to decline. For many endangered and threatened species, the loss of habitat and increasing human disturbance are the single biggest threat to their continued survival. Habitat protection for these species is critical to maintaining the biological diversity and ecological integrity of the State. Similarly, at N.J.A.C. 7:15-5.24(b)2, the Department has identified Natural Heritage Priority Sites as areas into which the extension of sewers is inappropriate. Natural Heritage Priority Sites are identified by the Department in the Natural Heritage Database pursuant to N.J.A.C. 7:5C-1.4. Natural Heritage Priority Sites represent the best habitats for rare plant and animal species and natural community assemblages. These areas are considered to be top priorities for the preservation of biological diversity in New Jersey. If these sites become degraded or destroyed, New Jersey will lose unique components of its natural heritage. The extension of public wastewater infrastructure into endangered and threatened species habitats and Natural Heritage Priority Sites will serve to encourage development and the loss of these unique and fragile components of New Jersey's ecosystem. An exception is included, however, to acknowledge that some areas included in the database may actually be developed. Exclusion of such areas from sewer service would not benefit Natural Heritage Priority habitats. Therefore, areas within Natural Heritage Priority Sites that are denoted as "Urban Lands" according to the Department's 1995/97 and 2002 Land Use/Land Cover GIS coverage are not to be excluded from sewer service areas.

N.J.A.C. 7:15-5.24(c) excludes the Coastal Fringe Planning Area, the Coastal Rural Planning Area and the Coastal Environmentally Sensitive Planning Areas from sewer service areas. The Rules on Coastal Zone Management provide the basic policy direction for planning actions undertaken in areawide Water Quality Management plans (N.J.A.C. 7:7E-1.2(h) and N.J.A.C. 7:15-3.6(a)). The Rules on Coastal Zone Management at N.J.A.C. 7:7E-5B.2(d) through (f) encourage center based development and low density and low intensity development in each of these planning areas. The extension of public sewers into these planning areas is inconsistent with the policy direction included in the Rules on Coastal Zone Management and therefore designation of sewer service area in these planning areas, where sewers do not already exist, is prohibited in these rules. The Coastal Planning Areas are available as a GIS overlay on the Department's web site at <http://www.nj.gov/dep/gis/cafralayers.htm#cpa>.

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N.J.A.C. 7:15-5.24(d) identifies areas subject to special consideration in the designation of sewer service areas as a result of Federal grant conditions or limitations in the Rules on Coastal Zone Management, N.J.A.C. 7:7E. Many publicly owned sewage treatment plants and collection systems were constructed using federal grant money under section 201 of the Federal Clean Water Act. As a condition of many of those grants, the U. S. Environmental Protection Agency precluded the extension of sewer service to sewage generating structures located in certain environmentally sensitive areas, in most cases floodplains and wetlands. Where environmentally sensitive areas subject to grant conditions are mapped, the rule requires that they be excluded from the delineated sewer service area in a wastewater management plan. However, not all of the environmentally sensitive areas identified in these grant conditions have a reliable mapping source. In these cases, the wastewater management plan will be required to exclude the extension of sewer service in areas subject to grant conditions through narrative conditions in the wastewater management plan. The Department will provide a list of those municipalities that are affected by Federal grant conditions and a description of the environmentally sensitive areas to which they apply to the wastewater management planning agencies. However, if a mapping revision or a grant condition waiver issued by the U.S. Environmental Protection Agency allows the extension of sewer service to a particular project located in an area subject to the grant condition, that area may be added into the sewer service area under N.J.A.C. 7:15-5.24(f) if the other substantive requirements of this chapter are met (that is, N.J.A.C. 7:15-5.25) and it meets other regulatory requirements.

As stated previously, the Rules on Coastal Zone Management provide the basic policy direction for planning actions undertaken in areawide Water Quality Management plans. The Rules on Coastal Zone Management generally prohibit development on beaches (N.J.A.C. 7:7E-3.22), coastal high hazard areas (N.J.A.C. 7:7E-3.18) and dunes (N.J.A.C. 7:7E-3.16). For example, beaches, dunes and coastal high hazard areas are subject to increased vulnerability due to wave action during coastal storm events. Extending new sewer service into these areas would promote a density of development that is incompatible with the threat to life and property. To make areawide Water Quality Management plans consistent with the policy direction of the Rules on Coastal Zone Management, the Department is proposing that these areas also be excluded from approved sewer service areas. Where these features are reliably mapped, sewer service area delineations shall exclude these areas. Where these features are not mapped, these features may be excluded by narrative condition in the wastewater management plan. Exceptions to this exclusion from sewer service area are allowable under N.J.A.C. 7:15-5.24(f), but shall only be made where the Department has determined that the development complies with the rules on Coastal Zone Management through a coastal permit review.

N.J.A.C. 7:15-5.24(e) allows a wastewater management planning agency or an applicant for a site specific Water Quality Management plan amendment to demonstrate that the Department's GIS information is incorrect. The Department acknowledges that GIS mapping of environmental features on a Statewide basis relies on remote sensing techniques such as aerial photographic interpretation. Where a more detailed analysis of a particular site or area demonstrates that the Department's GIS coverage does not reflect actual conditions, the Department will consider that information in determining the appropriate wastewater

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management alternative for that area. For example, if the Department's digital wetlands coverage indicates an area as wetlands, but the applicant has a Department issued Letter of Interpretation for the site that concludes the site is not jurisdictional wetlands under the Freshwater Wetlands Protection Act, the Department will consider that site specific information and adjust the sewer service boundary accordingly. Similarly, where a site or area is identified as endangered or threatened species habitat on the Department's Landscape mapping, but a more thorough investigation of the habitat demonstrates through a Habitat Suitability Determination pursuant to N.J.A.C. 7:15-5.26 that one or more of the critical habitat components for the identified specie is absent, the Department will consider adjusting the sewer service area boundary.

N.J.A.C. 7:15-5.24(f) allows the inclusion of the special restricted areas identified in subsection (d) if a site specific analysis results in a determination that the site can be included in the sewer service area. For example, where the U.S. Environmental Protection Agency has issued a mapping revision or a grant condition waiver that allows the extension of sewer service to a particular project located in an area subject to a Federal 201 grant condition, that area may be added into the sewer service area under N.J.A.C. 7:15-5.24(f). Where the Department issues a CAFRA permit that includes the connection to public sewers for a project located on a site identified as a beach, dune or coastal high hazard area, that site shall be eligible for inclusion in the sewer service area. If the area is excluded by the delineated sewer service area in an adopted WMP, the project shall be subject to a formal amendment or revision procedure under N.J.A.C. 7:15-3.4 or 3.5, as appropriate. In these cases, concurrent applications for an amendment or revision of the areawide WQM plan and the CAFRA permit shall be made to the Department. If the area is within the adopted sewer service area and excluded by narrative criteria, submission of either a letter from the U.S. Environmental Protection Agency or a CAFRA permit issued by the Department, as applicable, shall be sufficient to make the project consistent with the areawide Water Quality Management plan for the particular criteria being reviewed.

N.J.A.C. 7:15-5.24(g) allows some minor adjustment of the sewer service area boundary relative to the environmental features listed in (b) in order to allow infill development where a sewage collection system already exists, or to remove undulations in the sewer service area boundary that will assist in locating that boundary spatially. In order to be considered minor, such adjustments would be confined to those necessary to create a linear sewer service area boundary. Some flexibility in the interpretation of what constitutes a minor adjustment is intentional, because the Department cannot set forth in these rules an absolute formula that strikes a balance between maximizing the protection of environmentally sensitive areas and ensuring that the sewer service area includes sufficient land area to allow a development. In general, if an analysis of the area formed by a line drawn at the peaks of the undulation of the environmentally sensitive features and the proposed sewer service area includes more than 50 percent environmentally sensitive area, then that sewer service area adjustment would not be allowed. Boundary modifications that would encompass an area critical to the survival of a known population of an endangered or threatened species cannot be approved. For example, if the boundary modification were to encompass a known nest site for an endangered species, then the development of that sewer service area would likely eliminate that breeding habitat.

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Facilitating the destruction of habitat known to be critical to the survival of a listed species through the extension of sewer service is inconsistent with the Department's environmental protection mandate.

N.J.A.C. 7:15-5.24(h) allows new sewer service area within environmentally sensitive areas as necessary to accommodate center-based development under the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq. The central theme in center-based development is to concentrate development in localized areas in exchange for additional protection or a reduction in development density in the surrounding area, typically referred to as the environs. These types of negotiations commonly take place through the State Planning process known as "plan endorsement." Plan endorsement requires approval of the State Planning Commission. The State Planning Commission is made up of seventeen members representing State government, local government and the public. The Commissioner of the Department of Environmental Protection holds one of those seats. Through the plan endorsement process, the State Planning Commission considers and weighs the effects of land use planning options on land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban environment, historic preservation, public facilities and services and intergovernmental coordination. Prior to proposal, the Department received some comments objecting to a relationship between the State Planning Area designations on the State Plan Policy map and wastewater management planning. The basis for the objections was the fact that many of the Planning Area designations were based on the sewer service area designations in the existing outdated WMPs, and that many of these designations dated back 20 or 30 years and did not adequately consider environmental impacts. The Department agrees that former renditions of the State Plan Policy Map include conflicts with the Department's environmental protection and conservation planning. However, the goal of the continuing planning process is to promote consistency among Federal, State, regional and local land use plans by aligning these plans. Therefore, it would be inconsistent with this legislative objective for the Department to simply ignore the State Planning process. Therefore, where the Department concludes that an endorsed plan, approved by the State Planning Commission, has adequately addressed the environmental protection and natural resource conservation needs of the planning area, the Department does not need to reevaluate center boundaries or environmentally sensitive areas protection through the wastewater management process. Therefore, at N.J.A.C. 7:15-5.24(h), the Department is proposing to include environmentally sensitive areas listed at subsection (b) in a sewer service area provided the sewer service area is designated to accommodate centers based development and provided the area to be included is not critical to a population of endangered or threatened species, the loss of which would decrease the likelihood of the survival or recovery of the species in the State. For example, a known hibernacula area for a threatened or endangered snake species should not be included in a sewer service area even to support center based growth. Absent a change in factual information, a Department vote supporting an endorsed plan will generally lead to a finding that the endorsed plan meets the environmental requirements in a WMP.

Consequently, sewer service area boundaries that are congruent and consistent with the development patterns envisioned in those endorsed plans are approvable under this paragraph.

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However, due to the significant number and broad scope of the issues being evaluated by the State Planning Commission, endorsed plans may be approved with only a conceptual solution to the planning area's ultimate wastewater treatment needs. In these cases, the endorsed plan process will have addressed the issue of designating an appropriate wastewater management alternative but will not have identified an adequate wastewater treatment alternative. Where this is the case, the Department cannot adopt the sewer service area until an adequate wastewater treatment alternative is identified in accordance with N.J.A.C. 7:15-5.25(a) through (c).

N.J.A.C. 7:15-5.25 Evaluation criteria for wastewater management plans and amendments

The Department has determined that to be more effective, as well as predictable, cost-efficient, and expedient, more explicit standards for protection of water resources in the wastewater management process are needed, and that these standards must be readily understood and implemented at the beginning of the permitting and/or amendment process. The Department believes establishing set thresholds and requirements will help streamline the amendment process and save time, effort, and costs for both the private and the public sectors. Therefore, at proposed new section N.J.A.C. 7:15-5.25, the Department is proposing to establish specific requirements for analyses and performance standards that will be protective of the State's water resource as a whole. These requirements will simplify the preparation of wastewater management plans because much of the information the Department requires is based on digital data coverages and analyses designed to be accomplished as a desktop Geographic Information System exercise.

These rules, upon adoption, are intended to replace the requirements to conduct an alternatives analysis under Executive Order No. 109 (2000) and provide clear standards to determine the adequacy of wastewater management, water supply and nonpoint source pollution control components of WMPs and WMP amendments. The standards in this section require a demonstration that adequate capacity exists to treat all wastewater that will be generated in each wastewater service area without degrading water quality. The patterns and types of development permitted as well as the wastewater management alternative selected, must be assessed in terms of the availability of water supply to meet the needs of projected future development. This section also requires a regulatory program to control nonpoint sources of pollution. The standards for nonpoint source pollution control require compliance with the stormwater management rules, and the protection of riparian zones and steep slopes. Riparian zones are protected because they are integral in filtering pollutants from runoff before it enters surface waters. Steep slopes are protected because, when disturbed, these areas tend to contribute disproportionately large loads of suspended solids due to the velocity and erosive potential of runoff.

Specifically, the Department is proposing N.J.A.C. 7:15-5.25(a) to require that, before the Department adopts a WMP, an update to a WMP or a WMP amendment, the applicant shall demonstrate compliance with the environmental criteria in this section with respect to existing and future wastewater treatment needs, water supply demands, and nonpoint sources of pollution.

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In addition, N.J.A.C. 7:15-5.25(a) provides that the Department will only process a revision under N.J.A.C. 7:15-3.5(b)4 if the Department determines that the standards at N.J.A.C. 7:15-5.25 will be met. Projects that qualify for a revision are of relatively small scale. As a result, the Department anticipates that it will be able to determine compliance with the standards without the need for submission of additional information not otherwise required for a revision. As indicated in N.J.A.C. 7:15-3.5, where the Department is unable to determine compliance based, for example, on the application and digital data provided through GIS coverages, the Department will notify the applicant of any additional information it needs to determine if the modification qualifies as a revision, and will allow the applicant to provide this information to the Department to demonstrate that the proposal meets the criteria for a revision. However, if the Department cannot determine compliance with the standards, the pending application will not be processed as a revision, but may be processed as an amendment.

Further, the Department does not intend to limit WMP planning entities or municipalities from establishing more protective requirements within their jurisdictional areas. Therefore, proposed N.J.A.C. 7:15-5.25(a) also provides that the standards set forth in the section are the minimum standards, and that the WMP planning entity or municipality can substitute more protective standards. For example, a municipality may wish to establish a more conservative water quality target for the nitrate dilution standard, a wider buffer for riparian protection or provide protection for slopes with a grade less steep than 20 percent.

At N.J.A.C. 7:15-5.25(b), the Department is proposing that the requirements set forth in N.J.A.C. 7:15-5.25(c) through (g) apply to all applications for a WMP, WMP update or WMP amendment, with some modified requirements that apply to amendments as set forth at N.J.A.C. 7:15-5.25(h). The overall analyses and demonstrations at subsections (c) through (g) are intended to protect the State's water resources with a level of precision suitable for planning purposes. The standards that apply to site specific amendments at N.J.A.C. 7:15-5.25(h) are also intended to protect water resources, but have been customized to apply to specific projects or activities.

A summary of the standards that must be met to satisfy this section and the bases for establishing them are described below.

Environmental Build-Out

At proposed N.J.A.C. 7:15-5.25(c), the Department requires environmental build-out analyses with differing requirements depending upon whether or not the area is in a sewer service area. Environmental build-out considers the development potential of an area given existing development and environmental constraints. The environmental build-out is used with the analyses in the rule related to future wastewater and water supply needs. The Department is not requiring urbanized municipalities to conduct an environmental build-out analysis. Urbanized municipalities are those where 90 percent of the land area appears as "Urban Lands" according to the Department's most current Land Use/Land Cover GIS database, based on Level I of the Anderson Classification System (Anderson et al, 1976, modified by the New Jersey

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Department of Environmental Protection, 1999). In municipalities that are largely urban, future development is likely to consist of infill and redevelopment, which is difficult or impossible to estimate through the build-out method. In these areas, the Department has determined that future growth and associated wastewater and water supply needs is more appropriately estimated using population projections and associated wastewater and water supply needs (see summaries for N.J.A.C. 7:15-5.25(d)1 and (f)1 below).

The Department is requiring that the environmental build-out information be calculated and presented for each sewer service area and the remaining wastewater service areas on a HUC 11 basis. The environmental build-out must be further apportioned among the municipalities within each HUC 11. In addition, future development within public water supply service areas must be distinguished from that which will occur outside public water supply service areas. A HUC 11 is an area within which water drains to a particular receiving surface water body, at a scale that is identified by an 11-digit hydrologic unit boundary designation, delineated within New Jersey by the United States Geological Survey (USGS). There are 152 HUC 11 watersheds in New Jersey. The HUC 11 basis was selected for the analyses because it allows consideration of impacts of wastewater management and water supply use on a holistic, watershed basis, while keeping the scale of the analyses manageable. Disaggregating the HUC 11 among contributing municipalities and breaking down among wastewater service areas, public water supply service areas and those areas outside of public water supply service areas is necessary to apportion the wastewater and water supply impacts and needs, determined through the analyses at N.J.A.C. 7:15-5.25(d), (e) and (f), at the county level, while allowing that each municipality within a county can be considered a distinct chapter of the plan as provided at N.J.A.C. 7:15-5.3. The information requirements for the analyses are set forth at N.J.A.C. 7:15-5.16 through 5.18 and 5.20.

At N.J.A.C. 7:15-5.25(c)1, the Department is proposing to require that the environmental build-out analysis in sewer service areas must identify existing development that is not connected to sewers but is proposed to be connected in the future and the future development potential of undeveloped areas that are proposed to be connected to sewers, based on zoning and certain environmental constraints. Areas that are currently developed and not currently connected to sewers but are proposed to be connected will figure into the assessment of demand on available wastewater treatment capacity, under proposed N.J.A.C. 7:15-5.25(d). For these areas, it is necessary to identify the development type by residential units and the appropriate measure for nonresidential development, such as square footage or number of employees, so that wastewater generation potential and water supply needs can be estimated, as described in greater detail in the summary of N.J.A.C. 7:15-5.25(d). It is not necessary to subtract any environmentally sensitive areas that may coexist with existing development because the presence of environmentally sensitive areas will not affect the wastewater generation potential of development that already exists. In undeveloped areas, the applicant must overlay undeveloped areas with zoning and areas that are constrained in terms of future development to determine the development potential in terms of units that can be converted to flow, as described at N.J.A.C. 7:15-5.25(d). The overlay step is necessary for undeveloped areas because the methodology used for delineation of the sewer service areas may include areas that will not generate

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significant amounts of future development. Wetlands and certain riparian zones are regulated such that minimal future development can be expected to occur there. To avoid overestimating future development and associated wastewater and water supply needs, wetlands, riparian zones, and other areas that are identified as excluded from development by the municipality, must be excluded from areas used in the build-out analysis to generate future wastewater generation potential.

At N.J.A.C. 7:15-5.25(c)2, the Department is proposing that the applicant identify the number of equivalent dwelling units that are allowable in undeveloped and underdeveloped areas within remaining wastewater service areas, as determined in accordance with the analysis at N.J.A.C. 7:15-5.25(e). Underdeveloped areas are areas that support an existing improvement but could be further subdivided, without the need to obtain a variance, according to existing zoning. An example would be a 30-acre tract of land that contains a residential structure and is located in an area that, according to zoning, could have one residence every three acres. This tract could theoretically support up to an additional nine residences. For the purposes of wastewater and water supply availability planning, it is important to consider the potential impact of the cumulative total of the development that could be supported on numerous underdeveloped parcels.

In the portions of the planning area that are outside of distinct sewer service areas, it is not necessary to exclude wetlands and riparian zones in the environmental build-out analysis. While development on wetlands and in riparian zones is regulated inside and outside of sewer service areas, given the lower densities of development expected outside of sewer service areas, it is more likely that the development of these areas can avoid wetlands and riparian zones that are on the development site. Therefore, excluding the wetlands and riparian zones in this case would potentially underestimate the development potential, and, therefore, the number of allowable equivalent dwelling units that can be planned for by each municipality. The extent to which wetlands and riparian zones appropriately limit the density of development using individual subsurface sewage disposal systems (ISSDSs) is already incorporated in the nitrate dilution analysis at N.J.A.C. 7:15-5.25(e). Further, underestimation of future development would affect the outcome of the proposed water supply analysis at N.J.A.C. 7:15-5.25(f).

Finally, at proposed N.J.A.C. 7:15-5.25(c)3, the Department requires that the planning entity provide the information, including maps and data tables, in a format and in sufficient detail to enable the analyses at N.J.A.C. 7:15-5.25(d) through (f) to be performed and compliance to be demonstrated. The Department recognizes that no one format will ideally suit the varying circumstances present in each municipality and county with regard to environmentally constraining areas present, the number of urbanized municipalities, the range of development types provided for in local zoning, and the number and types of wastewater service areas that may be proposed. Therefore, the planning entity may select the format, provided the minimum submission requirements at N.J.A.C. 7:15-5.16 through 5.18 and 5.20 are met.

Wastewater

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At proposed N.J.A.C. 7:15-5.25(d), the Department requires the WMP agency to identify the wastewater management methods to serve the existing and future wastewater needs in the planning area. There are various alternative means to manage wastewater from development. Wastewater can be treated and discharged to ground water on the site of the development that generates the wastewater or conveyed, using a system of sewer lines commonly referred to as a collection system and interceptors, force mains and pump stations as needed, to a centralized facility for treatment and discharge to surface water or ground water. On-site treatment facilities include individual subsurface sewage disposal systems (ISSDSs), or septic systems, that discharge to ground water. Septic systems are usually thought of in the context of one-per-residence, but septic systems can serve multiple residences, one or more commercial establishments, or a public facility such as a school or municipal complex. When the on-site treatment facility exceeds 2,000 gallons per day capacity, a NJPDES permit is required.

Suitable wastewater alternatives for a particular project or area are a function of the development type and density, availability of existing infrastructure and the availability of assimilative capacity in potential receiving waters or the ability of the land to absorb wastewater and still protect surface water or ground water quality. The Department is proposing several fundamental standards that must be met in identifying the appropriate wastewater management measures under this rule proposal. These standards are discussed further below at the summary for N.J.A.C. 7:15-5.25(d) and (e).

In order to identify adequate wastewater management measures for proposed sewer service areas, it is first necessary to determine the amount of wastewater that must be managed. Therefore, at N.J.A.C. 7:15-5.25(d)1, the Department establishes the procedure for calculating the existing wastewater generated, and the future wastewater generation potential under the environmental build-out condition in non-urbanized municipalities, or in accordance with population projections in urban municipalities, and information about new non-residential flows not accounted for using flow projection criteria. These may include expanded or redeveloped industries with atypical flow characteristics, landfill leachate or septage. Existing flows are to be based, pursuant N.J.A.C. 7:15-5.25(d)1i, on the average monthly flow according to the Discharge Monitoring Reports for the treatment facility for the most recent 12-month period. Use of this method to establish existing flow will avoid an artificially high existing flow due to seasonal periods of high flows due to infiltration and inflow. The exception would be the domestic treatment works service coastal areas. These facilities experience peak flows during the summer tourist season. For these facilities, the highest average monthly flow for the most recent 12-month period should be used. Estimated future flows are determined, pursuant to N.J.A.C. 7:15-5.25(d)1ii for urbanized municipalities and N.J.A.C. 7:15-5.25(d)1iii for non-urbanized municipalities. In non-urbanized municipalities, in which the environmental build-out analysis will have identified the development types, future flows for existing development that is not yet connected but is proposed to be connected and for future development proposed to be connected are calculated based on the projected flow criteria at N.J.A.C. 7:14A-23.3. In addition, if there are any known future contributions to a treatment facility that do not fit the categories at N.J.A.C. 7:14A-23.3, such as septage or landfill leachate, these shall be identified and included in the flow generation calculation. In urbanized municipalities, N.J.A.C. 7:15-

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5.25(d)1ii provides that 20-year population projections based on a governmental or academic source are used to assess the wastewater flow from future residential development, as represented by the incremental population increase over the next 20 years. Future wastewater generation is calculated using a value of 75 gallons per capita per day applied to this population increment. The Department presently uses this default value where development type is unknown at N.J.A.C. 7:15-5.18(f). This value is consistent with literature values that estimate the indoor water use per person nationwide. In addition, recognizing that redevelopment in urbanized municipalities may involve new or expanded industrial uses, as well as sources that are not captured by the categories at N.J.A.C. 7:14A-23.3, where such new sources are known, these flows must be factored into the wastewater generation potential for urbanized municipalities.

At N.J.A.C. 7:15-5.25(d)2, the Department requires a demonstration that the wastewater generation potential of a sewer service area must align with the permitted capacity for each facility. This requirement will ensure that planning based on sewer service area does not proceed in advance of an analysis of the ability of a treatment facility to accept flow that would be generated by a sewer service area larger than the permitted or allowable capacity. This demonstration will also help dampen sprawl and encourage development in areas where growth has been demonstrated to be supportable. Sewer service areas may include more than one municipality and a treatment facility must allocate sewage treatment capacity among contributing municipalities at N.J.A.C. 7:15-5.6. N.J.A.C. 7:15-5.25(d)2 requires that the demonstration compare potential flow to permitted capacity on a municipal basis. Where the wastewater generation potential analysis indicates that there is insufficient permitted capacity to meet the estimated need, the WMP agency is required to achieve conformity with the standard in one of four ways: 1) reducing the sewer service area; 2) reducing the wastewater generation potential of the sewer service area by having affected municipalities modifying zoning; 3) identifying new or expanded treatment facilities to accommodate the additional wastewater flow, or 4) providing a Department-approved plan with a commitment by the owner of affected facilities to eliminate excessive infiltration and inflow sufficient to accommodate the increase in wastewater flow.

At N.J.A.C. 7:15-5.25(d)3, the Department proposes to require an antidegradation analysis for any new or expanded domestic or industrial treatment works. The analysis must conform to the requirements of N.J.A.C. 7:9B-1.5(d). The approach must also be consistent with the hierarchy set forth in this section.

Specifically, where new or expanded domestic or industrial treatment facilities are proposed with discharges to surface water to meet estimated wastewater needs, the Department is proposing at N.J.A.C. 7:15-5.25(d)3i to require consideration of reclaiming wastewater for beneficial reuse, and implementing it where it is determined to be feasible.

Where new or expanded facilities are contemplated to meet the wastewater needs, the applicant must evaluate reclaiming water for beneficial reuse by conducting a study in accordance with the Department's "Technical Manual for Reclaimed Water for Beneficial

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Reuse,” as supplemented or amended. The Department’s “Technical Manual for Reclaimed Water for Beneficial Reuse” was developed to assist in the implementation of a Reclaimed Water for Beneficial Reuse (RWBR) permitting program for new or existing wastewater treatment plants and includes design, operation, and maintenance criteria for wastewater systems discharging reclaimed water for beneficial reuse, as well as providing RWBR criteria for users of RWBR. The Technical Manual for Reclaimed Water for Beneficial Reuse is available to be viewed or downloaded at <http://www.state.nj.us/dep/dwq/techman.htm>.

A RWBR program may only be authorized by the Department under the authority of a NJPDES discharge permit. The Technical Manual provides guidance for treatment plant owners to develop and evaluate flexible designs and sound engineering practices for managing wastewater in an environmentally sound manner. By taking what was once considered waste product and giving it a specialized level of treatment, that designated volume, either in totality or a specified portion, can then be used to replace or supplement a source of ground water or potable water supply. Depending upon the specifics of an application and the proposed end-uses, extensive treatment and disinfection may or may not be required to protect public health and environmental quality. For example, the treatment required for many types of landscape irrigation, agricultural irrigation, industrial use, fire protection, aesthetic fountains and lagoons, and many construction uses need not rise to the level required for primary contact recreation and water supply use. However, while lower treatment may be appropriate for a specific use, the treatment requirements are intended to ensure RWBR discharges are free from substances that pose a serious threat to the public health, safety, and welfare.

Where new or expanded wastewater facilities with a discharge to surface water are proposed, the antidegradation requirements of the Surface Water Quality Standards, N.J.A.C. 7:9B-1.5(d), must be met. The Department is proposing at N.J.A.C. 7:15-5.25(d)3ii that the first step of the antidegradation analysis is to determine if expansion of an existing treatment facility can be accomplished while maintaining the existing pollutant load. This means that the total pollutant load discharged in the effluent is no more than the existing load, even though the wastewater volume has increased. Improvements to the treatment process would be needed to accomplish this. This is the preferred means to accomplish an expansion because there is no additional pollutant load added to the receiving water.

When an upgrade that achieves no increase in load is insufficient to eliminate the need for a new or expanded treatment facility, the Department requires at proposed N.J.A.C. 7:15-5.25(d)3iii that the new or expanded treatment facility shall achieve treatment levels that will result in no measurable change of quality in the receiving waters. To determine the necessary treatment levels, the applicant must conduct a stream study, the scope of which must be approved in advance by the Department’s NJPDES permitting program, in order to calculate the water quality based effluent limits for pollutants in the effluent or the treatment works must adhere to water quality limits needed to comply with adopted total maximum daily load wastewater allocations.

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Where addressing new or expanded wastewater treatment needs cannot be accomplished through N.J.A.C. 7:15-5.25(d)3ii and iii, but the applicant believes a new or expanded facility is essential, the Surface Water Quality Standards, N.J.A.C. 7:9B, provide that, in Category Two waters, a lowering of water quality may be allowed where it is demonstrated to be necessary to accommodate important economic or social development. Therefore, at proposed N.J.A.C. 7:15-5.25(d)3iv, the Department will only allow identification of a new or expanded discharge to surface waters that are classified as Category Two that will result in a lowering of water quality where the applicant makes the demonstrations at N.J.A.C. 7:9B-1.9 Pursuant to N.J.A.C. 7:9B-1.9, a lowering of water quality must not result in a violation of the water quality criteria or a loss of an existing or designated use and must be the minimum lowering necessary to accommodate the important economic or social development.

Where the applicant is unable to demonstrate that a viable new or expanded facility with discharge to surface water can comply with the above hierarchical standard, proposed N.J.A.C. 7:15-5.25(d)3v provides that a new or expanded facility is not allowable and wastewater needs must be reassessed, with proposed sewer service areas being revised and/or reduced accordingly.

Where a new or expanded discharge to ground water subject to regulation under NJPDES is proposed to accommodate the wastewater generation needs of existing and planned development, the applicant must demonstrate that such a wastewater management option is reasonable. Therefore, at proposed N.J.A.C. 7:15-5.25(d)4, the Department requires that when a WMP agency proposes a new or expanded treatment facility with a discharge to ground water subject to regulation under NJPDES to meet future wastewater needs, compliance with the Ground Water Quality Standards, N.J.A.C. 7:9C, must be demonstrated. Technical feasibility will be demonstrated through the review for the NJPDES permit process. For domestic treatment facilities, the Department will determine conformance with antidegradation requirements, in terms of the nitrate planning standard, through the planning process. Compliance with the nitrate planning standard shall be assessed using the equivalent dwelling units attributed to the treatment facility and the dilution associated with the land area that would be served by the proposed discharge to ground water. This is appropriate because, where future development in a wastewater service area will be served by a centralized treatment facility with discharge to ground water, the nitrate load that would have been associated with ISSDSs will be conveyed to the treatment facility. Equivalent dwelling units can be calculated based on flow (500 gallons per day equals one unit), where no nitrate effluent limits will be imposed, or based on mass (30 lbs/year equals one unit), where nitrate effluent limits are imposed.

Where an industrial treatment works with a discharge to ground water is proposed, the NJPDES permit review will determine both the technical feasibility and the antidegradation requirements set forth in the Ground Water Quality Standards, at N.J.A.C. 7:9C-1.8. If a proposed facility is demonstrated to be technically feasible and in conformance with the antidegradation requirements, then inclusion in the plan will be allowed.

Water supply goes hand in hand with wastewater generation. The Department believes it is essential to have reasonable assurance that a water supply source sufficient to accommodate

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any new or expanded treatment capacity is available in order to include a new or expanded treatment facility in a wastewater management plan. Therefore, at proposed N.J.A.C. 7:15-5.25(d)5, the Department requires that, where a new or expanded treatment facility is proposed, the applicant must identify a water supply source with available capacity sufficient to supply the new or expanded wastewater capacity. A water supply has available capacity for the purposes of this analysis if the source identified has unutilized capacity sufficient to generate the new or expanded wastewater amount in accordance with the most current New Jersey State Water Supply Plan.

The requirements as set forth above are not intended to supersede the requirements for wastewater management that apply in the Highlands preservation area. Thus, at proposed N.J.A.C. 7:15-5.25(d)6, the Department makes clear that the requirements of the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38, apply with respect to wastewater management planning in the established jurisdictional area.

At proposed N.J.A.C. 7:15-5.25(e), the Department establishes requirements for wastewater management alternatives that are not addressed in N.J.A.C. 7:15-5.25(d). These are discharges to ground water of 2,000 gallons per day or less. These discharges are below the threshold for regulation under NJPDES, and include systems that serve individual homes as well as larger systems that might serve multifamily homes, small commercial development or institutional uses such as schools or firehouses. These systems are referred to as individual subsurface sewage disposal systems (ISSDSs) and are commonly known as septic systems.

Individually, ISSDSs are not likely to have a significant impact on water quality. However, the cumulative impact of numerous discharges from ISSDSs can have a significant impact on ground water quality. In order to protect ground water quality from this cumulative impact, the Department is proposing to establish a density standard for areas to be served by ISSDSs that is intended to maintain existing ambient ground water quality, expressed as nitrate. This approach is consistent with the concept of antidegradation of water quality that is better than standards.

At N.J.A.C. 7:15-5.25(e)1, the Department is proposing that nitrate be maintained at a level of 2.0 mg/L. The 2.0 mg/L standard is the ambient nitrate quality in ground water, considering the State as a whole, as discussed further below. Based on an analysis of the constituents present in septic effluent and the behavior after discharge into the soil, the Department has determined that nitrate is an appropriate surrogate for the constituents in septic system effluent on which to base a density standard for development using ISSDSs. Nitrate is one of several constituents that is found in relatively large and predictable amounts in septic effluent. Because of the amount of nitrate in septic effluent relative to ambient levels in the ground water and its solubility, it provides a conservative basis for a dilution-based standard. This determination is consistent with the Department's approach in the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38. In addition, a positive correlation between nitrate concentrations and other chemicals, primarily pesticides, has been well established for agricultural land uses (Vowinkel, 1993, USGS, 1999). This relationship has also been shown to

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exist between dissolved solids and nitrate concentrations (Szabo, 1993). Residential lawn care is the second largest user of pesticides, primarily herbicides (NJDEP, 1995). Therefore, it is reasonable to assume that this same positive correlation between intensity of land use and concentration of pollutants also exists for residential land use. Studies have already shown a relationship between volatile organic compounds (VOCs) and, to a lesser extent, pesticides and nitrate concentrations in residential and urban areas as well (Kish, 1986; USGS, 1999). Therefore, due to its stable and soluble nature, the concentration of nitrate in ground water is a reasonable surrogate for concentrations of pesticides, herbicides, paints and thinners, compounds used for health and personal care, cleaning products and other chemicals typically used in homes or applied to residential sites. These contaminants tend to occur at higher concentrations in shallow ground water (MacLeod, 1995). This same shallow ground water makes up much of stream baseflow during periods of dry weather. While the concentrations at which these contaminants presently occur may not always pose a risk to human health, ecological receptors can exhibit a greater sensitivity to some compounds than humans (see New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B; also Efrogmson, 1997). For instance, both suspended solids and ammonia have more stringent SWQS criteria for streams classified as trout production and trout maintenance. The relationship between septic density and drinking water vulnerability has also been noted (USGS, 1996). As a result, placing limits on nitrate concentrations will help to protect the quality of ground water with respect to an array of contaminants of concern with respect to water used for drinking. For a fuller discussion of nitrate as a surrogate, refer to "Nitrate as a Surrogate for Assessing Impact of Development Using Individual Subsurface Sewage Disposal Systems on Ground Water Quality" (NJDEP, 2007).

The 2.0 mg/L standard does not apply in the Highlands preservation area, which is governed by the rules at Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38. In the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38, a septic density standard has been established based on nitrate in accordance with the Highlands Water Protection and Planning Act. In those rules, the Department established two densities for septic systems: 88 acres per unit in forested areas and 25 acres per unit in other areas.

Two mg/L represents ambient ground water quality in the rest of the State based on an analysis of literature surveys and data. Data compiled in the *N.J. Geological Survey Open-File Report 04-1: A Recharge-Based Nitrate-Dilution Model for New Jersey*, (Hoffman and Canace, 2004) documents minimum, median, and maximum nitrate levels taken throughout all four major geologic provinces that transect New Jersey. The *N.J. Geological Survey Open-File Report 04-1: A Recharge-Based Nitrate-Dilution Model for New Jersey* document can be found on the Department's website at <http://www.njgeology.org/pricelst/pricelst.htm>. Twenty-three studies were cited, with publication dates ranging from 1981 through 1997. Many of the studies delineated areas dependent upon predominant land use, for example, undeveloped, urban, and agricultural. The data was also categorized by geologic province: Valley and Ridge, Highlands, and Newark Basin, which are grouped together here as above the "Fall Line," which is the outer border of the Piedmont region and where streams pass from the more resistant rocks of northern New Jersey to the softer deposits of the Coastal Plain. In Table 1 mean nitrate levels were derived in multiple ways: using all the median data points statewide; by isolating the Coastal

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Plain due to its long history of crop production as a predominant land use; and by then removing those records based on agricultural areas which have disproportionately high levels of nitrate due to applied fertilizers. As Table 5 illustrates, where the result is influenced by agriculture and the historical deposition of nitrate fertilizers, nitrate levels are notably elevated.

Table 1 Nitrate quality based on data compiled from *N.J. Geological Survey Open-File Report 04-1: A Recharge-Based Nitrate-Dilution Model for New Jersey.*

	<u>Statewide (All)</u>	<u>Statewide (Agricultural areas removed)</u>	<u>Coastal Plain (All)</u>	<u>Coastal Plain (Agricultural areas removed)</u>	<u>Above Fall Line*(All)</u>
# Studies	23		18		5
# Median (M) Values	41	34	32	25	9
Mean (nitrate levels from M-values (mg/L) **	1.95	0.93	2.18	0.85	1.15

* No agricultural areas were monitored above the Fall Line.

** 70 percent of the median levels were recorded as nitrate-nitrogen, 30 percent as nitrate + nitrite. Nitrite is a highly unstable ion that occurs in low concentrations. It is commonly assumed that by the time leachate reaches the water table nitrite concentrations are insignificant. Where both nitrate-nitrogen and nitrate + nitrite levels were recorded, the nitrate + nitrite records were omitted. Two studies monitored for nitrate + nitrite and total Kjeldahl nitrogen; in these cases the nitrate + nitrite value was used.

The Ambient Surface Water Quality Monitoring Network monitors surface water quality throughout the State through regular sampling and chemical analysis. As part of this effort, background sites are also monitored, at least one per geologic province, as a reference for natural or historical conditions. Table 2 below summarizes nitrate levels in surface waters at these sites for the latest five-year round. There were a minimum of 20 samples for each site, collected seasonally from 1997 through 2002.

Table 2. Background Nitrate Levels Observed by NJDEP/USGS Cooperative Network.

<u>Location Name</u>	<u>Geologic Province</u>	<u>Maximum Nitrate Level (mg/L)</u>
Dunnfield Creek at Dunnfield	Valley and Ridge	0.41
Double Kill at Wawayanda	Highlands	0.17
Spruce Run at Newport	Highlands	0.879
Morristown National Historic Park (Primrose Brook)	Highlands/Piedmont	1.59
Gravelly Run at Laurel Lake	Coastal Plain	0.23
Lebanon State Forest (McDonald's Branch)	Coastal Plain	0.1

As the preceding table illustrates, documented ambient levels for nitrate concentrations at reference sites are generally well below the water quality standard of 10 mg/L.

The full set of data collected in the Ambient Ground Water Quality Monitoring Network (AGWQMN) was also assessed. This network contains nutrient data from 150 wells sampled

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between 1999 and 2004. These wells are distributed throughout the State and sampled approximately once every five years to monitor statewide trends in ground water quality.

In certain instances, such as when the concentration of nitrate is less than the detection limit of the methodology utilized, data is report as less than the reported value. There are 35 data points in the AGWQMN dataset that are recorded as less than either 0.05 or 0.06 mg/L nitrate. Although the true value is lower than the reported value, the Department used the reported value of 0.05 or 0.06 mg/L nitrate, respectively, rather than abandon the data. In addition, some data points (n = 13) are noted as “estimated,” which indicates there is some question about the precision of the data. Again, rather than abandon this data and lose full spatial representation of all physiographic provinces throughout the State, the Department utilized the estimated values as actual values. Because of this the mean concentration of 3.58 mg/L nitrate based on all 150 data points is expected to be higher than the actual value.

This mean includes data from all land uses and is considerably higher than the values noted at reference locations. The AGWQMN categorizes the land cover contributing to each well as undeveloped, urban, or agricultural. Nitrate levels in agricultural areas are observed to be elevated as noted above, due to applications of fertilizing agents. Therefore, another analysis was performed whereby all data points from the land use category of agricultural were removed from the data set (n = 60). This exercise produced a mean concentration of 1.45 mg/L nitrate for the remaining 90 wells.

Approximately 25 per cent (n = 16) of the data points from agricultural areas, were greater than the water quality standard of 10 mg/L nitrate. Urban and suburban areas can exhibit elevated nitrate concentrations of this magnitude as well, due to sources such as wastewater treatment facilities, areas with dense concentrations of septic systems, and fertilizers applied to lawns and landscaping. Under the construct that water quality that does not attain standards should be restored, another exercise was performed in which all wells with nitrate concentrations greater than 10 mg/L (n = 16) were reduced to 10 mg/L. This resulted in a mean concentration of 2.88 mg/L nitrate.

Reducing values that are beyond the drinking water standard in the data set is reasonable because of the effect on the mean. Ambient nitrate levels in forested, pristine areas are on the order of 0.1 mg/L, such that even a few extreme values from other areas will dramatically affect the mean. The three highest concentrations recorded in the AGWQMN database for ground water wells are 55.51, 24.20, and 21.75 mg/L nitrate, all from agricultural land uses.

Another set of analyses were performed to further sort and evaluate the data. Water quality data for all New Jersey wells in the USGS QWDATA database (part of the National Water Information System/NWIS and inclusive of the AGWQMN database) was retrieved for a broad period of record. All wells in confined units were automatically deleted as they are not expected to be affected by localized surface activities. A USGS program known as Weedpoint was used to sort and select the maximum number of wells without overlapping 500-meter buffers (n = 1,315), to prevent the potential for redundancy of data. Where there were multiple data

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records for a well, the most recent value was automatically selected. Where wells were sampled at multiple depths, the shallowest sampling depth was automatically selected. Some wells were not sampled for nitrate, or otherwise provided no meaningful data value, reducing the data set to 1,103. After this sorting, the sampling period covered by this data is February 1978 through September 2004. The mean concentration of nitrate for all 1,103 selected wells was 2.68 mg/L.

Elevated nitrate values were found in this data set as well. For instance, the highest concentration of nitrate detected in the complete NWIS database was 72.4 mg/L, over seven-times the drinking water standard of 10 mg/L. In fact, 58 wells sampled above 10 mg/L nitrate (the mean concentration of nitrate for these 58 wells was 16.81 mg/L). As above, using the construct that water quality that does not attain standards should be restored, these values were reduced to the standard (58 wells) and the mean concentration of nitrate for this amended 1,103-well database was 2.32 mg/L nitrate.

An additional exercise was performed to assess the potentially excessive loading of nitrate in agricultural production areas. Within the 500-meter buffers of each well, the type of land cover was categorized using Level I of the Anderson Classification System land use designations, for example, Agricultural, Barren, Forest, Water, Wetlands, and Urban. Under the assumption that, if the immediate area around the well was equal to or greater than 50 percent agriculture there would be abnormally high loadings of nitrate, the well was removed from the database (161 wells). This screening produced a mean concentration of nitrate for the remaining 942 wells of 1.95 mg/L.

A final analysis using the USGS software was conducted in which wells were selected if the 500-meter buffer was equal or greater to 90 percent Forest, Water or Wetlands. Of the 1,315 wells in the complete data set, only 83 fit this criteria. The mean concentration for these wells was 0.3 mg/L nitrate.

In establishing the nitrate concentration planning standard that would represent antidegradation of existing ambient ground water quality, the Department considered the various literature sources and data sets evaluated with regard to background levels for nitrate. In some undeveloped areas of the State, nitrate levels are recorded as low as 0.01 mg/L. On the other hand, in areas subject to anthropogenic activities that introduce significant amounts of nitrate, such as agricultural and residential areas, the level is often significantly higher. In addition, nitrate levels will vary in a given area seasonally as well because of variable precipitation. During the wet spring season nitrate may be diluted to less than the standard, while during dry summers or times of drought there will be less dilution and the standard may be locally exceeded. This seasonal mixture of wet and dry extremes, combined with variable soil permeability, generally balances out over the area of an entire development or watershed, but the occurrence of such conditions illustrates the importance of specifying a nitrate planning standard that is sufficiently protective to account for these naturally recurring shifts as well as the importance of planning on a watershed basis. Considering all of the above, the Department has selected 2.0 mg/L of nitrate as the value that best represents the ambient ground water quality for the State as a whole, balancing pristine areas and those affected by a reasonable level of human

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influence. Further, considering the regional basis of the analyses that were used to develop the nitrate standard, the Department believes that the HUC 11 watershed level is an appropriate scale for demonstrating attainment of the nitrate standard.

Therefore, at proposed N.J.A.C. 7:15-5.25(e)1, the Department establishes that, except in the Highlands preservation area, in areas to be served by ISSDS, the density of systems in undeveloped and underdeveloped areas shall not cause exceedance of the nitrate planning standard of 2.0 mg/L of nitrate on a HUC 11 basis. The Department also sets forth an analysis that must be performed to assure that the amount of development outside of the sewer service areas does not exceed the maximum that the area can support while continuing to maintain the 2.0 mg/L standard.

The first step in the analysis, at proposed N.J.A.C. 7:15-5.25(e)1i, is to determine the number of acres per residential dwelling unit that the area can support while maintaining the 2.0 mg/L standard. There are two methods offered to perform the analysis: a detailed analysis using A Recharge-Based Nitrate-Dilution Model for New Jersey v5.1, as amended and supplemented, or a simplified method using HUC 11 recharge rates called A Recharge-Based HUC11-Scale Nitrate-Carrying-Capacity Planning Tool for New Jersey, MS Excel Workbook, v1.0, as amended and supplemented, available at <http://www.nj.gov/dep/watershedmgt/rules.htm>.

A Recharge-Based Nitrate-Dilution Model for New Jersey, v5.1 can be found on the Department's website at <http://www.nj.gov/dep/watershedmgt/rules.htm>. This model calculates the number of acres per single family residential dwelling unit needed to dilute a pollutant load in order to achieve a concentration target in the ground water. The model has as inputs 1) the recharge capabilities that have been derived for a wide range of soil types present in New Jersey, 2) a climate factor assigned to each municipality that is based on precipitation data for the State, 3) the pollutant load per person, expressed as pounds per year, 4) the number of persons per single family residential dwelling unit, and 5) the target concentration in the ground water. The model derives a value for impervious cover using an algorithm that relates lot size and the associated percent of impervious cover to refine the output of the model, which is acres per unit needed to achieve the designated target. This algorithm is extrapolated from the Natural Resources Conservation Service's (NRCS) Technical Release 55 (TR-55: Urban Hydrology for Small Watersheds (USDA, 1986)), which presents procedures for estimating stormwater runoff and peak rates of discharge. The soil type and municipality are user inputs. The nitrate loading is specified as 10 pounds per person per year, a value derived from literature as the amount of nitrate contributed by a person to a septic system. To establish a household occupation rate, the Department examined the latest U.S. census data to determine a representative residential density. Based on the 2000 census, the average household-size in New Jersey is 2.68 people (U.S. Census Bureau, 2006; U.S. Census Bureau data can be accessed at www.census.gov). Therefore, the Department rounded this number to three. The target is the nitrate planning standard of 2.0 mg/L.

In the HUC 11 simplified model at N.J.A.C. 7:15-5.25(e)1i(2), the variable inputs for soils and municipal climate factor are replaced with a recharge value that provides a weighted

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average of these variables within the HUC 11. The derivation of this weighted average is described in detail in the Technical Report, "Nitrate as a Surrogate for Assessing Impact of Development Using Individual Subsurface Sewage Disposal Systems on Ground Water Quality," available at <http://www.nj.gov/dep/watershedmgt/rules.htm>. With this model, the user selects the applicable HUC 11 to determine the applicable recharge rate and applies it to the undeveloped and underdeveloped acres in the HUC 11. The Department tested the two methods in Monmouth County and determined that the outcomes were comparable. The simplified method offers considerable savings in terms of time and resources. This model cannot be used in Hudson and Essex Counties because recharge values have not been developed for the soils in these counties. This model should not be used where the land use is predominantly urban or water/wetlands because the recharge values in these HUC 11 areas will be based on the very limited recharge associated with the non-urban/wetland/water areas, giving an inappropriately large number of acres needed per unit. Whichever model is selected must be used for an entire HUC 11 to avoid invalidating the averaging effect in the simplified model.

The next step, at proposed N.J.A.C. 7:15-5.25(e)1ii, is to determine the number of undeveloped and underdeveloped acres outside of sewer service areas and apply the required number of acres per single family residential dwelling unit determined in N.J.A.C. 7:15-5.25(e)1i in order to calculate the total number of additional single family residential dwelling units allowable in the HUC 11.

The Department next requires, at proposed N.J.A.C. 7:15-5.25(e)1iii, that the number of allowable residential units be compared to the number of units that can be realized under the existing zoning for the undeveloped and underdeveloped tracts in each municipality, or portion thereof, within each HUC 11. Recognizing that existing zoning is not uniform and must allow for a mix of development types, proposed N.J.A.C. 7:15-5.25(e)1iii also provides a means to convert zoning types other than residential units, such as transit residential development and non-residential development types, into an equivalent number of residential units, which is the development type that is the basis for the nitrate dilution model output. The Department has assumed three persons per dwelling unit in the dilution analysis, as discussed above. However, wastewater flow values are assigned at the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A-7.4, by the number of bedrooms in a house. Based on statistics available from the 2000 US Census at <http://www.census.gov/const/www/>, the majority of homes constructed outside Metropolitan Statistical Areas (MSA), are three-bedroom homes. A MSA is a core area containing a substantial population nucleus (at least one urbanized area of 50,000 or more inhabitants), together with adjacent communities having a high degree of economic and social integration with that core. As of data last revised January 19, 2006, there were six MSAs in New Jersey: New York//Northern New Jersey/Long Island, Trenton/Ewing, Philadelphia/Camden/Wilmington, Vineland/Millville/Bridgeton, Ocean City and Atlantic City. Areas outside MSAs were assumed to be the most representative of areas using ISSDSs. In consideration of this data, the Department selected a three-bedroom house as the typical single family residential dwelling to associate with the assumption of three persons per dwelling unit. It is recognized that not every residential unit will consist of a three bedroom structure and not every residential unit will house three persons. However, because of the regional basis of this

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analysis, the use of averages is appropriate. According to the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A-7.4, the wastewater flow associated with a three bedroom house is 500 gallons per day. Therefore, one means to translate non-residential development to an equal number of residential units is to take the wastewater flow in gallons generated by the development type, calculated in accordance with the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A-7.4, and divide by 500 gallons. For example, in a zone in which a 9,000-square-foot strip mall is allowed, the number of equivalent dwelling units would be figured by taking the flow rate of 0.125 gallons per square foot of structure assigned according to N.J.A.C. 7:9A-7.4 and multiplying it by the number of square feet to get a wastewater flow of 1,125 gallons per day. Dividing by 500 gallons, this zone would be the equivalent of 2.25 dwelling units. Thus every 500-gallon increment generated by a development is equivalent to a residential dwelling unit, and is referred to as an equivalent dwelling unit. Application of the equivalent dwelling unit concept can also be in terms of nitrogen loading, where a treatment facility with discharge to ground water is or will be subject to a NJPDES permit with enforceable effluent limits for nitrate concentration. In this situation, the pounds per year of nitrate must be calculated (multiplying the effluent limit concentration by the permitted flow and converting to pounds per year) and divided by the 30 pounds per year associated with the typical residential unit (three persons per unit multiplied by 10 pounds per person per year) to determine the number of equivalent dwelling units.

If it is determined, based on the analysis in N.J.A.C. 7:15-5.25(e)1iii, that the number of equivalent dwelling units that could occur under existing zoning would exceed the allowable number of equivalent dwelling units determined in N.J.A.C. 7:15-5.25(e)1i, ground water quality will not be protected. Therefore, proposed N.J.A.C. 7:15-5.25(e)1iv requires that the plan submitted include adjustments to the zoning in affected municipalities to achieve conformance between the equivalent dwellings units allowed by zoning and the number of equivalent dwelling units that can be accommodated to assure the ground water quality will be protected.

The Department recognizes that variations in development type and density are necessary and desirable and that municipalities are responsible for determining, through zoning, how development should be distributed within each municipality, based on local concerns. Accordingly, proposed N.J.A.C. 7:15-5.25(e)1v provides that municipalities should determine, and allocate through zoning, the types and intensity of development at their discretion and in ways that will satisfy local objectives, provided the overall level of development on a HUC 11 basis assures protection of ground water quality.

Proposed N.J.A.C. 7:15-5.25(e)2 states that the requirements for ISSDS wastewater management in the Highlands preservation area shall be governed by the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38. As previously discussed, the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38, have established a more conservative septic density consistent with the requirements of the Highlands Water Protection and Planning Act. These requirements are more stringent and take precedence over achieving the statewide ambient water quality target.

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Since 1990, the Department has maintained the rules that govern the Standards for Individual Subsurface Sewage Disposal Systems at N.J.A.C. 7:9A. These rules generally guide the regulated community through the process of locating, designing, and constructing septic systems and also address the need for proper operation and maintenance of those systems. Currently, all municipalities are required by regulation for all ISSDS design and construction to be performed through a professional engineer (P.E.) and approved by the applicable health department (N.J.A.C. 7:9A). At N.J.A.C. 7:9A-3.14, health departments are also required to notify homeowners with septic systems every three years advising on long-term operation and maintenance practices. It is difficult, however, to ensure that systems are properly operated and maintained after the certification of compliance is issued.

There are more than 380,000 ISSDSs in New Jersey, which equates to greater than 16 percent of all New Jersey homes (Rutger's, 2005). Unfortunately, many homeowners who utilize ISSDSs to treat their wastewater discharges do not properly maintain them in a timely fashion, often putting off maintenance or repairs until the system is completely clogged and septic effluent is seeping out of the ground. A failing system is a risk to human health and to water quality. Proper maintenance of ISSDSs is essential in order to offset the high costs of repair or replacement and hazards to the environment that failing systems pose.

Therefore, in order to ensure ISSDSs will be protective of public health and the environment, at proposed N.J.A.C. 7:15-5.25(e)3, the Department is proposing that a mandatory maintenance program be established at the local level. Several municipalities in New Jersey already have septic management programs. Various levels of regulation and administrative oversight are possible, from a simple voucher system, in which homeowners would be required to periodically submit evidence that their system had been pumped out, to one that includes licensing of inspectors and renewable permits for ISSDSs. The Department is not specifying the form that the program must take beyond that a proper maintenance program will require periodic pump outs of accumulated septage and repair of malfunctioning parts as needed. Depending on the size and type of ISSDS, pumpouts should occur between every three and seven years (Rutger's, 2005).

Water Supply

Proposed N.J.A.C. 7:15-5.25(f) addresses cumulative water supply issues, which are integral to water quality management planning. This subsection requires applications for WMPs and WMP updates to include information that will allow the Department to determine if there is sufficient water supply available to serve the water supply needs that would be associated with the environmental build-out condition, consistent with the findings of the most current New Jersey State Water Supply Plan (NJSWSP), applicable regional water supply studies or adopted TMDLs.

Understanding water supply needs and how they are proposed to be met will enable the Department to assess the cumulative impact of the depletive and consumptive losses on stream baseflow and water quality. There is a direct interrelationship between ground water and water quantity in streams. The baseflow of streams is primarily made up of ground water flow that

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reaches streams through wetlands, seeps, springs, or direct contact with an aquifer, all of which is derived from precipitation. Recharge is that fraction of precipitation that percolates into the ground and enters an aquifer, where it is stored and released to surface waters slowly over time. It is this water that primarily makes up baseflow, or dry weather flow, in streams. That precipitation which evaporates or is transpired by plants is lost to the ground water system in gaseous form. The fraction of precipitation that runs overland into surface water is quickly lost to the system and cannot form baseflow, or dry weather flow. Due to this relationship, ground water withdrawals will alter the amount of baseflow in surface waters. Direct water supply withdrawals, pump-storage diversions to reservoirs and reservoir releases all affect stream water quality and quantity as well.

Water use can be divided into three categories: nonconsumptive, consumptive, and depletive. After a nonconsumptive water use, the entire volume of water is returned to the water source, as in hydroelectric power generation. Consumptive use refers to a water use that evaporates, or consumes, a portion of the water during use and then returns the remainder to the watershed. For example, a portion of water used for irrigation, including lawn watering, is lost through evaporation and transpiration. Depletive water use refers to water exported from the watershed, which is thereby totally lost from the originating watershed. Such losses may occur through either a water supply distribution network that moves water from one watershed to another or through a regionalized wastewater collection and treatment system where treated wastewater ultimately is discharged to a different watershed or subwatershed.

Decreases in baseflow due to consumptive or depletive use can impair a surface water body's ability to sustain several of the uses designated in the New Jersey Surface Water Quality Standards (N.J.A.C. 7:9B-1.12). For example, significant ground water withdrawals or a direct surface water withdrawal upstream of water supply reservoirs or water supply intakes can reduce the safe yield of those water supplies. When less water exists in a stream, particularly during dry periods, less water is available to meet passing flow requirements associated with surface water allocations. Consequently, the amount of water that can be withdrawn is diminished. Further, significant ground water withdrawals or a direct surface water withdrawal upstream of point source discharges reduce the amount of water available to mix with point sources of pollution during low-flow periods, which can greatly affect water quality. The cumulative impact of water withdrawals and decreasing ground water recharge due to impervious surface is less water being available to dilute surface water discharges and the potential for more frequent violations of water quality standards and criteria.

The effects of decreasing baseflow are not limited to water quality nor are they necessarily localized. Decreased baseflow quantity can affect stream temperature and other habitat considerations, such as depth, thus adversely affecting aquatic biota and stream dependent wildlife. The most extreme effect of decreasing baseflow will occur in headwaters areas where the streams themselves would simply dry up except during rain events. These streams would be incapable of supporting aquatic life during a majority of the year. If surface water depth and temperature are altered, downstream reaches could similarly be affected to the point that water levels over reproductive habitat for finfish or even refuge areas, such as in-

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stream pools, would no longer be sufficient to support finfish populations. As less freshwater is passed downstream, the potential for increased salinity in estuaries and the upstream migration of the salt front can produce dramatic effects on nursery areas for finfish and the survival of shellfish. Oysters are particularly sensitive because they depend on a narrow range of salinity for optimal growth and disease and predation protection.

New Jersey's State Water Supply Plan (NJSWSP), also known as the New Jersey Statewide Water Supply Plan, last updated in 1996 and currently undergoing revision, assesses water supply needs and available supply and identifies areas where water supplies are currently experiencing or may experience stress. The water availability estimates in the NJSWSP for surface water sources were relatively well known due to the calculation of "safe" or "dependable" yields for reservoirs and surface intakes based on actual stream flow data. In contrast, less is known on a Statewide basis about the ground water resource.

The NJSWSP estimated ground water availability based on the concept of natural recharge as determined by baseflow separation. Baseflow separation is a technique used to differentiate observed flows at stream gauges into a surface runoff fraction and a ground water contributed fraction. The ground water contributed fraction can then be applied to the entire area of the watershed above the gauge to estimate the amount of aquifer recharge that occurs per unit land area. The appropriate rate of recharge is then applied to the land area of that water supply management area to assess the total amount of aquifer recharge in each water supply management area. However, because aquifer recharge is essentially equal to the natural discharge that makes up stream baseflow, only some portion of natural recharge is available for water use without causing damage to surface water resources. Based on observed aquifer and stream stress in previous localized studies, the 1996 NJSWSP established "planning thresholds" to estimate the amount of ground water available on a sustainable basis. Those thresholds were set at 20 percent of aquifer recharge in the Piedmont, Highlands and Ridge and Valley geologic provinces and 10 percent of aquifer recharge in the Inner and Outer Coastal Plains.

The available ground water supply was then added to the known safe yield of surface water supplies for each of the 23 water supply management areas. This total available water supply was then compared to current known water supply withdrawals and projected water supply demand increases in ten year increments over a 40-year period. The results of this analysis showed that, by 2010, eight of the 23 water supply areas would be stressed. The NJSWSP recommended more detailed study be undertaken in each of these areas to better estimate the water supply and demand and to develop solutions for these stressed water supply areas.

Many of these studies are currently underway including: Cape May, Atlantic County, Northeast, Toms River, Metedeconk River, and the Maurice River. In addition, studies have been completed in Water Supply Critical Areas 1 and 2 and alternatives for sustainable water supplies have been identified in each of these areas. The Department is also preparing water budgets on a HUC 11 basis and an ecological flow model that will be used in the next NJSWSP

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update to better quantify available water and define where there are stresses on water supply availability in the State.

The 1996 NJSWSP also noted that the current institutions, programs and public policy associated with water supply consist of a “patchwork” of narrowly confined, too often conflicting or competing objectives and jurisdictions. For example, there is no current regulatory program in the Department that deals with the cumulative effects of individual ground water withdrawals less than 100,000 gallons per day. However, the cumulative effect of these withdrawals could easily surpass the sustainable ground water yield. To address this issue, the 1996 NJSWSP strongly recommended that the management of water resources be accomplished through a watershed approach.

At N.J.A.C. 7:15-5.25(f), the Department is proposing to require that the WMP agency submit information that will allow the Department to assess water supply needs relative to water supply availability through the wastewater management planning process. In order to determine if there is adequate water supply for the planned future development, the WMP agency must provide information about future water supply needs within public water supply service areas, which will have an associated water allocation permit, and outside of public water supply service areas, which do not, but for which water availability has been assessed in the NJSWSP. To comport with the municipal and HUC 11 watershed bases of the WMP analyses, and to allow consideration of the effect of the identified wastewater management method within each area, the information on water supply need must be broken down by municipality, HUC 11 and wastewater service area. The appropriate increments can then be assembled by the Department for comparison with water supply availability information from water allocation permits, the NJSWSP, adopted regional water supply plans and considering any constraints imposed by adopted total maximum daily loads that rely upon certain baseflow in surface water. Therefore, the Department is proposing at N.J.A.C. 7:15-5.25(f)1 to require this information in each public water supply service area and for the area outside public water supply service areas. The Department has developed a GIS coverage of public water supply service areas that should be used for this analysis, which will be made available upon request. Except in urbanized municipalities, the future development in each area is to be taken from the environmental build-out analysis required at N.J.A.C. 7:15-5.25(c) and the water supply needs of the future development shall be based on the water supply use figures found in the Safe Drinking Water Act rules at N.J.A.C. 7:10-11.5(f). In urbanized municipalities, an environmental build-out analysis is not required. Therefore, future water supply need shall be assumed equivalent to the wastewater generation potential of the population increase for the 20-year planning horizon, as determined in N.J.A.C. 7:15-5.25(d)1. While this may underestimate the actual water demand because it excludes outdoor water use, which is likely to be small in urban settings, it is a sufficient approximation for planning purposes.

Where future water demand exceeds safe and sustainable water supply as identified in existing water allocation permits, the NJSWSP, or conflicts with an adopted regional water supply plan or TMDL, a wastewater management plan cannot be approved. When the water need exceeds the water available as a result of the analysis in N.J.A.C. 7:15-5.25(f)1, the

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Department proposes at N.J.A.C. 7:15-5.25(f)2 to require the applicant to select from a set of options to ensure that water resources are protected. Options include: 1) satisfying future water supply needs by implementing measures identified by conducting a study in accordance with the Department's Division of Water Quality's Technical Manual for Reclaimed Water for Beneficial Reuse; 2) obtaining water supply from an alternative source in a manner consistent with water availability identified in the NJSWSP, regional water supply plans and adopted TMDLs; 3) adopting water conservation ordinances, such as outdoor water use restrictions, that would accomplish conservation of water sufficient to offset the difference between water need and water availability; or 4) by adjusting future development plans to reduce demand. This could include revising either the amount or type of development, or both.

Nonpoint Source Pollution

Proposed N.J.A.C. 7:15-5.25(g) requires that wastewater management plans, plan updates and wastewater management plan amendments consider and address the effects of planned future development with respect to nonpoint source pollution. The standards are set forth in terms of requirements for stormwater recharge, quality, and quantity and limitations on disturbance of riparian zones and steep slopes. In addition, adopted TMDLs or watershed restoration plans may establish measures related to nonpoint source pollution control that will need to be incorporated into a wastewater management plan or update. Examples of measures that might be incorporated in an adopted TMDL or watershed restoration plan may include adoption of ordinances to achieve proper application of fertilizer, or requiring the stormwater management best practices that apply to Tier A municipalities in a Tier B municipality (assignment made through the Municipal Stormwater Regulation Program at N.J.A.C. 7:14A-25.3), such as street sweeping, pet waste management and wildlife feeding ordinances.

Nonpoint source pollution comes in many forms, entering waterways by both overland and subsurface means. It delivers sediment, nutrients and other pollutants to streams and lakes with many adverse results, including eutrophication, degradation or destruction of aquatic communities, and degradation of water quality that affects uses of water resources for drinking water and recreation. (See for example, Welsch, 1991 and Basnyat, 1999.) As development approaches build-out, the volume of stormwater increases and the rate of delivery of stormwater runoff is adversely modified. The increase in runoff volume and acceleration in flow rates result not only in heavier pollutant loads being carried to streams, but also in the destruction of stream characteristics necessary to support a healthy aquatic ecosystem. Increased runoff can erode stream bed and banks, increase the sediment load in the stream and ultimately bury the natural stream substrate as that increased sediment load is dropped. (See, for example, Booth 2000 and Horner 1997). Nonpoint sources of pollution are responsible for many of the impairments listed on the Department's List of Water Quality Limited Segments.

The Department's progressive stormwater management requirements for TSS removal, flood peak controls and recharge, set forth in the Stormwater Management rules at N.J.A.C. 7:8, are expected to ameliorate the effects of future development resulting from stormwater related impacts on water quality, changes in hydrology, flooding, and loss of recharge. Concurrently, adverse physical changes in channel morphology that contribute to water resources degradation

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will also be reduced. Therefore, N.J.A.C. 7:15-5.25(g)1 establishes that a WMP or WMP update must demonstrate compliance with recharge and stormwater quality and quantity objectives through adoption of a stormwater management plan(s) and ordinance(s) as required by the Stormwater Management rules, N.J.A.C. 7:8. A model ordinance is provided at www.nj.us/dep/watershedmgt as an aide. The Department believes that demonstration of compliance in this way with the provisions of the Stormwater Management rules, N.J.A.C. 7:8, is a sufficient demonstration of protection with respect to this aspect of nonpoint source pollution within a WMP or WMP update.

However, the Department believes that measures beyond stormwater management are required to fully protect water quality and valuable aquatic resources from degradation due to nonpoint source pollution. One of these measures is to maintain vegetated riparian zones. The word “*riparian*” comes from the Latin word “*ripa*”, meaning *river*, and is simply defined as “of, or on, the river bank.” While different sources define riparian zone differently, the following are the characteristics of a riparian zone: 1) it is adjacent to a water body; 2) it is linear in nature but lacks clearly defined linear boundaries; 3) it provides a unique transition zone between aquatic and upland environs, and; 4) it is characterized by the presence of water and periodic saturation (Palone and Todd, 1997).

The Department is proposing a definition for the term “riparian zone” that describes where a riparian zone exists and how one is measured. Further, at N.J.A.C. 7:15-5.25(g)2, the Department is proposing to establish the minimum widths of riparian zones based on stream classification and other characteristics. The Department is requiring a demonstration that these areas are protected from avoidable disturbance as set forth in this section as part of a WMP or WMP update.

Research has shown that a vegetated area immediately adjacent to a watercourse provides a variety of significant functions and values. As stated by the United States Army Corps of Engineers in a rule proposal (64 FR 39274 (July 21, 1999)) that would allow the Army Corps to require vegetated buffers adjacent to certain water areas, which was later adopted (65 FR 12818 (March 9, 2000)), vegetated buffers along waters serve to:

1. Reduce adverse effects to water quality by removing nutrients and pollutants from surface runoff;
2. Reduce concentrations of nutrients and pollutants in subsurface water that flows into streams and other open waters;
3. Moderate storm flows to streams, which reduces downstream flooding and degradation of aquatic habitat;
4. Stabilize soil (through plant roots), which reduces erosion in the vicinity of the open water body;

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5. Provide shade to the water body, which moderates water temperature changes and provides a more stable aquatic habitat for fish and other aquatic organisms;
6. Provide detritus, which is a food source for many aquatic organisms;
7. Provide large woody debris from riparian zones, which furnishes cover and habitat for aquatic organisms and may cause the formation of pools in the stream channel;
8. Provide habitat to a wide variety of aquatic and terrestrial species;
9. Trap sediments, thereby reducing degradation of the substrate that provides habitat for fish and other aquatic organisms (for example, some fish species depend upon gravel stream beds for spawning habitats); and
10. Provide corridors for movement and dispersal of many species of wildlife. In addition, vegetated buffers next to streams provide flood storage capacity and ground water recharge functions.

The existing Stormwater Management rules at N.J.A.C. 7:8-5.5(h) already establish a 300-foot Special Water Resource Protection Area along Category One waters and upstream tributaries within the same HUC 14 watershed. Given the many important ecological functions that a healthy riparian zone provides, adequately preserving such areas is essential to protecting New Jersey's natural resources and water supply. The protection and preservation of riparian zones is essential to the overall health of the natural environment. The loss of soil and plant life that occurs adjacent to surface waters not only threatens public and private property, but directly impacts water quality and the health of fish and wildlife. The extreme importance of preserving and restoring adequate stream corridors has been heavily documented in recent decades.

In consideration of the literature on riparian zones and the protections they provide, the Department is requiring protection of additional riparian zones as follows: 150 feet along all trout production waters, and upstream tributaries to trout production waters, trout maintenance waters and tributaries within one mile upstream, waters flowing through areas that support certain threatened or endangered species and tributaries within one mile upstream; and waters that flow through areas that contain acid producing soils. To provide a minimum level of protection for all other waters, a 50 feet riparian zone is required. The Department selected these riparian zones based on the literature cited below. These widths are also consistent with existing protections afforded in the Stormwater Management rules, N.J.A.C. 7:8 and in the proposed Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

A detailed review of the scientific literature that references over 150 studies published within the last 30 years was conducted by Seth Wenger for the Office of Public Service & Outreach Institute of Ecology at the University of Georgia (Wenger, 1999). The literature outlines the importance of functioning riparian zones and attributes the following functions to the riparian zones:

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Reduce erosion and sedimentation. The physical barrier of vegetative cover decreases the velocities of overland flow and resists channelization of stormwater runoff, promoting infiltration and reducing stream bank erosion (see, for example, Johnson and Ryba, 1992 and the Center for Watershed Protection (CWP), 2003). The roughness of the vegetation mechanically traps and holds sediment and debris, promoting deposition of sediments on land (see, for example, Castelle et al. 1994 and Wenger, 1999).

Stream bank stabilization. Root systems of buffer vegetation aid in the maintenance of soil structure and bank stability (Caldor, 2002). The extensive root systems of forested buffers are most effective in this regard, holding soil firmly in place to resist channelization and landslides (Johnson et al, 2000). Fallen branches influence stream morphology by dissipating flow energy (Booth, 1991), providing further protection against streambank erosion and channel widening (Booth and Jackson, 1997).

Nutrient and contaminant removal. Riparian zones absorb, adsorb and filter nutrients such as phosphorous and nitrates both by filtering stormwater runoff and via plant uptake (see, for example, Palone and Todd, 1997 and Castelle et al. 1994). Riparian zones also reduce levels of other contaminants such as herbicides (USDA, 2003), and pesticides and metals both by displacing direct contamination of water bodies via the buffer area which then also increases retention time for contaminants to decompose and/or bind to soils (Wenger, 1999). Measurable success has also been recorded for an adequately wide riparian zone to reduce levels of pathogenic microorganisms such as fecal coliform (see, for example, Doyle et al. 1977 and Coyne et al. 1995).

Maintenance of habitat diversity. Due to their function as a transition area between upland and wetland environs, riparian zones encompass a unique set of characteristics inclusive of attributes of each, in effect, creating a unique “ecotone” of its own (Naiman et al. 1988). “*Edge effect*” is a well-known theory proposing that numbers of both plant and animal species increase at edges of varying environs due to the overlap of adjacent habitats (Johnson and Ryba, 1992). Forested and vegetated riparian areas have been found to support twice as many species as are found in upland counterparts (Gregory et al. 1991). One study that conducted census surveys for plant and avian species found as much as 90 percent of the region’s populations could be represented when minimum riparian widths of 33 to 98 feet and 246 to 574 feet, respectively, were left undisturbed. Riparian zones also provide a vast array of food and habitat for wildlife (Spackman and Hughes, 1995). Presence of large woody debris provides a diverse range of substrates and aquatic environs by creating pools and riffles, trapping sediment and detritus, and promoting habitat complexity (May et al. 1997). Leaf litter is at the base of the aquatic food chain and a vital food source for many macroinvertebrates (Palone and Todd, 1997), which in turn form the core diet of many fish species (FCDPWES, 2001).

The importance of adequate riparian zone widths is also discussed in Wenger's review of available research on the topic. Varying widths are recommended for specific functions. For example, Wenger notes that the ability to remove sediments increases as the width of the riparian

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zone increases. Sediment can travel up to 300 feet through a riparian zone, and the removal of rocks, vegetation and vegetative debris within the zone increases the distance that sediment can travel (Belt et al., 1992). One study shows that a riparian zone of 60 meters (approximately 200 feet) removed 94 percent of total suspended solids (TSS) (Peterjohn & Correll, 1984). Another study shows that a riparian zone of 70 feet removed between 75 and 81 percent of TSS. In general Wenger recommends a riparian zone of 100 feet for sufficient sediment entrapment.

Riparian zones can also remove excess nutrients and contaminants such as pesticides, heavy metals and organic matter, all of which are detrimental to water quality. Nitrogen can often be found in excess in the ecosystem and contributes to the eutrophication of water bodies. A riparian zone of 50 meters (approximately 165 feet) resulted in a decrease in all forms of nitrogen in surface runoff and a decrease in nitrate in subsurface flow (Peterjohn & Correll, 1984). Based on his review of the literature, Wenger notes that a minimum riparian zone width of 15 meters (approximately 50 feet) is generally required for the purposes of denitrification but notes that a width of 30 meters (approximately 100 feet) will likely provide more nitrogen removal.

Phosphorus also contributes to eutrophication and its removal can result in improved water quality. A riparian zone width of 50 meters (approximately 165 feet) led to an 84 percent decrease in total phosphorus and a 73 percent decrease in soluble phosphorus in surface runoff (Peterjohn & Correll, 1984). Most studies reviewed by Wenger showed a positive correlation between phosphorus removal and riparian zone width. In addition, for the removal of pesticides and heavy metals, a width of 15 meters (approximately 50 feet) is recommended (Neary, 1993). However, studies in this area were limited and it is suggested that the above recommendation be considered a minimum width. In fact, the USDA Natural Resource Conservation Service notes that soluble compound removal is accomplished with a minimum riparian zone width of 100 feet. Lastly, the removal of organic matter is also essential to water quality. A riparian zone of 60 meters (approximately 200 feet) resulted in a decrease in fecal coliform by 87 percent, in total fecal coliform by 84 percent and in biological oxygen demand by 62 percent (Wenger, 1999).

While the above functions are probably the most studied, suggestions for the width of the riparian zone for various other functions are as follows:

Function	Recommended Width	Source
Flood Attenuation	20 to 150 meters (approximately 65 to 500 feet)	Fischer and Fischenich, 2000
	Width of the 100-year floodplain	Wenger, 1999
Stream Stabilization	10 to 20 meters (approximately 30 to 65 feet)	Fischer and Fischenich, 2000
Wildlife Habitat	30 to 500 meters (approximately 100 to 1650 feet)	Fischer and Fischenich, 2000

While a sufficient width of a riparian zone is essential to its effectiveness, it is also noted in the reviewed literature that a riparian zone's continuity is also vital. A break or gap in this area can negatively affect the overall riparian system (Rabeni & Smale, 1995).

UPDATED AS OF JUNE 4, 2007

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A review of various States' policies and legislation also reveals the importance of riparian zones. Massachusetts regulates activities within 25 to 200 feet of its rivers through its Wetlands Act. This buffer area is known as the "riverfront area" and its importance to the environment is presumed in the Wetlands Act. The width of the riverfront area varies based on geographic area and surrounding land use. In the case of the presence of rare wetland and upland vertebrates or invertebrates or vernal pool species, development within the riverfront area is prohibited. Maryland recommends a local model ordinance that includes a "no build" setback 100 feet from the top of bank of FEMA mapped watercourses and 50 feet from unmapped watercourses. Connecticut has had a law in place since 1996 which allows its wetland agency to review activities in certain upland areas, including those uplands surrounding watercourses.

Lastly, the Federal government has recognized the importance of riparian zones through programs such as the National Conservation Buffers Initiative, which encourages the installation of conservation buffers to aid in improving water quality. The large number of Federal grants that have been used to fund riparian zone protection and enhancement indicates the importance of these areas. The newly proposed Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, recognize, as the Federal government has, the importance of riparian zone protections.

Given the above, the Department has determined that expanding the protected riparian zones as proposed herein is both appropriate and necessary to adequately protect the State's surface and ground water resources. The Department will also continue to review the available literature and research on this topic in order to assess if these riparian zone widths adequately protect the State's resources, as future research may conclude that different widths are necessary to ensure that the riparian zone can better serve its important functions. These riparian zones are consistent with the Special Water Resource Protection Areas in the Stormwater Management rules, N.J.A.C. 7:8, for Category One waters and the riparian zones in the newly proposed Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

At N.J.A.C. 7:15-5.25(g)3, the Department proposes that compliance with the riparian zone standard be demonstrated by providing evidence of an ordinance adopted by the municipalities within a wastewater management planning area which prevent, with few exceptions, new disturbance for projects or activities. Exceptions include redevelopment within the limits of existing impervious surfaces and new development necessary to 1) protect public health, safety or welfare, such as to clean up a contaminated site; 2) to provide an environmental benefit, such as a stream bank stabilization project; or 3) to prevent extraordinary hardship. This could be in terms of aspects peculiar to the property, so as to allow pedestrian access to a stream in a homeowner's back yard or to build ancillary structures such as deck or pool where there is no alternative outside the riparian zone. Or, it could be in terms of economic hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment. This would allow construction of a single family home on a property that is wholly contained within the riparian zone where the lot was in existence on the effective date of the rules. The stated exceptions recognize that some encroachments into riparian zones are unavoidable or, in the case of

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redevelopment, encroachment already exists. Redevelopment offers an opportunity to mitigate the effects of existing disturbance through site designs that re-establish a portion of the riparian zone as part of the redevelopment concept.

There are Federal, State and may be local regulations or ordinances that impose requirements on projects or activities in riparian zones that are similar to and supported by those that are proposed in this chapter. N.J.A.C. 7:15-5.25(g)4 makes it clear that compliance with the riparian zone requirements of this chapter does not constitute compliance with specific regulatory requirements of these authorities. Requirements imposed by other authorities consider other factors, such as flood control, and evaluate details and circumstances of the site and the project itself.

The Department also recognizes that the designated riparian zone widths may not accurately reflect the physical location of the features that render the functional values attributed to the riparian zones. Local conditions, including current vegetated state and other factors, will cause the functional values of a riparian zone, which include provision of habitat, nonpoint source pollutant reduction, temperature moderation and protection of stream channel integrity, to vary locally. Therefore, at N.J.A.C. 7:15-5.25(g)5, the Department allows adjustment in the spatial extent of the riparian zone so long as such adjustment is consistent with other rules that regulate activities within riparian zones. For example, the Stormwater Management rules at N.J.A.C. 7:8 allows modification of the Special Water Resource Protection Area through a Stream Corridor Protection Plan, as approved by the Department.

A further additional protection proposed relative to nonpoint source pollution involves steep slopes. Disturbance of steep slopes results in accelerated erosion processes from stormwater runoff and the subsequent sedimentation of waterbodies with the associated degradation of water quality and loss of aquatic life support. Related effects include soil loss, changes in natural topography and drainage patterns, increased flooding potential, further fragmentation of forest and habitat areas, and compromised aesthetic values. It has become widely recognized that disturbance of steep slopes should be restricted or prevented based on the impact disturbance of steep slopes can have on water quality and quantity, and the environmental integrity of landscapes. Multiple townships and municipalities throughout the U.S. (for example, Highland Park, IL, and Lake Forest, MI), as well as several municipalities within New Jersey (for example, Princeton, Harrison Township, and the municipalities within the consortium of municipalities known as Ten Towns within Morris and Somerset Counties), have adopted ordinances or zoning restrictions that prevent or limit development upon these potentially unstable geomorphic features. The level of slope that constitutes “steep” and the restrictions that are applied vary, but the number of these ordinances and overlays being implemented, however, are indicative of the importance, viability and overall acceptance of the concept of steep slope protection. The Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38-3.8 reserves the strictest prohibitions with respect to slopes of greater than 20 percent and allows some disturbance, in accordance with standards, in slopes between 10 and 20 percent.

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The designation of the degree of slope that constitutes a steep slope warranting protection varies in the approximate range of from 10 percent to 25 percent. The grade selected may depend on the region's geological attributes, soil types and depths, or even why the municipality or entity has decided steep slope restrictions are necessary. Pollutant removal is dependent on velocity, residence time and contact with vegetation to allow for plant uptake, denitrification, and settling out of sediments. Some publications assert that even when vegetated, slopes greater than 15 percent are susceptible to erosion and channelization (USC, 2000). Other sources also assert that slopes less than 15 percent are thought to provide adequate retention time to perform the preceding functions (for example, SCDHEC 1999, Wenger 1999, and Desbonnet et al.1994). The Department is concerned with water quality, which is greatly influenced by increased erosion and sedimentation from disturbed steep slopes during and after storm events, as well as downstream flooding and loss of recharge and impacts to fragile ecosystems and continuity of the landscape. The proprietary rights of landowners and needs of a municipality to provide housing and growth opportunities must be balanced with the public's right to a water resource network that is safe, manageable, and sustainable. In consideration of the various soils and conditions throughout the State, the Department is proposing, at N.J.A.C. 7:15-5.25(g)6, to require a demonstration of protection for slopes equal to or greater than 20 percent. This standard is intended to balance the need to mitigate adverse effects to water quality and quantity and help protect fragile ecosystems from unwarranted damage or destruction with the need to allow reasonable development to proceed.

The demonstration required at N.J.A.C. 7:15-5.25(g)6 requires submission of evidence of an ordinance that prohibits disturbance of steep slopes, defined as those at or equal to 20 percent, with limited exceptions. The exceptions would allow redevelopment within the limits of existing impervious surfaces and new development necessary to protect public health, safety or welfare; to provide an environmental benefit; to prevent extraordinary hardship on the property owner peculiar to the property; or to prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment. Examples of allowable exceptions are similar to those discussed for riparian zones and could include disturbance to accommodate the remediation of a contaminated site. The benefit of remediation of a contaminated site outweighs the potential impact of disturbing a steep slope. Another possible exception could be for linear development needed to access development on areas that are not steep slopes and for which there is no feasible alternative location.

Finally, at N.J.A.C. 7:15-5.25(g)7, the Department requires a WMP, WMP update or WMP amendment to include measures identified in an adopted TMDL or watershed restoration plan as necessary to restore water quality as the result of effects of nonpoint source pollution. TMDLs, which are discussed in detail at N.J.A.C. 7:15-6, will establish the pollutant load reductions from both point and nonpoint sources needed to attain Surface Water Quality Standards and the means to obtain the load reductions. Similarly, a watershed restoration plan developed in accordance with EPA's Nonpoint Source Program and Grants Guidelines for States and Territories, available at <http://www.epa.gov/fedrgstr/EPA-WATER/2003/October/Day-23/w26755.htm>, and adopted by the Department as an amendment to the applicable Water

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Quality Management plan will identify nonpoint source load reductions needed to restore water quality in the subject watershed as well as the means to obtain the load reductions.

Implementation measures may include those within the authority of the WMP agency or municipalities within the WMP area to implement. These could include adoption of ordinances, such as for fertilizer application, increased frequency of measures such as street cleaning, or retrofit of stormwater management facilities to include water quality controls. Where a WMP is proposed in an area where an implementation plan has been adopted, the measures within the authority of the WMP agency or municipalities included in the WMP area shall be required elements of an approvable WMP, WMP update or WMP amendment.

Analyses for Site specific amendments and revisions

N.J.A.C. 7:15-3.5 identifies the projects or activities that can be processed as a revision and N.J.A.C. 7:15-5.1 identifies circumstances under which a site specific amendment can be proposed. Revisions at N.J.A.C. 7:15-3.5(b)4 as well as all amendments are required to comply with this section. Most revisions and amendments can only be processed where the WMP is up to date in accordance with the schedule at N.J.A.C. 7:15-5.23. In these cases, the Department recognizes that making a decision on an amendment or revision relative to compliance with the standards does not require completing the full scope of the demonstrations needed for evaluation of a wastewater management planning area. This is because, for these amendments or revisions to be considered, the analyses intended to capture cumulative and secondary impacts will have been completed for the overall WMP area. Therefore, it is only necessary to demonstrate that the amendment or revision is integrated within the overall assessment and to complete any analyses specific to the amendment or revision that were not previously covered in the WMP or WMP update. In addition, because such amendments or revisions are for specific projects or activities, site plans are available and the demonstrations can and should be done at a greater level of precision. As an additional precaution, the Department stipulates at N.J.A.C. 7:15-5.25(h) that site specific amendments and revisions are not allowed where they would result in a significantly new pattern of sewer development such that a significant potential or incentive is created to open new areas to sewer development. Without this provision, multiple amendments and revisions could undermine the objective of regional planning to capture secondary and cumulative impacts related to water resource protection. There are limited circumstances in which a revision, described at N.J.A.C. 7:15-3.5(b)4, or an amendment, described at N.J.A.C. 7:15-5.1, is allowed to be processed where a plan is not up to date. These include the allowance for a revision for a project involving ISSDSs less than 23 units or a project that meets the clustering requirements and amendments for Federal or State projects. In these limited circumstances, weighing the effect of delay on very small projects or projects of greater social significance, the Department has determined that the analyses specific to these project are sufficient to ensure adequate environmental protection. Therefore, at N.J.A.C. 7:15-5.25(h), the Department further provides that a more tailored set of demonstrations for some of the standards apply, sufficient to allow the Department to make a decision on amendments or revisions, some of which differ depending on whether or not the WMP is up to date.

At proposed N.J.A.C. 7:15-5.25(h)1, the Department requires, for projects or activities proposed to be served by NJPDES permitted wastewater treatment facilities, that the existing and

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proposed wastewater needs of the project or activity be calculated as set forth in N.J.A.C. 7:15-5.25(d)1. In order to trigger an amendment, a project or activity would necessarily be inconsistent with the applicable WMP. For example, local land use plans may change and the project or activity may generate more wastewater than was originally allocated to the municipality in which the project or activity is proposed. Or, a project or activity may be located in area that was excluded from the sewer service area, but is eligible to be sewered in accordance with N.J.A.C. 7:15-5.24. Therefore, where the project or activity is proposed to connect to an existing treatment facility, it is necessary to relate the wastewater generation potential of the project or activity to the wastewater generation potential of the sewer service area at environmental build-out calculated for the sewer service area, as identified in the wastewater management plan. Where wastewater generation exceeds available capacity as the result of the proposed project or activity, and cannot be offset by a demonstration that other parts of the sewer service area will generate less wastewater than was initially calculated, additional wastewater treatment capacity to accommodate the proposed project or activity must be identified. Where a new or expanded wastewater treatment facility is proposed to serve the proposed project or activity, then the analyses at N.J.A.C. 7:15-5.25(d)2, 3 and 4 apply.

Revisions at N.J.A.C. 7:15-3.5(b)4vi and x and certain amendments at N.J.A.C. 7:15-5.1 do not require an up to date WMP. Therefore, at proposed N.J.A.C. 7:15-5.25(h)2, the Department requires that, where a project includes one or more discharges to ground water, compliance with the nitrate planning standard is required, but only for the project area, not the WMP area.

Dilution models to be used are specified, one for residential development and one for non-residential development. The Department's "A Model of Recharge-Based Nitrate-Dilution for New Jersey v5.1" nitrate dilution model is designed to predict nitrate values from residential development using ISSDSs. A variation of the nitrate dilution model, "A Recharge-Based Nitrate-Dilution Model for Small Commercial Establishments in New Jersey, v1.1," was designed to estimate concentrations of nitrate from non-residential development. For non-residential establishments that may propose on-site wastewater treatment facilities that discharge to ground water, a means of estimating nitrate loading different from the residential model is warranted. For non-residential development, nitrate load will be based on an effluent nitrate concentration of 40 mg/L applied to projected flows as established at N.J.A.C. 7:9A, the Standards for Individual Subsurface Sewage Disposal Systems, or N.J.A.C. 7:14A-23.3 which are based on number of persons, square footage, or other applicable variables. The effluent concentration of 40 mg/L is consistent with literature values for septic effluent. Except for this difference, the model operates the same as "A Model of Recharge-Based Nitrate-Dilution for Small Commercial Establishments in New Jersey, v1.1."

The Department recognizes that there are circumstances under which the cited models may not adequately reflect the nitrate concentration impact of a proposed project or activity. For example, the assumed nitrate concentration of 40 mg/L for non-residential development, when applied to the flow assigned to that type of development at N.J.A.C. 7:9A or 7:14A-23.3, may result in a loading in excess of what is actually experienced with that type of development. An

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applicant may be able to demonstrate that a different concentration is more appropriate than the default concentration. For this reason, the Department will allow use of an alternative to the standard model application where the applicant can demonstrate that different input variables, or a different approach to estimating nitrate concentration in ground water, are warranted for the project or activity.

Where a project or activity is proposed in an area where the WMP is up to date, then it is necessary to demonstrate that the nitrate planning standard continues to be met in the HUC 11, with the proposed project or activity. After adoption of a WMP, there may be a proposal to develop a parcel in a manner that would generate wastewater in excess of the wastewater that would be generated by the parcel if it were developed in conformance with the zoning upon which the WMP and the nitrate dilution analysis were based. Without an equivalent action to reduce wastewater to be discharged to ground water within the HUC 11, the nitrate planning standard will no longer be met. Continued compliance with the nitrate planning standard can be demonstrated in several ways. For example, the wastewater generated from the parcel could be treated at a NJPDES permitted facility with enforceable effluent limits that would result in an equivalent loading of nitrate from the parcel. Alternatively, the applicant could demonstrate that zoning was adjusted downward elsewhere in the HUC 11 or that a sufficient area of land has been preserved and no longer has the potential to generate wastewater loading so that the nitrate planning standard will continue to be attained.

The Department provides at N.J.A.C. 7:15-5.25(h)3 that the water supply needs of the proposed project or activity be assessed and compared to the water availability established in the most recent New Jersey State Water Supply Plan, regional water supply plans or adopted TMDLs, and considering the other water supply needs in an up to date WMP, if there is one. If the available water supply will be exceeded in any of the HUC 11 watersheds as a result of the addition of the proposed project or activity, then the Department requires that alternatives as prescribed at N.J.A.C. 7:15-5.24(f)3 be evaluated, specific to the project or activity. This way, any additional demand placed on a HUC 11 beyond that which was assessed in the adopted WMP will be tracked and assessed to capture the cumulative effects of development that had not been foreseen when the WMP was adopted.

Under N.J.A.C. 7:15-5.25(g)1, compliance with the stormwater aspects of the nonpoint source requirements is demonstrated through adoption of an ordinance and stormwater management plan. This is appropriate for a planning analysis at the scale of a wastewater management plan. A specific project or activity will, on the other hand, have a site plan and can be assessed directly. Therefore, at N.J.A.C. 7:15-5.25(h)4, the Department provides that a project or activity may demonstrate compliance with the design standards in the Stormwater Management rule, N.J.A.C. 7:8, directly through site plan and design documentation. Alternatively, this demonstration would not be required if documentation is provided that the project or activity is exempt from the Stormwater Management rule, N.J.A.C. 7:8, or has obtained a waiver or variance under the municipal mitigation plan provision of the Stormwater Management rule, N.J.A.C. 7:8.

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At N.J.A.C. 7:15-5.25(h)5, the Department provides that compliance with the riparian zone standard established at N.J.A.C. 7:15-5.25(g)2 shall be measured through an analysis of the specific project or activity, in lieu of providing an ordinance. Therefore, proposed N.J.A.C. 7:15-5.25(h)5 allows either an alternative demonstration through site plan documentation that there will be no disturbance of the applicable riparian zone by the proposed project or activity, or that the encroachment fits within an allowable encroachment identified in this paragraph. The Department recognizes that certain projects or activities cannot be accomplished without encroachment within a riparian zone. If the type of project or activity is such that the need for the project or activity outweighs the need to avoid the disturbance, the Department believes these projects or activities should be allowed to be identified within a WMP within the riparian zones where there is no alternative. For example, if there is no feasible alternative location for a linear development, that activity should be allowed as long as impacts are minimized to the maximum extent practicable. Stream corridor restoration or stream bank stabilization, where approved by the Department, should also be allowed because such activities accomplish an overall positive environmental benefit. One of the important attributes of riparian zones is that they are valued for recreation. Therefore, to enhance the ability of the public to access to this highly valued landscape type, disturbance needed to provide for public pedestrian access, or water dependent recreation where the requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, the Flood Hazard Area Control rules, N.J.A.C. 7:13, or the Coastal Zone Management rules, N.J.A.C. 7:7E are met, should also be allowed. Generally, these rules require an applicant to demonstrate that the public access be located and configured so as to minimize adverse environmental impacts and incorporate or integrate an educational component about the area being impacted for the public access. Allowing impacts to these riparian zones, provided impacts are minimized, reflects the Department's attempt to strike an appropriate balance between the potentially conflicting goals of providing public access and the need to protect natural resources. Where measures are necessary to remediate hazardous substances in riparian zones, the benefits of removing hazardous substances outweigh the temporary disturbance of a riparian zone that would occur in order to accomplish the removal. Redevelopment is also allowed, provided it does not exceed the limits of impervious cover already on the site, so as not to increase impacts within the riparian zone. Redevelopment is a potentially positive outcome, especially in urban areas, where reclaiming areas that have fallen into disrepair, such as highly valued waterfront landscapes, is often part of plans for urban revitalization. Finally, encroachments needed to avoid imposing an extraordinary hardship, provided the hardship was not created by the property owner, are allowed. For example, if a parcel is located wholly within a riparian zone and this situation was not created by the applicant by subdivision after these requirements are in effect, some provision for a reasonable return on investment is necessary to avoid a taking without compensation.

In lieu of the ordinance requirement for steep slope protection at N.J.A.C. 7:15-5.25(g)6, because site specific details of the project or activity are known, the Department provides at N.J.A.C. 7:15-5.25(h)6 that the applicant shall demonstrate through site plans that development is not located in areas with a 20 percent or greater slope, except for limited exceptions. The Department believes that certain exceptions to the prohibition of new disturbance on steep slopes are needed to prevent imposing extraordinary hardship or to allow for an overriding positive

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purpose. For example, redevelopment, within the footprint of existing impervious cover should be allowed to support efforts to revitalize development that has fallen into disrepair. In addition, projects that must be located on steep slopes and are necessary to protect public health, safety or welfare, such as necessary linear development with no feasible alternative, or to provide an environmental benefit, such as remediation of a contaminated site, should be allowed because the overall benefit outweighs the adverse impact of steep slope development. Further, the Department believes that disturbance of a steep slope should be allowed if it is needed in order to ensure that a property owner is afforded a reasonable return of investment, provided the hardship is not a result of the actions of the property owner.

N.J.A.C. 7:15-5.26 Habitat Suitability Determination

When an applicant for a WQM plan revision or amendment wants to rebut the presumption that the Department's mapping that identifies a parcel of land as a habitat patch with a Rank of 3, 4 or 5 on the Department's "Landscape Maps of Habitat for Endangered, Threatened, or Other Priority Wildlife" is suitable habitat for the breeding, feeding, resting, or sheltering of any threatened and/or endangered animal species, the applicant may request a Habitat Suitability Determination (HSD) from the Department pursuant to N.J.A.C. 7:15-5.26. The HSD process starts after an applicant reviews the information contained within the letter obtained from the Department's Natural Heritage Program and contained in the Department's Landscape Maps, where the applicant believes that the habitat on a particular site is not consistent with that information and should not be classified as threatened or endangered species habitat. In some cases, the alteration of the habitat will be obvious and a sight inspection by the Department may be all that is necessary to confirm that the area is no longer suitable habitat. However, many cases may be less obvious. This section provides detailed information regarding the HSD that must be submitted to the Department to rebut its habitat findings.

N.J.A.C. 7:15-5.26(a) indicates the circumstances under which an applicant applies for a HSD. N.J.A.C. 7:15-5.26(b) outlines the application requirements of a HSD. N.J.A.C. 7:15-5.26(b)3 contains the detailed information necessary for describing the species and habitat. These requirements include: at N.J.A.C. 7:15-5.26(b)3i, a detailed description of the vegetation and topographic features; at subparagraph (b)3ii, information regarding geology; at subparagraph (b)3iii, soil types and other important soil features; at subparagraph (b)3iv, hydrologic features; at subparagraph (b)3v, natural and man-made disturbances; at subparagraph (b)3vi, a detailed analysis and description of all ecological communities including upland, wetland and aquatic ecological communities; at subparagraph (b)3vii, a map locating the ecological communities as previously described; at subparagraph (b)3viii, the results of any species surveys conducted; at subparagraph (b)3ix, the names, addresses and professional qualifications of all persons who performed habitat evaluations, and/or species surveys relied upon to support the application for the HSD; at subparagraph (b)3x, any other relevant survey or report that may have been completed; and at subparagraph (b)3xi, any other information that the applicant deems relevant to provide documentation to the Department that would assist in an accurate assessment of the habitat in question.

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N.J.A.C. 7:15-5.26(c) outlines the components that inform the HSD decision process: the original information upon which the Department's findings were made; any species surveys that may have been conducted on the site in question; scientific information relating to the life histories of the species in question; and how the site in question meets or fails to meet the habitat requirements for the species in question.

N.J.A.C. 7:15-5.26(d) explains that the Department will issue a letter that states whether the area in question is considered habitat or not. This subsection also notes that seasonal conditions may affect the timeframe in which a determination may be made depending on the species. There may be circumstances where a HSD cannot be made based on seasonal or other conditions, and so, at N.J.A.C. 7:15-5.25(d)3 the options available in this circumstance are set forth. For example, if there has been a past sighting of a bog turtle (an endangered species) on the site, and a habitat suitability determination application is submitted in December, when the early successional habitat needed by bog turtles is under snow and cannot be identified, Department staff will not make a determination until the snow melts and appropriate investigation is concluded. The applicant has the option of waiting until the proper conditions are present or accepting the determination that the habitat is suitable.

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Subchapter 6. List of Water Quality Limited Segments and Total Maximum Daily Loads

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N.J.A.C. 7:15-6 establishes the process for the development, ranking, adoption and modification of the “water quality limited surface waterbodies” listing as required under Section 303(d) of the Federal Water Pollution Control Act. The List of Water Quality Limited Segments, also known as the 303(d) list, inventories all waters that will not achieve the surface water quality standards based on implementation of technology-based effluent limitations. Each State must prioritize 303(d) listed waterbodies for total maximum daily load (TMDL) analyses for each of these waterbodies unless subsequent investigation indicates that the waterbodies do not actually require water quality-based controls. The process for developing and adopting TMDLs is currently contained in N.J.A.C. 7:15-7. The 303(d) list is adopted as part of the Statewide Water Quality Management Plan.

The Department is proposing to repeal this subchapter and Subchapter 7 and propose a new Subchapter 6 that will consolidate current Subchapters 6 and 7. By consolidating the two, the Department seeks to eliminate redundancies and simplify the rules. Both subchapters derive directly from Federal requirements and the Department is proposing to incorporate these requirements and related guidance by reference to ensure the Department’s procedures remain consistent with the most current Federal requirements and guidance.

N.J.A.C. 7:15-6.1 Scope and purpose

Proposed N.J.A.C. 7:15-6.1 describes the scope and purpose of this subchapter to set forth the State’s process for developing the List of Water Quality Limited Segments, determining the priority and schedule for development of TMDLs for listed waters, and for developing TMDLs and implementation plans.

7:15-6.2 Listing of water quality limited segments

Proposed N.J.A.C. 7:15-6.2(a) states that the Department shall develop lists of water quality limited segments in accordance with implementing regulations at 40 CFR 130.7(b), incorporated herein by reference. The regulations at 40 CFR 130.7(b) set forth specific requirements for listing of water quality limited segments, which are periodically updated by the US Environmental Protection Agency through issuance of guidance documents. The Department is proposing to incorporate the Federal requirements and guidance or information concerning the Clean Water Act Section 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions by reference so that the procedures used by the Department for developing the List of Water Quality Limited Segments are consistent with the Federal requirements without the need for rule amendments. The information and guidance documents referenced in this section may be viewed at <http://www.epa.gov/owow/tmdl/policy.html>. The most current guidance document at the time of this proposal is called Information Concerning 2008 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions – Diane Regas – October 12, 2006. The Department is also establishing procedural requirements in this section that are not expected to change as the result of changing Federal requirements.

Section 303(d) of the Clean Water Act, 33 U.S.C. §1315(d), requires that states identify

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waters for which technology based effluent limits are not sufficient to achieve water quality standards applicable to the waters. As part of the identification process, the state is to establish priority ranking for development of TMDLs, taking into account the severity of the pollution and the designated uses for the water. States must also list waters where thermal discharge controls are not sufficient to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife. This identification process occurs on what is referred to as the List of Water Quality Limited Segments and has also come to be known as the List of Impaired Waterbodies or 303(d) list.

In November 2001, USEPA issued guidance that encouraged states to integrate their Water Quality Inventory Report required by the Clean Water Act at 33 U.S.C. §1315(b) (Section 305(b)) with their List of Impaired Waterbodies or 303(d) list. Consistent with this guidance, New Jersey chose to prepare an integrated assessment of water quality known as the Integrated Water Quality Monitoring and Assessment Report (Integrated Report), which includes the biennial water quality assessment required by Section 305(b) of the Clean Water Act, also known as the 305(b) report, and the 303(d) list. The Integrated Report places a waterbody on one of five Sublists with respect to attainment of the designated uses within the waterbody. Sublists 1 through 4 include waterbodies that are generally unimpaired (Sublist 1 and 2), have limited assessment or data availability (Sublist 3), are impaired due to pollution rather than pollutants or have had a TMDL or other enforceable management measure approved by EPA (Sublist 4). Sublists 1 through 4 constitute the Water Quality Inventory Report. The List of Water Quality Limited Segments appears as Sublist 5 of the Integrated Report.

The Department has developed a methodology for assessing water quality and making the determination of how to characterize various waters. This methodology is set forth in the Integrated Water Quality Monitoring and Assessment Methods document (methods document), which is published and is available on the web at <http://www.nj.gov/dep/wmm/sgwqt/wat/index.html>. The Department expects it may periodically update or revise the assessment methods, for example, to reflect revised water quality standards, more accurate approaches to assess water quality or support of designated uses, or new EPA guidance. Therefore, at N.J.A.C. 7:15-6.2(b) the Department is stating that it has developed and will periodically update its methods document for assessing water quality which provides the methods used in developing the List of Water Quality Limited Segments pursuant to Section 303(d).

At 40 CFR 130.7(b)5, EPA requires the Department to consider all readily available data collected by others, in addition to data collected by the Department, in its assessment process. Therefore, at N.J.A.C. 7:15-6.2(c), the Department is proposing to provide an opportunity for the public to submit such information. The Department will notify the public that it is seeking this information by placing a notice in the New Jersey Register and on its website.

At N.J.A.C. 7:15-6.2(d), the Department specifies that the methods document shall include quality assurance requirements for data used for assessment, the basis for assessing waterbodies and the basis for prioritizing the development of TMDLs for those waterbodies

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placed on Sublist 5. To ensure that the Department considers only data of a sufficient quality, the methods document will establish the submittal requirements for the data submitted by stakeholders in accordance N.J.A.C. 7:15-6.2(c). The assessment methods, for example, will specify the minimum number of data points and the age of the data that will be considered in making a current assessment of a water body for attainment of a numeric water quality criterion. Or, for a designated use support assessment, the methods document will set forth the parameters necessary to evaluate use support. For example, trout use requires biological data as well as data on temperature and dissolved oxygen. The Department may specify a percent compliance that will equate to full support of the designated use with less than that level to be deemed nonsupport of the designated use. The methods document also describes how the Department determines on which Sublist to place a waterbody. Waterbodies where one or more pollutants do not meet water quality standards are placed on Sublist 5 of the Integrated Report. Sublist 5 constitutes the 303(d) list or the List of Water Quality Limited Segments, for which TMDLs are expected to be required. EPA requires that the waterbodies so listed be prioritized for TMDL development and so the methods document must also specify the rationale used for this prioritization. The priority system considers issues such as the relative importance of the parameter of concern (affecting human health compared to affecting support of aquatic communities, for example), complexity of formulating a TMDL, severity of impairment, affect on threatened or endangered species, presence of other on-going controls that might address the impairment, and public interest in the impairment or impaired waterbody.

Proposed N.J.A.C. 7:15-6.2(e) establishes that the Department will provide an opportunity for public comment any time it revises the methods document. Notice will be placed in the New Jersey Register and on the Department's website. The intent is to solicit comments, review them and revise the methods document as necessary to address public comment.

Proposed N.J.A.C. 7:15-6.2(f) establishes that the Department will develop a new List of Water Quality Limited Segments every two years, as required by Federal regulation (40 CFR 130.7(d)1). The Department will develop the list in accordance with the methods document, described above, and will include a schedule of those TMDLs intended to be developed during the two-year effective life of the list.

Proposed N.J.A.C. 7:15-6.2(g) provides the procedures for proposal of the List of Water Quality Limited Segments as an amendment to the Statewide Water Quality Management Plan, which includes providing an opportunity for public participation, prior to adoption. Procedures for adoption of the List of Water Quality Limited Segments are described in N.J.A.C. 7:15-6.4. Under the Clean Water Act, states are required to submit the established List of Water Quality Limited Segments to EPA for approval before formal adoption of the list. Following approval of the list by EPA, the Department will adopt the list as a component of the Statewide WQM Plan by publishing an adoption notice in the New Jersey Register.

N.J.A.C. 7:15-6.3 Total maximum daily loads

Proposed new N.J.A.C. 7:15-6.3 describes the contents and process for formulation of

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total maximum daily loads (TMDLs). States are required under the Clean Water Act to establish, in accordance with the priority ranking assigned to the impaired waters, TMDLs for waters listed as water quality limited segments for identified pollutants. TMDLs are to be set at levels necessary to achieve the applicable water quality standards, considering seasonal variation and a margin of safety, which takes into account any uncertainty regarding the relationship between the effluent limitations and water quality. TMDLs that estimate the total maximum thermal load that will allow for the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife are also required for waters identified on the 303(d) list because of thermal discharges.

Proposed N.J.A.C. 7:15-6.3(a) states that the Department shall develop TMDLs in accordance with implementing regulations at 40 CFR 130.7(c) and (e), and USEPA guidance documents. These regulations and guidance set forth specific requirements for the preparation of TMDLs. The Department is also incorporating by reference future amendments and supplements to these Federal rules and guidance to allow the Department's procedures to keep pace with the Federal requirements for TMDLs without the need for rule amendment. There are three relevant EPA documents that currently guide the Department in developing TMDLs. EPA Review of 2002 Section 303(d) Lists and Guidelines for Reviewing TMDLs under Existing Regulations issues in 1992. Office of Wetlands, Oceans and Watersheds Memorandum from: C.H. Sutfin, dated October 2002, USEPA describes the components that must be included within a TMDL and what EPA must consider in approving a TMDL. Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs. Office of Wetlands, Oceans and Watersheds Memorandum from: R.H. Wayland, III, dated November 22, 2002 sets forth the requirement to apply wasteload allocations for NPDES regulated stormwater discharges, how a State may go about approximating the contribution attributed to such point sources and that such point sources can be ascribed BMP-based controls. Establishing TMDL "Daily" Loads in Light of the Decision by the U.S. Court of Appeals for the D.C. Circuit in *Friends of the Earth, Inc. v. EPA, et al.*, No.05-5015 (April 25, 2006) and Implications for NPDES Permits. Office of Water Memorandum from: B. H. Grumbles, dated November 15, 2006 advises that, contrary to past direction, TMDLs and wasteload allocations must be expressed in terms of a load per day, but flexibility in translating wasteload allocations into NPDES permit limits remains available. These guidance documents are available on the Department's website at www.state.nj.us/dep/watershedmgt/rules.htm. From time to time EPA has issued new or revised guidance that states must follow in order to develop a TMDL that will meet EPA's requirements for approval. As new or revised guidance is issued, the Department will post these documents on the website noted above.

Proposed N.J.A.C. 7:15-6.3(b) identifies the key components of a TMDL. In accordance with the Clean Water Act and implementing regulations, a TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. A TMDL can also be calculated for a water quality target that is better than standards, if determined to be appropriate in order to maintain water quality that is better than standards. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and

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nonpoint sources and includes a margin of safety and consideration of seasonal variations. A TMDL is required for segments on the List of Water Quality Limited Segments. The Department may choose to calculate a TMDL that will be protective of existing water quality that is better than the applicable water quality standards. A segment is the portion of a stream, lake or other water body that is considered to be represented by the monitoring data that was used to determine that an impairment exists.

The first component of a TMDL at N.J.A.C. 7:15-6.3(b)1 is an identification of the segment and pollutant for which a TMDL is being prepared, as well as an identification of the known or expected sources of the pollutant and the priority ranking for TMDL preparation that was stated in the List of Water Quality Limited Segments.

The second component of a TMDL at proposed N.J.A.C. 7:15-6.3(b)2 is the identification of the water quality target(s) for the pollutant(s) of concern. The targets may be the numeric or non-numeric (that is, narrative) standards that are not being attained or a target that reflects a water quality target better than the standards. The target may also be expressed in terms of attaining specific designated uses. The target is typically the numeric water quality standard for the pollutant of concern. In some cases, the standards allow development of site specific criteria. In addition, upon demonstration that observed water quality does not meet standards because of unique naturally occurring conditions, the standards allow that the naturally occurring condition becomes the standard. In such cases, a TMDL may establish a site specific criterion or make the demonstration regarding naturally occurring conditions, which will be the endpoint for the TMDL and will become the water quality standard for the specific location.

The third component of a TMDL at proposed N.J.A.C. 7:15-6.3(b)3 identifies that seasonal variation must be considered under the critical conditions that are being assessed. For example, low flows and the summer season are typically the most critical condition and time to ensure dissolved oxygen criteria are met in order to protect aquatic life use. The loading capacity and endpoint must be determined in consideration of seasonal variation and critical conditions.

The fourth component of a TMDL, identified at proposed N.J.A.C. 7:15-6.3(b)4, is the determination of the loading capacity, which is the amount of pollutant that can be assimilated and still attain the TMDL water quality target. Loading capacity is determined using a tool, often a water quality model, to link pollutant load and observed or predicted water quality. The technique used to link pollutant load and water quality may be simple or complex, depending on the nature of the segment, the pollutant and its behavior in the environment, and the sources of the pollutant.

The fifth component of a TMDL, identified at proposed N.J.A.C. 7:15-6.3(b)5, is an allocation of the loading capacity to the various sources. These include nonpoint sources of the pollutant, which receive load allocations or LAs, point sources of pollution, including point sources of stormwater, which receive wasteload allocations or WLAs, and a margin of safety. Because there are uncertainties in the development of the components of a TMDL document

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relating to a number of variables/factors including the amount and accuracy of data, the tool used to relate the pollutant load to water quality and in the effectiveness of potential controls to achieve the pollutant load reductions required to meet the WLAs and LAs, a margin of safety sufficient to account for the level of uncertainty in a particular application is required. The margin of safety can be in the form of an implicit margin, where conservative assumptions are made in the course of developing the endpoint (the WLAs and LAs), or explicit, where a quantifiable factor is applied after calculation of WLAs and LAs to act as a cushion in the event load reductions have been underestimated. An optional reserve capacity may be included in the allocation, to allow for pollutant loads from as yet unrealized development.

The sixth component of a TMDL, identified at proposed N.J.A.C. 7:15-6.3(b)6, is an implementation plan. An implementation plan describes the means to accomplish the load reductions from point sources and nonpoint sources, both regulatory and nonregulatory, the schedule for accomplishing the necessary tasks, and the means to assess the effectiveness of the chosen strategies in achieving compliance with the water quality target. For example, for point sources, an implementation plan may identify the need for more stringent effluent limitations for wastewater treatment facilities and/or the need to include additional measures in a municipal stormwater permit, such as more frequent street sweeping or storm inlet cleaning or retrofit of existing stormwater management facilities to include new or improved quality or quantity controls. For nonpoint sources, an implementation plan may identify areas where installation of best management practices related to agricultural land uses or excessive populations of resident geese are needed to reduce nonpoint source pollutant load.

The seventh component of a TMDL, identified at proposed N.J.A.C. 7:15-6.3(b)7, is a description of the public involvement that has occurred in the development of the TMDL, a summary of the input received during the provided public participation and the response to public input.

Proposed N.J.A.C. 7:15-6.3(c) provides that opportunities for public involvement in the development of TMDLs, in addition to the final opportunity for public comment which is provided as part of the process for adoption of a TMDL as an amendment to the applicable areawide WQM plan at proposed N.J.A.C. 7:15-6.4, may be provided. These additional opportunities for public involvement earlier in the TMDL development process will be offered where the Department gages that there is anticipated interest in one or more aspects of a TMDL that is under development. Such additional opportunities will assist the Department in identifying parties that might have an interest in the waterbody segment where the TMDL is being developed, which will allow these parties to be involved in the entire process. The Department may hold informational meetings and solicit comments under proposed N.J.A.C. 7:15-6.3(c)1 at any time during the development of a TMDL. In addition, proposed N.J.A.C. 7:15-6.3(c)2 provides that the Department may inform the public through posting web notices or soliciting electronic communications with any interested party or groups regarding the components of the TMDL. For example, the Department may request assistance from local watershed groups regarding the potential sources of the pollutant(s) of concern. In addition, the Department may be alerted as to local activities that will help to reduce sources of the pollutant

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of concern, which can then be factored into the implementation plan. Or, in a complex TMDL, sharing the proposed technical approach for developing the TMDL(s) in advance could generate useful information from interested parties, including the regulated community that would improve the approach.

N.J.A.C. 7:15-6.4 Amendment procedures

N.J.A.C. 7:15-6.4 establishes procedures for the Department to adopt the List of Water Quality Limited Segments as an amendment to the Statewide Water Quality Management Plan or TMDLs as amendments to the applicable areawide WQM plans. The Statewide and areawide WQM Plan amendment procedures in N.J.A.C. 7:15-3.4 contain amendment procedures for applicants other than the Department and requires components such as statements of consent from all affected governmental entities. The Department does not believe requiring statements of consent from affected governmental entities will aid the Department's decision making regarding the approval of the List of Water Quality Limited Segments or TMDLs and does not want to burden these agencies with this additional requirement. Thus, amendment procedures for the List of Water Quality Limited Segments and TMDLs are set forth in this subchapter at N.J.A.C. 7:15-6.4.

Proposed N.J.A.C. 7:15-6.4(a) sets forth the process for proposing the List of Water Quality Limited Segments and TMDL documents as amendments to the Statewide or areawide WQM Plans and soliciting public input. Proposed N.J.A.C. 7:15-6.4(a)1 provides that the public notice requirements include placing a notice in the New Jersey Register, on the Department's web site and in a newspaper or newspapers of general circulation in the affected areas. The public notice will describe how to obtain a copy of the specified document and a procedure for submitting comments. The Department may decide to hold a nonadversarial public hearing in anticipation of sufficient public interest, in which case information on the hearing, including location, date and time, will be included in the proposal notice. A minimum comment period of 30 days will be provided. If a hearing is scheduled, the hearing will be scheduled a minimum of 30 days after publication of the notice of proposal and the comment period shall stay open until 15 days after the public hearing.

In the event the Department does not schedule a public hearing in anticipation of sufficient public interest, proposed N.J.A.C. 7:15-6.4(a)2 provides the Department with the ability to hold a nonadversarial public hearing based on a demonstration of sufficient public interest, in accordance with the standards contained in the General Practice and Procedure rules at N.J.A.C. 7:1D-5.1, provided the request is received within 30 days of publication of the public notice. If the Department decides to hold a nonadversarial public hearing in response to the public request(s), notice of the hearing will be provided a minimum of 30 days before the hearing on the Department's website and in newspaper(s) of general circulation in the affected areas. In addition, the Department will provide a notice to anyone who requested the public hearing. The public comment period will remain open 15 days after the hearing.

Under proposed N.J.A.C. 7:15-6.4(a)3, following the completion of the public process,

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the Department will make any necessary revisions to the List of Water Quality Limited Segments or TMDL document(s) and for TMDLs will prepare a response to comments document. The Department shall then establish the List of Water Quality Limited Segments or the TMDL as they were proposed, establish all or portions of the List of Water Quality Limited Segments or the TMDL with changes that do not destroy the value of the original notice regarding the proposed List of Water Quality Limited Segments or the TMDL, or the Department will re-propose with substantive changes all or portions of the List of Water Quality Limited Segments or the TMDL, through a public notice process as described at N.J.A.C. 7:15-6.4(a)1 above.

The revised document(s), constituting the established List of Water Quality Limited Segments or the TMDL, will be submitted to USEPA for approval, along with the response to comments received for TMDLs, under proposed N.J.A.C. 7:15-6.4(a)4.

As a result of the EPA review process, the document may be further revised. Under proposed N.J.A.C. 7:15-6.4(b)1, substantive changes that invalidate the original notice would result in a reproposal of the document. Proposed N.J.A.C. 7:15-6.4(b)2, provides that upon approval by EPA, the document will be adopted as an amendment to the Statewide Water Quality Management Plan or the applicable areawide WQM plans by placement of a notice in the New Jersey Register and on the Department's website. This constitutes the final agency action on the document.

Subchapter 7. Total Maximum Daily Loads

As indicated in the summary of proposed new N.J.A.C. 7:15-6, the Department is proposing to repeal N.J.A.C. 7:15-7 and combine it with N.J.A.C. 7:15-6.

Subchapter 8. Withdrawal and Redesignation of Wastewater Service Areas

The Water Quality Planning Act at N.J.S.A. 58:11A-10 requires the Department to ensure that its funding and permitting decisions do not conflict with the water quality and land use planning embodied in the areawide WQM plans. The Department relies on the wastewater management plan (WMP) components of the areawide WQM plans to provide a comprehensive evaluation of the cumulative effects of land use on the water resources of the State and to ensure that the WQM plans are not static.

A WMP is a detailed planning document intended to ensure that adequate wastewater treatment capacity is available to accommodate the needs of existing and future development. These plans are essential to ensuring that the planned method of wastewater treatment is appropriate given local environmental constraints and that wastewater treatment facilities can accommodate the future needs of the wastewater management planning area.

An outdated WMP cannot be relied upon to accurately predict the future wastewater management needs of the WMP area. Similarly, where land use plans have changed, an outdated

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WMP may not accurately assess point and nonpoint source pollutant loading, hydro-modification issues, water supply sustainability, and the protection of sensitive environmental resources.

Furthermore, if the WMP is not updated, the implications of new information, such as threatened and endangered species sightings, pollutant loading, or sustainability of water supply, may not be adequately reflected in the plan against which the project will be measured. For example, a recent designation of Category One waters and the associated antidegradation policies with respect to point and nonpoint pollutant sources may prevent the permitting of new or expanded wastewater treatment facilities that are identified in an outdated plan, leaving areas without a suitable wastewater management alternative. Further, the lack of a comprehensive or updated WMP may lead to a greater density of development than is appropriate or sustainable in terms of water resources because the cumulative impacts of development in the WMP area have not been evaluated.

If a project is inconsistent with the WQM plan, the project can proceed if the WQM plan is amended and the project becomes consistent. As part of the amendment process, the Department conducts a detailed review of the impacts of the project on water resources, in light of existing and planned development in the area. The Department will not issue an amendment unless it can be demonstrated that the impact of the project, when considered in combination with the existing and planned development, will continue to provide for adequate wastewater management, as well as the protection of the environment.

There is widespread non-compliance with the requirement to prepare and update WMPs in accordance with N.J.A.C. 7:15-5.23. Existing N.J.A.C. 7:15-5.23(a) requires wastewater management planning agencies to prepare and submit wastewater management plans as requests to amend areawide WQM plans under N.J.A.C. 7:15-3.4 in accordance with the schedule established in N.J.A.C. 7:15-5.23(b) through (e). Thereafter, an updated wastewater management plan must be submitted at least once every six years from the date of the previous submission. These periodic updates are intended to advance the continuing planning process described in Subchapter 2 and to account for advances in the various sciences integral to the field of watershed management, so that new findings and approaches towards the protection of New Jersey's waters and water-related resources are incorporated. Over the years, the Department has notified and encouraged WMP agencies to voluntarily satisfy their obligation to prepare and update WMPs in accordance with the rules and, in some cases, directed the WMP agency to submit a WMP. However, the Department has not penalized WMP agencies for failing to meet their WMP preparation and approval obligations. To date, only 13 of the 161 required WMPs are in compliance with the requirements of N.J.A.C. 7:15-5.23. As a result, many WMPs cannot presently be relied upon to plan for the future needs of development and the protection of water resources.

In light of the importance of the WMP process, the Department determined that further action was needed to achieve compliance and assure that up to date WMPs are maintained going forward. In order to achieve this goal, the Department considered several options. The Department considered the option of not approving any permits where WMPs were not up to

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date. However, it was determined that this approach is not practicable as some public purpose projects need to move forward, other proposals that lie within areas designated for growth would be unfairly penalized, and it would result in the Department's permitting process becoming unpredictable. The Department also considered the option of continuing to allow site specific WQM plan amendment proposals to be processed in the absence of an up-to-date WMP, but these site specific amendments do not evaluate the full cumulative impacts of a proposal. Further, continuing to allow site specific amendments to be processed would not provide a way to improve the WMP compliance rate to improve the information upon which environmental and water quality decisions are based.

On October 17, 2005, the Department issued a notice of intent to withdraw sewer service area where wastewater management plans were not up to date through proposed amendments to the applicable WQM plans. (See 37 N.J.R. 4071(a).) This amendment proposal was withdrawn on March 6, 2006 (see 38 N.J.R. 1349(b)). In the continuing effort to address the issue, the Department is proposing amendments to these rules that will effectively limit the extension of sewers, by not allowing amendments where a WMP is not up to date, until such time as the environmental carrying capacity is evaluated and the full cumulative impacts of all growth proposals can be assessed against the carrying capacity of the land.

Further, the Department is proposing to withdraw sewer service areas and general wastewater service area designations for all discharges to ground water with planning flows of less than 20,000 gallons per day where the WMP is not up to date, following a grace period to allow submission of a WMP that includes the analyses set forth in these proposed amendments, as discussed in greater detail below.

N.J.A.C. 7:15-8.1 Withdrawal of wastewater service area designations

Under the existing Water Quality Management Planning rules (N.J.A.C. 7:15-5.18), there are three primary wastewater service area designations that are identified in WMPs. These categories are 1) sewer service area; 2) a general wastewater service area designation for all discharges to ground water with planning flows of less than 20,000 gallons per day; and 3) a general wastewater service area designation for all discharges to ground water with planning flows of less than 2,000 gallons per day. Sewer service areas are the land area from which all generated wastewater is designated to flow to a domestic or industrial treatment works as identified in an adopted areawide WQM plan. Each domestic or industrial treatment works has a separate sewer service area. The general wastewater service area designation for all discharges to ground water with planning flows of less than 20,000 gallons per day includes land areas where any number of wastewater discharges to ground water may occur as long as each discharge is less than 20,000 gallons per day. Wastewater facilities needing NJPDES discharge permits and those that qualify for certificates under the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, which include individual subsurface sewage disposal systems (ISSDS), fall into this general wastewater service area designation. The general wastewater service area designation for all discharges to ground water with planning flows of less than 2,000 gallons per day includes land areas where any number of wastewater discharges

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to ground water may occur as long as each discharge is less than 2,000 gallons per day. Wastewater facilities that discharge less than 2,000 gallons per day and qualify for permits under the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, which include ISSDS, fall into this general wastewater service area designation.

On February 20, 2001 the Department adopted N.J.A.C. 7:15-8 (see 33 N.J.R. 697(a)), which withdrew two general wastewater service area designations, one for new discharges to ground water which discharged planning flows of less than 20,000 gallons per day (gpd) and the other for discharges to ground water which discharged planning flows of less than 2,000 gpd. These wastewater service area designations were replaced with either individual service area designations for existing wastewater treatment facilities that discharge to ground water under a NJPDES permit or a new general service area designation for the remaining area for all new discharges to ground water of less than 2,000 gpd. The rule was appealed, and on March 18, 2002 the Appellate Division reversed the rule and remanded it to the Department for new public notice and comment. *In re Adopted Amendments N.J.A.C. 7:15-8*, 349 N.J. Super 320 (App Div 2002).

The Department is proposing a revised version of the previously adopted Subchapter 8 through this readoption with amendments. This rule will require all new development associated with wastewater discharges of greater than 2,000 gpd, including residential developments totaling six or more dwelling units and expansions of existing facilities that have not previously assessed environmental impacts, to assess the impacts associated with that development through an amendment or revision to the areawide WQM plan, except for certain exempt existing discharges to ground water and the properties that they serve. In determining what size residential development would generate 2,000 gallons per day of discharge, the Department utilized the flow projections from N.J.A.C. 7:9A-7.4(b). N.J.A.C. 7:9A-7.4(b) requires a minimum volume of 350 gallons per day per dwelling unit using a septic system. Based on this estimate, six homes would produce a total of 2,100 gpd. Thus, a development of more than five units could have the same impact on the ground waters of the State as an individual discharge of greater than 2,000 gpd.

Under proposed N.J.A.C. 7:15-8.1(a), the Department is proposing to withdraw all sewer service area designations and all general wastewater service area designations for all discharges to ground water within areas that do not have an adopted wastewater management plan that is current in accordance with the schedule established at N.J.A.C. 7:15-5.23. Where wastewater management plans have either never been adopted or are more than six years old, the assumptions concerning wastewater treatment capacity, water supply and nonpoint source pollution, if provided at all, may no longer be accurate as a result of subsequent master plan or zoning changes at the local level. By compelling those affected wastewater management planning agencies to comply with the requirements of this chapter, the Department will assure that all projects discharging more than 2,000 gallons per day of wastewater will receive a comprehensive analysis of environmental impacts to assure that approvals aren't based upon outdated information, thereby allowing areawide WQM plans to achieve their statutory mandate and enhancing the effectiveness of continuing planning process. It is important to note that while

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this action affects areas shown as future sewer or wastewater service areas on maps, it does not impact areas where sewer lines and existing structures are already lawfully installed and connected. In these cases the wastewater service area designation as it applies to those structures remains unaffected by this proposal.

Wastewater management planning agencies whose sewer service area and wastewater service area designations are withdrawn under this section may apply to reinstate future wastewater service areas through an updated WMP. However, all future wastewater service areas will be required to meet the criteria in N.J.A.C. 7:15-5.24 and 5.25 before being redesignated.

Sewer service and general wastewater service area designations for discharges to ground water of less than 20,000 gallons per day in WMPs that are current in accordance with N.J.A.C. 7:15-5.23, will be grandfathered and their existing designations maintained until the WMP is due to be updated in accordance with N.J.A.C. 7:15-5.23. When a WMP is due for update pursuant to N.J.A.C. 7:15-5.23, these sewer service area and wastewater service area designations will no longer be grandfathered and must undergo the same analyses and assessments required for non-current WMPs in N.J.A.C. 7:15-5.24 and 5.25. For additional discussion of wastewater service area withdrawal and reinstatement, see the summary for N.J.A.C. 7:15-5.2.

Exceptions to the proposed revocation of sewer service proposed are enumerated in proposed N.J.A.C. 7:15-8.1(b) as follows:

1. An exception is proposed for infill area development. Infill area development is development on an individual lot or lots situated between two improved lots, where the total amount of wastewater to be generated by all potential new development allowed by existing zoning at the time of application between the two previously improved lots is less than 2,000 gallons per day, as calculated in accordance with Treatment Works Approval projected flow criteria at N.J.A.C. 7:14A-23.3, and where sanitary sewer infrastructure lawfully exists in the right-of-way adjoining the lot or lots such that a connection can be made without crossing any property lines other than that of the lot to be served and where such connection does not require the extension of a collection system. To qualify for this exception, the lots, improvements on the lots, and the sewer line must exist on the date of the adoption of this rule.

This exception has been proposed in recognition that a public investment in sewage infrastructure has already been made with the expectation that its cost would be offset by future connections along its immediate route. The Department proposes to limit the volume of wastewater generated between existing improved lots to minimize the potential for unintended environmental impacts through either nonpoint source pollution, water supply stress, or the alteration of significant undisturbed blocks of habitat. Infill with wastewater volume in excess of the cumulative total of 2,000 gallons per day would involve the construction of sizable commercial development or more than five houses and has the potential to have more significant environmental impacts including, but not limited to: nonpoint source pollution, modification of hydrology in receiving waters, depletive and consumptive water uses, and modification or

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destruction of environmentally sensitive areas. The potential for significant impacts from development with wastewater flow in excess of 2,000 gallons per day warrants an assessment of the cumulative impact through the wastewater management planning process.

2. An exception is provided for projects that have received, prior to the effective date of wastewater service area withdrawal, both a local preliminary or final site plan approval or subdivision approval where subsequent site plan approval is not required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. or a municipal construction permit; and a Department TWA or NJPDES permit, if one is required, until such time as one of those qualifying approvals expires. The rationale for this proposed exception is again based on a demonstrated significant investment in project design and engineering in reliance on the ability to connect to a centralized sewer system. However, if any of the qualifying approvals is allowed to expire prior to the initiation of construction, the exemption will be lost.

3. An exception is proposed for projects that have received a site specific WQM plan amendment or revision adopted prior to the effective date of these rules for a period of six years from the date of adoption of the qualifying amendment or revision. These projects may have performed an analysis under EO 109 that satisfied the Department that the proposed project would not adversely affect water resources. However, these analyses, if conducted, failed to consider the cumulative effects of development decisions within the wastewater management planning area because the wastewater management plans have not been kept current. Therefore, a limited but reasonable period of protection for these projects is appropriate. Limiting the protection period to six years is based on the fact that WMP updates are to be prepared and submitted to the Department every six years. Consequently, if a WMP agency adheres to the schedule for WMP update in the rule, these site specific amendments should be included within a full WMP or WMP update within a six-year period.

4. An exception is proposed for projects requiring an industrial treatment works for a discharge that does not handle process wastewater or sanitary sewage. This exemption is consistent with proposed N.J.A.C. 7:15-4.3(c)3.

Under proposed N.J.A.C. 7:15-8.1(c), areas for which wastewater service area designations are withdrawn under this section are redesignated as a general wastewater service area to be served by facilities that discharge to ground water with planning flows of 2,000 gallons per day or less. Proposed N.J.A.C. 7:15-8.1(c)1 through 4 identify those wastewater service options that are consistent with the new designation.

Proposed N.J.A.C. 7:15-8.1(c)1 allows wastewater facilities discharging to ground water that serve non-residential development with a daily maximum planning flow of 2,000 gpd or less. Wastewater flows are calculated in accordance with the expected volume of sanitary sewage criteria established in the Standards for Individual Subsurface Sewage Disposal Systems at N.J.A.C. 7:9A-7.4.

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Proposed N.J.A.C. 7:15-8.1(c)2 allows individual or other subsurface sewage disposal systems serving residential development or subdivisions with a total of less than six dwelling units. N.J.A.C. 7:15-8.1(c)2i(1) through (4) set forth the situations in which previous residential development must be considered in determining the number of dwelling units. Previous residential development must be considered to ensure cumulative impacts are addressed and to capture circumstances where parcels are contiguous and share infrastructure; are in common ownership or are subdivided after the effective date of these rules; where there is a substantial common interest by one or more individuals in the dwelling units; or where the addition of one or more dwelling units after the effective date of these rules, results in a total of six or more dwelling units.

Proposed N.J.A.C. 7:15-8.1(c)3 sets forth the limited circumstances under which facilities discharging to ground water may exceed the cumulative 2,000 gallons per day and five dwelling unit threshold. N.J.A.C. 7:15-8.1(c)3i allows for projects with a valid approval for 50 or more realty improvements under the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq., as these activities have already undergone Department review. N.J.A.C. 7:15-8.1(c)3ii allows for projects which have received, prior to the effective date of this rule, a local site plan approval or subdivision approval where subsequent site plan approval is not required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. or a municipal construction permit and a permit to construct or alter issued by the administrative authority under N.J.A.C. 7:9A-3.5 to be deemed consistent with the general service area designation for wastewater planning flows of less than 2,000 gallons per day. These projects will not be deemed consistent if one of the qualifying approvals expires.

Proposed N.J.A.C. 7:15-8.1(c)4 allows repair or minor expansions of existing wastewater facilities with a discharge to ground water.

Proposed N.J.A.C. 7:15-8.1(d) recognizes the unique approval process associated with public schools. Thus, wastewater facilities for public schools are exempt where there is evidence of compliance with statutory provisions of the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. in the form of a planning board response dated prior to the effective date of these rules, or the expiration of the 45-day courtesy comment period that municipal planning boards are allotted to provide recommendations to the school board and Department of Education prior to the effective date of this rule.

Subchapter 9. Watershed Management Grants

N.J.A.C. 7:15-9 allows for the award of grants to watershed management groups pursuant to the Watershed Protection and Management Act of 1997 (the Act), N.J.S.A. 58:29-1 et seq. The Act establishes a nonlapsing, revolving Watershed Management Fund in the Department. The funding source is Corporate Business Tax (CBT) revenues. Under an amendment to the New Jersey Constitution approved by voters in November 1996, a minimum of two-thirds of one percent or a minimum of \$5 million dollars, whichever is less, of CBT annual revenues is dedicated for use by the Department in accordance with the Act for the purposes of water quality

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point and nonpoint source pollution monitoring, watershed-based water resource planning and management and nonpoint source pollution prevention projects (N.J.S.A. 58:29-2). The Department is proposing to readopt Subchapter 9 without amendment.

Social Impact

The proposed readoption with amendments of the Water Quality Management Planning rules will have numerous positive social impacts. The restoration, enhancement, and maintenance of the State's surface water and ground water resources are important to all residents of New Jersey since every resident depends upon surface and ground waters for residential, commercial, industrial, agricultural and aquaculture use, as well as for recreation, tourism, fishing, and shellfish harvesting. Through its provisions, the Water Quality Management Planning rules are designed to restore, enhance and maintain the chemical, physical and biological integrity of the State's surface water and ground water, and the public trust therein; to protect public health; to ensure that New Jersey's streams, rivers, lakes, wetlands, and coastal waters will be fishable, swimmable, and support healthy and sustainable ecosystems; to ensure that surface and ground water will be clean sources of water; and to ensure that adequate supplies of surface and ground water will be available for all existing and future needs and uses. The rules encourage development of appropriate environmental infrastructure and provide for a sustainable New Jersey. Specifically, the rules require the preparation of wastewater management plans (WMPs) to periodically update planning of wastewater infrastructure so as to provide for the needs of local communities while considering the overall implications in terms of the water resources of the State. Planning for wastewater management needs in this way has a positive social impact by meeting the needs of society today without foreclosing options for or lowering the quality of life of society in the future. This design is proposed to be continued with the readoption of the Water Quality Management Planning rules and enhanced through the proposed amendments. The proposed amendments will require that watershed management be an integral component of local wastewater planning and that local plans be consistent with adopted areawide WQM plans and plan modifications. Thus local zoning ordinances and master plans must consider the cumulative and secondary impacts of proposed development, and the complex interrelationships of water quality, water quantity and ecosystem health.

Subchapters 3 and 4 establish the requirements for determining the consistency of proposed projects or activities with adopted areawide WQM plans and the procedures to modify areawide WQM plans. Under N.J.S.A. 58:11A-3, all projects and activities affecting water quality must be developed and implemented consistent with the applicable areawide WQM plan. Since the Department cannot grant any permit(s) that conflict with the applicable areawide WQM plan, readoption of these provisions are necessary to inform when applicants may need to modify their projects or activities to be consistent with the applicable plan(s), or request a plan modification. The proposed amendments clarify the consistency determination process and revise the categories of projects or activities eligible to be processed as a revision. The rules proposed for readoption with amendments maintain the current areawide WQM plans and designated planning agencies (and their responsibilities), and the Continuing Planning Process embodied in the Federal Clean Water Act. Activities under the rules will continue to be

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coordinated and integrated with related Federal, State, regional and local land use, functional, and other relevant planning programs and policies, including the Pinelands Comprehensive Management Plan, Coastal Zone Management Program, Hackensack Meadowlands District Master Plan, the State Development and Redevelopment Plan and county and local master plans, thereby providing positive social impacts by promoting plan integration and enhancing the efficiency of governmental operations. This positive social impact is enhanced through proposed amendments which, in recognition of the newly enacted Highlands Act, add coordination with the Highlands Council and integration with the Highlands Regional Master Plan to this aspect of the planning process. Overall, the proposed amendments provide a social benefit by creating greater predictability in the permitting process, which depends on project consistency, and by ensuring coordination and integration of local and State planning objectives.

At Subchapter 5, the proposed amendments will shift responsibility for wastewater management planning to counties. It is intended that plans will be developed based on municipal components that are integrated on a regional (county) basis. This will have a social benefit by placing planning responsibilities in the hands of those most familiar with local goals, objectives, and concerns and with the means to effectuate the provisions of the plans. In addition, the standards in the proposed amendments will have a social benefit by providing clear standards of review, thereby providing greater predictability in the planning process. Further, the standards will result in more cost-effective and environmentally sound wastewater management and water supply infrastructure decisions and integrate and coordinate State, regional and local obligations to address water supply, wastewater and stormwater management. Cumulative impacts of existing and future development will be assessed so that infrastructure and land use planning activities conducted at the local level reflect the water resource capacities of the planning area.

For example, N.J.A.C. 7:15-5.25 requires consideration of alternatives to Reclaimed Wastewater for Beneficial Reuse where new or expanded wastewater facilities are needed or where water supplies are identified as stressed in the New Jersey State Water Supply Plan. Reclaiming water for appropriate beneficial reuse can reduce existing nonpotable water demands, freeing up additional supply to meet future potable water demands and extending existing water supplies. This will provide a positive social impact by helping ensure that there is adequate water supply for the needs of current and future generations.

Also at N.J.A.C. 7:15-5.25, the proposed amendments include the requirement that areas with the wastewater service designation for discharge to ground water of 2,000 gallons per day or less have a mandatory septic maintenance program. This requirement may have an adverse social impact for some homeowners with septic systems who do not practice routine maintenance of their systems and would object to this additional measure of governmental control. However, performing routine maintenance of septic systems should be considered a normal part of operating these types of wastewater treatment systems, as well as an obligation in consideration of the impacts of a failing system with regard to other members of society. The lack of proper maintenance, including regular pump outs, is a major cause of septic system failure. Septic system failure not only impairs water quality but also presents a significant health

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risk. The requirement for regular inspection and maintenance will have a positive social impact by helping to prevent the failure of septic systems.

Subchapter 6, as proposed to be amended, contains the procedures for the developing and adopting the List of Water Quality Limited Segments and Total Maximum Daily Loads, which are required under the Clean Water Act and are currently contained in Subchapters 6 and 7. In addition to consolidating these closely linked activities, the proposed amendments would adopt the Federal requirements and guidance by reference. This will have a positive social benefit by ensuring the Department's procedures keep pace with Federal requirements without the need for rule making.

WMPs assist State and local planning entities by identifying, and updating on a regular basis, existing and proposed wastewater needs and the means to address them. At Subchapter 8, the proposed amendments provide for the withdrawal of wastewater service areas, including sewer service areas and the general wastewater service area designation for discharge to ground water less than 20,000 gallons per day, where WMPs are not up to date and where an effort to update is not made within certain time frames. This provision is expected to create a compelling incentive to update plans on a regular basis, so that the social benefits of proper planning and the continuing planning process can be realized.

The withdrawal of these areas where WMPs are not up to date will have positive and negative social impacts. Counties, which are designated by the rule as the wastewater management planning agencies, will have an opportunity to update the plans within nine months of the date of adoption in order to avoid the withdrawal of wastewater service area. If a county fails to act or does not intend to act within that time frame, a municipality will be afforded the opportunity to become the wastewater management planning agency and may submit a plan for their municipality within 12 months of the date of adoption, thereby avoiding the withdrawal of their wastewater service area. The withdrawal of sewer service area, should it occur, may have negative social impacts for property owners whose development plans were based on the assumed availability of sewer service. The withdrawal could be temporary, lasting until the WMP becomes compliant. However, redesignation of sewer service area is not guaranteed. Delineation of sewer service areas in WMPs prepared under the proposed rule amendments will exclude significant tracts of environmentally sensitive areas. While this may adversely affect some individual property owners in terms of the density of development that may be achieved on their property, this provision is expected to have positive overall social impacts because development will be directed to areas suited for more dense development and sprawling development in environmentally sensitive areas will be avoided. The proliferation of sprawl development consumes vast amounts of land, utilizes infrastructure inefficiently, and is detrimental to the natural environment, including water resources, and the overall quality of life.

With the withdrawal of the wastewater service area discharge to ground water designations of less than 2,000 gallons per day and less than 20,000 gallons per day and replacement with the designation of discharge to ground water of 2,000 gallons per day or less, the threshold for projects that will require an amendment or revision will be lowered. This will

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have an adverse impact for developers whose projects previously did not require water quality planning in order to proceed. This adverse impact will be offset by the overall positive social impact because reducing the review threshold will help to capture the cumulative impacts of numerous small projects on water resources relied upon by all. To balance the need to consider cumulative impacts with the need to minimize the adverse social impact to project developers, proposals involving between the equivalent of six and 23 single family dwellings on septic systems will qualify for review as revisions to the areawide WQM plans, reducing the administrative burden on applicants and providing for an expedited review by the Department.

Based on the above, the net social impact(s) of the rules proposed for readoption with amendments will be to improve the overall quality of life for people who live and work in the State of New Jersey.

Economic Impact

The rules proposed for readoption with amendments encourage growth and development where it is desired: in areas where infrastructure exists and that are not environmentally constrained. The rules also seek to ensure that the development supported by the selected wastewater management alternative can be sustained by the water resource. The readoption of the current rules is necessary to achieve the restoration, enhancement, and maintenance of the chemical, physical, and biological integrity of the State's surface and ground waters, which provide positive economic benefits by protecting public health, providing water supply for future economic growth and enhancing recreational opportunities.

The rules proposed for readoption with amendments will continue the integration of water resources management and land use planning concepts ensuring that adequate wastewater treatment capacity exists to support local and regional land use plans. Significant economies, efficiencies, and savings will be realized by both public and private development projects if land use planning, at all levels of government, become consistent through integrated planning. The existing rules establish wastewater management plans as the vehicle for land use planning integration and the assurance of adequate wastewater treatment. The rules proposed for readoption with amendments continue the requirement of wastewater management planning which is necessary to ensure that adequate wastewater treatment capacity exists to support those integrated plans. There is a cost associated with the preparation of wastewater management plans, and that cost varies with the geographic scope of the plan and complexity of wastewater treatment systems included in the plan. For a simple plan addressing one municipality with one wastewater management system, the cost could be less than \$20,000. For a large regional plan with multiple wastewater management systems, the plan might cost \$200,000 or more. However, the economic benefits associated with sound land use and wastewater management planning far exceed those costs.

Sound comprehensive water quality and land use planning can dampen sprawl development. Studies of the economic impact of continued sprawl development compared to more center based development make clear that the cost of providing municipal services to

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sprawl development is significantly greater (see studies conducted by the Center for Urban Policy Research at Rutgers University in 1992 and 2000). When current, WMPs benefit the development community by resolving conflicts among State, regional and local land use plans; and provide assurance that wastewater capacity exists to support planned development. Therefore, wastewater management plans that are kept current result in better investment decisions, fewer delays in securing development approvals, and reduced carrying costs associated with these delays. Also, because wastewater management plans guide the extension of sewage infrastructure, they result in more efficient infrastructure investment, thus providing an economic benefit to the ratepayers of public wastewater collection and treatment systems. Further, wastewater management plans ensure the proper planning for wastewater, stormwater, and water supply management facilities, which are essential to everyday life, sustainable economic growth and water resource protection, thereby providing economic benefits to all the residents of the State. Therefore, the Department concludes that the current rule provides a substantial economic benefit and should be readopted.

The full economic benefit of the current rules has not been realized due to the failure to keep many wastewater management plans current. Therefore, the Department is proposing amendments to the existing rules intended to improve the efficiency of wastewater management plan preparation and adoption.

The Department is proposing amendments to N.J.A.C. 7:15-3 to make the consistency determination process more efficient. The Water Quality Planning Act establishes that the Commissioner shall not grant any permit that is in conflict with an areawide WQM plan (N.J.S.A. 58:11A-10). In the current rules, certain permits including New Jersey Pollutant Discharge Elimination System permits, Treatment Works Approvals, Solid Waste permits, and CAFRA permits require formal consistency determinations, while other permits do not. On occasion this has led to significant investment in securing certain approvals (for example, Freshwater Wetlands and Stream Encroachment) from the Department only to later have a necessary permit denied due to inconsistency with the areawide WQM plan. Proposed amendments to this subchapter eliminate the distinction between formal and informal consistency determinations. Proposed amendments to this subchapter essentially require that any permit associated with a new development shall be evaluated for consistency with the applicable areawide WQM plan. This change will allow the Department to identify projects that conflict with areawide WQM plans before significant economic investment is made securing permits from the Department. This should result in a cost savings to the regulated community as investment in plan development and permitting for inconsistent projects will be minimized.

The proposed rules do not require a separate application for a consistency determination, though the Department will continue to issue independent consistency determinations upon application. Rather, these determinations will be made by the permitting programs concurrent with their review of any submitted application. There is no additional fee required for a consistency determination and the review will be conducted concurrent with and within the established time frames for the permit triggering the consistency determination review. Therefore there are no fee costs or costs associated with a delay in the issuance of a permit

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decision as a result of the consistency determination requirement. To promote efficiency, the Department adopted a digital sewer service area coverage October 11, 2006 (38 N.J.R. 4756). The adopted GIS coverage is also available to the general public on the Department's web site at www.nj.gov/dep/gis/newdata.htm.

The Department has also modified the informational requirements for a consistency determination to that which is required to determine that future wastewater generation does not exceed what was planned, that the proposed method of wastewater treatment is correct, and that the project complies with the non-point source control aspects of the plan. Requiring a consistency determination as part of a permit review may mean that information beyond what has been traditionally required for that particular permit application may be required. For example, a site plan of a development to be supported by a water main extension would be required to determine whether the project is consistent with the riparian corridor and steep slope provisions of the rule. While this may be a new submission requirement for the water main extension application, the Department is confident that these site plans would have had to be prepared for other State or local approvals. Thus the requirement for a site plan to be submitted is not anticipated to be a large economic burden. Also, the Department intends to use its NJEMS electronic permit tracking system to minimize duplicative submission requirements to different permit programs. Through this electronic data sharing system, when one permit program has performed a consistency determination for a particular project that determination can be shared with the other permitting programs in the Department to avoid redundant determinations. Therefore, the Department concludes that while these changes have the potential to slightly increase the cost associated with a particular permit application, the rule change offers a potential significant cost savings by identifying inconsistent projects before substantial investment in permitting occurs.

The Department is also proposing to amend N.J.A.C. 7:15-3.5 to include new revision categories. Most significant among the changes in this section are new revisions to allow for beneficial reuse of reclaimed water and review of certain projects in areas designated for individual subsurface sewage disposal systems.

The revision for reclaimed water for beneficial reuse (RWBR) is intended to encourage that use. Reclaiming water for appropriate beneficial reuse can reduce existing nonpotable water demands, freeing up additional supply to meet future potable water demands and extending existing water supplies. RWBR is economically beneficial when compared with the cost of developing of new water supplies.

The inclusion of a revision category for projects on individual subsurface sewage disposal systems is intended to reduce the economic and administrative burden of the rule provisions that make these projects inconsistent with the areawide WQM plan where wastewater management plans are not up to date. The proposed rule amendments will require that projects involving wastewater generation of more than 2,000 gallons per day (six or more homes) on individual subsurface sewage disposal systems demonstrate that the project will not result in nitrate concentrations exceeding 2.0 mg/L when considering the dilution available on the project

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site. This additional approval may result in an economic impact due to delays because Department permits cannot be issued until a modification of the areawide WQM plan is adopted that makes the project consistent. Allowing these projects to proceed under a revision will reduce the administrative burden, thereby expediting the adoption process and reducing the economic impact on the applicant.

As mentioned previously, the economic advantages of integrated land use, water resource and wastewater management planning can only be realized if those plans are kept current. Presently there are 161 wastewater management plans and wastewater management planning agencies. As of March 31, 2007, only 13 of the 161 wastewater management plans are current as required by the existing rule at N.J.A.C. 7:15-5.23. Many of the existing sewer service areas were originally developed in the 1970s and 1980s and did not include consideration of current environmental constraints, and provide no assurance that adequate wastewater treatment capacity exists. As such, a significant portion of the existing sewer service areas as currently adopted may have no relationship to the actual development potential of the land or the available wastewater treatment capacity. The Department is proposing several amendments to the existing rules to remedy this situation.

The Department is proposing to amend N.J.A.C. 7:15-5.2 to incorporate a compliance mechanism aimed at ensuring that wastewater management plans are submitted and updated as required. The rule amendment establishes a nine-month grace period for new and updated wastewater management plan submission where those plans are out of date. The Department intends to work closely with the wastewater management planning agencies toward wastewater management plan preparation while this proposed readoption with amendments is pending, thus making a nine-month grace period sufficient for plan submission. However, if a wastewater management plan is not submitted in accordance with the requirements of the rules, the Department will withdraw any approved wastewater service area within the deficient area. Should such a withdrawal become effective, it may have a profound effect on economic development within that area. A withdrawal of wastewater service area would greatly reduce the intensity of development that could be accommodated within the area, thus negatively affecting property value, property taxes and the future rate base of any sewer authority designated to serve these areas.

The Department has built certain exceptions into the withdrawal to minimize the immediate negative economic effect on sewer authorities and certain projects that have proceeded to gain local approvals and approval of a wastewater treatment alternative. For example, the withdrawal of sewer service areas where wastewater management planning is not up to date excludes places where sewage collection systems have already been installed, thus encouraging development in areas where appropriate infrastructure already exists, and maximizing its use. By allowing infill development the rule is careful not to withdraw sewer service area in areas where the investment in infrastructure has already been made, maximizing economic efficiency. Property owners in these areas also have a reasonable expectation of receiving service and therefore, that service availability is retained. This will also help sewer authorities to realize the expected rate base necessary to pay for those lines and also eliminate the

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added cost of establishing an onsite sewage treatment and disposal system when a suitable wastewater management alternative already exists.

Similarly, private and public investment in projects that have secured local Municipal Land Use Law approval and approval of a wastewater treatment alternative will not be undone by this rule, thus preserving those investments and minimizing direct economic hardship. However, the Department is clear that where wastewater service is withdrawn as a result of non-compliance with these rules, there could be a significant economic impact. However, the economic impact associated with the withdrawal is temporary in nature, in that wastewater service area can be restored upon adoption of wastewater management plan in compliance with the proposed rules. It is the Department's intent in that wastewater management plans be submitted in compliance with the rules making withdrawal of wastewater service area unnecessary.

Amendments are proposed at N.J.A.C. 7:15-5.4 to establish counties as the wastewater management planning agencies. There are existing costs to the public and regulated entities for wastewater management planning activities. Under the existing rule, the Passaic Valley Sewerage Commissioners, some counties and a myriad of sewerage authorities, municipal authorities, joint meetings, and municipalities are required to periodically submit wastewater management plans. In most cases, the cost of these wastewater management planning activities are ultimately borne by sewer users and local taxpayers. However, these costs are more than offset by eliminating inefficient extension of infrastructure, which is a cost that is currently passed onto these same rate and tax payers. In fact, an economic analysis of the State Development and Redevelopment Plan conducted in 1992 estimated that an annual operational cost savings of \$380 million could be realized by locating housing and jobs in areas that are more efficiently served by public infrastructure.

Designating counties as the wastewater management planning agencies will reduce the number of wastewater management plans from the current 161 to 21. This consolidation not only will achieve a more regional approach to water resource management, but will also result in an overall cost savings in the preparation of WMPs due to shared services and economies of scale. While there is a net cost to counties for the preparation of wastewater management plans that may be as high as \$250,000, there is a net savings to the currently designated wastewater management planning agencies. Furthermore, by reducing the number of wastewater management planning agencies, the Department will be able to establish a close working relationship with each of the counties, thereby eliminating the inefficiency and increased cost associated with continual deficiencies and requests for revisions to submitted wastewater management plans. On balance, the Department expects a net cost savings associated with wastewater management plan preparation, submission and adoption as a result of this change. While the Department cannot commit to paying the entire cost of wastewater management plan preparation, the Department expects to make financial assistance in the form of Federal 604(b) water quality planning grant assistance and \$1,000,000 in State watershed assistance available to counties in State fiscal year 2008.

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Proposed amendments at N.J.A.C. 7:15-5.6 and 5.8 establish information that sewer authorities and municipalities must provide to counties to enable wastewater management plan preparation. The information required in these sections should be readily available to these entities as part of their normal operations. Therefore, supplying this information to counties to facilitate wastewater management planning should be a nominal cost at best. Given that many of these entities are wastewater management planning entities presently, the net effect should be significantly reduced costs.

To further assist in the preparation of wastewater management plans, the Department is proposing clear standards for approval and is transitioning the analyses required for wastewater management plans to a GIS based exercise.

Amendments proposed at N.J.A.C. 7:15-5.24 set forth clear criteria for determining appropriate wastewater management alternatives based on the Department's environmental land use planning objectives. The Department is charged with primary responsibility for the protection of water quality, wetlands, threatened and endangered species, coastal environs and ecological diversity. In order to fully integrate State water resource and land use planning with regional and local land use plans, wastewater management decisions must consider the impact of those decisions on these resources. The Department selected these features based on the availability of GIS based information that will allow simple integration of these constraints into wastewater management plans. This means that it will not be necessary for counties to consolidate, develop and map natural resource inventories as part of the wastewater management planning process, thus reducing both economic burden of plan preparation and uncertainty surrounding the delineation of sewer service areas.

Due to the age of most wastewater management plans, the Department estimates that of approximately 1,960,000 acres of currently adopted sewer service area, an estimated 386,000 acres, 21 percent of the existing sewer service area, have some environmental constraint that would inhibit, if not preclude development. The 25-acre threshold proposed at N.J.A.C. 7:15-5.24 will remove approximately 316,000 acres of these sensitive features from sewer service area. The development of these areas is inconsistent with the environmental protection objectives of the Department and the extension of sewer collection and conveyance systems into these areas based on unrealistic development aspirations would be an inefficient use of public dollars. Based on 1995 aerial photography, it is estimated that 1,100,000 acres of the existing sewer service area are already developed. Thus removing the 316,000 acres of environmentally sensitive areas from sewer service area will leave approximately 544,000 acres of undeveloped land within sewer service areas. Therefore, these rules proposed for readoption with amendments will not thwart future economic growth, but rather will guide that growth into appropriate areas.

Removing any property from a sewer service area may negatively affect its property value because the density of development that may be supported by onsite wastewater systems is likely to be less than that which could be supported by connection to a public wastewater system. However, it is difficult to quantify the real economic effect on these properties as many will have

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existing environmental constraints, for example wetlands, that would have limited their development potential. While property values may be decreased in environmentally sensitive areas as a result of removal from an approved sewer service area, the wastewater management planning exercise may help prospective buyers and developers avoid purchasing properties that are not suited to their development aspirations.

Amendments to the proposed rule at N.J.A.C. 7:15-5.25 provide clear standards for wastewater management plans and amendments to areawide WQM plans. The present rule lacks any clear requirements for approval. Since 2000, the Department has been operating under Executive Order No. 109 (2000) and guidance developed pursuant thereto. The lack of clear standards for approval of a WMP in Department rules and Executive Order No. 109 (2000) has led to protracted negotiation and multiple submissions of wastewater management plans. Providing clear standards in this rule should reduce the uncertainty surrounding approvable wastewater management plans and amendments, thereby eliminating costly changes and delays in adopting these amendments, and reducing costs to developers that result from delays in the decision making process.

The purpose of the environmental build-out analysis (proposed N.J.A.C 7:15-5.25(c)) is to identify and remove land that is environmentally constrained from consideration in determining the maximum capacity for wastewater management infrastructure. The environmental build-out analysis is an essential component of any wastewater management plan in that it predicts future development and the wastewater treatment capacity needed to support that development. One goal of this analysis is to avoid the construction of excess capacity that could result in unnecessary costs. The development of appropriate capacity and infrastructure is costly and therefore should not be planned to include environmentally sensitive areas that will not support or be permitted to allow development. Similarly, an environmental build-out analysis could also indicate that insufficient wastewater treatment capacity exists to meet future needs in areas appropriate for development. In these cases, the wastewater management plan would be required to specify an orderly plan to provide that capacity while protecting water quality. It should also be noted that these build-out analyses may be useful for other infrastructure and land use planning including water supply, transportation, schools and affordable housing.

There are also costs and benefits associated with meeting water quality based effluent limitations. Effluent limits are established based on the assimilative capacity of the receiving water where treated wastewater is discharged. As more wastewater, and more effluent from treatment plants, is anticipated the permissible concentrations of pollutants in the effluent is reduced, thus requiring a higher level of treatment. Over-sizing a treatment plant and designing that plant to achieve effluent quality based on an unrealistic expectation of the amount of wastewater that will be generated by the sewer service area would also result in the unnecessary expenditure of public money. The preparation and regular updating of wastewater management plans will avoid this unnecessary expenditure thus having a beneficial economic impact.

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A properly prepared and updated WMP can also benefit the development community. An environmental build-out analysis is also necessary to ensure that adequate wastewater capacity has been planned and is available or will become available to support planned growth in appropriate areas. Real estate investment decisions are influenced by the availability of sewer and water infrastructure. Where those decisions are based on outdated WMPs, there can be no assurance that wastewater treatment capacity exists or will exist in the future. The construction of any development without ensuring adequate treatment capacity may result in the inefficient use of wastewater collection and conveyance systems and unnecessary delays in new construction as new wastewater management alternatives are being developed. Therefore, preparation and regular updating of wastewater management plans will have a positive economic impact on the development community.

However, where adequate wastewater treatment capacity cannot be demonstrated, the rule may preclude the redesignation of some existing sewer service in new and updated WMPs. In these areas property owners may have anticipated they would receive sewer service. These property owners may also perceive a loss of economic opportunity. However, the limitations placed on sewer service have complex effects on real property values, tax revenues, public service expenditures, and housing, labor, retail, and other markets. In these cases, where wastewater treatment capacity is insufficient, any future development expectation based on that capacity was unfounded, since the wastewater management alternative being relied upon does not exist. While there may be a perceived economic loss associated with the failure to redesignate sewer service in these areas, in reality, wastewater treatment capacity may never have existed. In these cases, development on any given piece of property would have had to utilize an onsite wastewater disposal system and that same development is still possible.

Proposed amendments also include requirements governing delineation of sewer service areas, prohibiting inclusion of significant areas of environmentally sensitive areas. Where sewer service area is removed in developing a new or updated WMP due to environmental constraints, the full development expectations of these areas may not have been reasonable because they are subject to other regulation, for example wetlands.

Areas that are not designated as sewer service area under these rules will be designated for discharge to ground water of 2,000 gallons per day or less. The proposed amendments establish a nitrate planning standard of 2.0 mg/L based upon existing nitrate concentrations in ground water. Therefore compliance with this standard must be demonstrated to ensure that ground water quality is not degraded. Under the current Ground Water Quality Standards, the Department allows degradation of ground water quality to approximately 5.2 mg/L. The application of the nitrate planning standard to development proposed on septic systems will result in required average lot sizes approximately doubling in size with new average lot sizes of between four and seven acres per single-family dwelling depending on local conditions. The Department acknowledges that some negative impact on the value of undeveloped property is expected from the general reduction in density of septic systems that can be supported under this rule. However, there are several mitigating factors that must be considered when determining the degree of economic impact.

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Based on the threshold for revisions, this standard will only be applied directly to projects that plan to generate and discharge a cumulative total of more than 2,000 gallons per day of wastewater (six or more houses). Therefore, the development potential of existing unimproved single family lots will not be impacted on a project specific basis.

Further, while the rule may impact the development potential of existing large lots that are to be subdivided or where a non-residential development is proposed, even in these cases, the actual economic impact of the rule on any particular piece of property will vary. For example, property that is already zoned at a lower density than that required to achieve the 2.0 mg/L nitrate planning standard are unaffected by the rule. Secondly, under a wastewater management plan, the rule does not require that housing units be distributed evenly. Rather the nitrate dilution standard must be achieved on a HUC 11 watershed basis. Thus the rule promotes flexibility by allowing smaller lot sizes in one part of the watershed to be compensated by larger lot sizes elsewhere in the watershed as necessary to accomplish other local land use planning and infrastructure objectives. Therefore, any negative economic impact of the rule based on reduced development potential may be mitigated by existing zoning. Even where this standard results in larger lots, houses constructed on those lots tend to fetch higher market prices further mitigating any devaluation.

Proposed amendments at N.J.A.C. 7:15-5.25 also establish the nonpoint source control requirements for wastewater management plans and site specific amendments. These provisions are straightforward in requiring riparian zone protection, steep slope protection and compliance with the stormwater management rules. Compliance with the Stormwater Management rules is already required under municipalities' NJPDES separate storm sewer system permits and there will be no new economic impact as a result of this rule proposal. Riparian zone and steep slope protection may result in land areas within these features having less actual development potential and value compared to that which could be expected based strictly on existing zoning. Land adjacent or near these features may become more valuable, offsetting the loss in value. Thus, some individuals may experience a loss in economic opportunity, while others may experience a gain. The extent of economic impact due to opportunity loss cannot be estimated because: 1) the riparian zone protection proposed in this rule are consistent with the regulatory requirements of the proposed Flood Hazard Area Control Act rules; 2) many municipalities already have adopted steep slope ordinances restricting development in these areas; and 3) there are provisions included that allow for hardship exceptions. Overall, any loss is expected to be offset by costs avoided to restore water quality that would be degraded if these areas are allowed to be fully developed. Therefore, the Department does not expect any significant new economic impact to be associated with these requirements.

Proposed N.J.A.C. 7:15-8 will revoke existing wastewater service area designations for discharges to ground water where wastewater management plans are not current as required by the existing rule. The effect of this provision is that projects proposing a cumulative total wastewater generation over 2,000 gallons per day discharging to ground water will immediately be inconsistent with the areawide WQM plan, thereby requiring a demonstration that the project

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will meet the 2.0 mg/L nitrate standard and WQM plan modification to become consistent, before any Department permits can be issued for that development. The application of the 2.0 mg/L nitrate standard may require that these projects be reduced in intensity, thus causing a loss of economic value. The rule exempts projects that have existing local Municipal Land Use Law approvals and a wastewater approval in an effort to reduce the economic burden on projects where a significant investment has already been made.

A second potential cost of this provision would be any associated carrying costs due to a delay in the project while the WQM plan modification is pending. As noted previously the rule minimizes the administrative burden by allowing proposals involving between six and 23 single family dwelling units (generating between 2,000 and 8,000 gallons of wastewater) to proceed as revisions. Revisions also provide for an expedited review by the Department, thus minimizing costs associated with the delay in modifying the areawide WQM plan. Once an updated WMP has been adopted that was developed based on a zoning density with respect to the new nitrate planning standard, there will no longer be a need to review these projects on a case-by-case basis. Projects that are developed consistent with the zoning upon which the WMP was based would have already demonstrated that the nitrate planning standard was met on a HUC 11 basis. Thus this negative economic effect is expected to be short lived.

The rule also includes a revision for clustered projects in wastewater service areas designated as discharge to ground water of 2,000 gallons per day or less, that will enable the recapture of some development potential. Because this revision will allow an onsite community owned treatment works, it may be possible for a developer to increase the number of units and density of units allowable on a property in exchange for the preservation of 70 percent of the land area of the property. This will potentially reduce the negative economic impact of the rule on properties that are affected by the new nitrate planning standard. Such clustered development will result in higher density development that continues to meet the nitrate planning standard of 2.0 mg/L but minimizes environmental impact associated with sprawl development.

The requirement that areas with the wastewater service designation for discharge to ground water of 2,000 gallons per day or less have a mandatory septic maintenance program at N.J.A.C. 7:15-5.25(e) may result in an increased cost to owners of these systems, including some homeowners, who have not been regularly maintaining their septic systems. However, the cost of performing routine maintenance of septic systems should be considered a normal operating cost of these types of wastewater treatment systems, just as water and sewer bills are a normal cost borne by users of centralized water and sewer infrastructure. The U.S. Environmental Protection Agency notes that nationally septic systems serve approximately 25 percent of households and approximately 33 percent of new development. More than half of the existing onsite wastewater systems are more than 30 years old and the U.S. Environmental Protection Agency reports surveys indicate at least ten percent of these systems back up onto the ground or into homes each year (Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized Wastewater Treatment Systems, US EPA, 2003)). The Department estimates that there are approximately 320,000 onsite wastewater systems operating in New Jersey.

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The lack of proper maintenance, including regular pump outs, is a major reason for septic system failure. Septic system failure not only impairs water quality, but also presents a significant health risk. The requirement for regular maintenance will benefit homeowners by preventing the inconvenience and far greater cost of repair or replacement of a septic system and disposal field that has failed due to lack of maintenance. The cost of routine maintenance is anticipated to average approximately \$500.00 every three years. This is a minor investment when compared to the cost of replacing a disposal field, which can cost between \$10,000 and \$60,000. Keeping septic systems functioning properly will also help to prevent costs in the form of additional health care costs, costs associated with treating or replacing drinking water resources contaminated by failing septic systems and, in coastal areas, business opportunity losses that would result from beach closings and shellfish closures that may result from failing septic systems.

The U.S. Environmental Protection Agency offers several management models for onsite wastewater systems (Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized Wastewater Treatment Systems, US EPA, 2003)). There will be a cost to counties or municipalities to administer the program for periodic maintenance of septic systems. The Department provides maximum flexibility in the construct of such a program, so the cost will depend on how elaborate a program the municipality decides to institute. The cost would be de minimus for a program that simply monitors vouchers submitted by property owners. The Department recommends a simple model to increase homeowner awareness of proper septic system use and maintenance and a tracking system to ensure that periodic maintenance is occurring. The U.S. Environmental Protection Agency has made The Wastewater Information System Tool, or TWIST, available in the public domain for use in just such a program (<http://cfpub.epa.gov/owm/septic/index.cfm>). In addition, the Department has published Technical Guidance for Inspection of Onsite Wastewater Treatment and Disposal Systems (NJDEP, 2003 http://www.state.nj.us/dep/dwq/pdf/inspection_guidance.pdf). Included in this document are guidelines and reporting forms for routine maintenance of onsite wastewater systems. Given the availability of these tools, the Department does not anticipate the cost of initiating and maintaining a maintenance program would be excessive. Fines levied for noncompliance could be used to fund the program for monitoring and enforcing the requirement.

A properly prepared WMP will also provide much of the information required to obtain a low cost loan under the Environmental Infrastructure Financing Program to implement wastewater, water supply or stormwater management infrastructure needs. Thus, an updated WMP may provide much of the basis for making low interest loans available for necessary wastewater management system upgrades. These low interest loans can also decrease the cost to ratepayers for necessary maintenance and construction of water and wastewater related infrastructure.

Finally, the overall benefit from the maintenance and improvement of the State's water quality should not be minimized. Good water quality is essential to every aspect of the State's economy from reduced costs of treatment to a plentitude of water dependent recreational and commercial opportunities. The impact of degraded water resources cannot be overstated. A

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primary objective of the proposed readoption with amendments is to maintain the quality of waters that already meet or exceed water quality standards. The nonpoint source pollution controls included in this set of rules are intended to prevent further water quality degradation from new development. Without such protection, high quality waters/watersheds could become impaired, which would result in increased expenditures to address the impairment. The 2006 Integrated Water Quality Monitoring and Assessment Report concluded that 71 percent of HUC 14 subwatersheds and 34 percent of lakes were impaired for one or more designated uses or to failed meet the Surface Water Quality Standards. The cost of restoring water quality in all of the State's impaired waters cannot be accurately predicted but will easily exceed \$3 billion (2000 Clean Water Needs Survey estimates \$2.8 billion). Based on recent watershed restoration plans this figure may underestimate the need. For example, the draft restoration plan for the Wreck Pond Watershed alone has identified approximately \$30 million in needed restoration projects. The Wreck Pond Watershed consists of two HUC 14 watersheds and covers only a portion of one HUC 11 watershed. The discharge from the Wreck Pond outfall is responsible for the majority of ocean swimming beach closings in New Jersey. Allowing further degradation of the State's surface water quality will only increase this daunting \$3 billion figure. Preventing future degradation will save the State restoration costs.

Environmental Impact

Without the Water Quality Management Planning rules there would be no means to amend WQM plans to reflect changing needs with respect to water resource management, adopt updated lists of water quality limited segments and total maximum daily loads, or award Watershed Management Grants. The rules proposed for readoption with amendments are expected to have a positive effect on the environment by continuing the planning process designed to restore, enhance and maintain the chemical, physical and biological integrity of the State's surface and ground waters. The proposed amendments will have a positive environmental impact by enhancing the achievement of these objectives. Together, the rules proposed for readoption and the proposed amendments will provide a mechanism for achieving the original goals of the Federal Clean Water Act.

The proposed amendments are expected to have a major positive effect on the environment by ensuring that a workable system for water resources management is implemented in New Jersey, and that the environmental protection requirements in areawide WQM plans are satisfied or met. The proposed amendments will produce wastewater management plans designed to (1) maintain the quality of waters that already meet water quality and designated/desired uses, (2) enhance the quality of waters to achieve water quality that will support new/improved designated/desired uses, and (3) restore those waters that are impaired or do not attain standards. The rules proposed for readoption and proposed amendments together establish the rules and processes that will be used to integrate water quality standards (for example, Surface and Ground Water Quality Standards), antidegradation requirements, and TMDLs in water resource management planning.

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The rules proposed for readoption with amendments will have a positive environmental impact through the continued and amended procedures for evaluating projects and activities for consistency with WQM plans in Subchapters 3 and 4. These procedures will ensure that the environmental protection requirements in areawide WQM plans are followed. Treatment works upgrades to improve effluent quality and treatment works with the sole purpose of abating existing pollution problems are deemed consistent (N.J.A.C. 7:15-4.2), thus permits for these activities may be expedited.

The environmental standards at new sections N.J.A.C. 7:15-5.24 and 5.25 will have environmental benefits by establishing clear performance criteria against which the Department will evaluate wastewater management plans, wastewater management plan updates and water quality management plan amendments. The purpose of the standards at proposed N.J.A.C. 7:15-5.24 and 5.25 is to evaluate infrastructure, land use and institutional options in relation to wastewater, stormwater, and/or water supply management. When evaluating alternative management options, preference and consideration will always be given to those alternatives that avoid adverse impacts to environmentally sensitive areas and water related resources over alternatives that minimize and mitigate such impacts. These standards will help to:

- Maintain, restore, or enhance water quality, water quantity, and ecosystem health;
- Maintain and restore natural hydrology of streams;
- Maintain/restore riparian zones and the associated functional values;
- Protect rare, threatened, and endangered species;
- Protect steep slopes; and
- Accommodate growth while protecting water resources.

These standards include procedures for delineating sewer service areas and require agencies to assess and provide for wastewater and water supply needs at the environmental build-out capacity for each wastewater management planning area. They also establish criteria for evaluating ground water impacts, stormwater impacts, including riparian zone and steep slope considerations, and impacts to threatened and endangered species habitat. The standards require consideration of antidegradation requirements prior to approval of a plan with new or expanded discharges to surface water. In addition, they set forth a hierarchy for alternative selection that will minimize the addition of pollutants to waterways, and maximize conformance with implementation provisions of TMDLs adopted for impaired waters. These proposed requirements are consistent with mandates under the Federal Clean Water Act to protect water quality that is better than water quality standards and to restore water that does not meet those standards.

The proposed procedure for delineating sewer service areas at N.J.A.C. 7:15-5.24 will eliminate from sewer service areas significant tracts of environmentally sensitive areas, including wetlands, riparian zones of Category One waters and habitats of threatened and endangered species. A positive impact of this procedure will be to reduce development pressure on environmentally sensitive areas by not facilitating intense development there. This should help to maintain and enhance water quality, biodiversity, and flood control. In addition, eliminating

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these areas from sewer service areas will eliminate a public subsidy for the development of areas important to water quality, flood storage, fisheries and the ecology of the State. Intense development in environmentally sensitive areas results in environmental degradation and the cost of restoration and remediation may be passed on to the public, resulting in an inefficient and costly cycle of degradation and restoration.

The proposed amendments include a requirement to calculate the environmental build-out for sewer service and other wastewater service areas as a basis for analyzing water quality and water supply impacts that will allow consideration of cumulative impacts. In order to conduct an environmental build-out analysis (proposed N.J.A.C 7:15-5.25(c)) that accurately predicts future wastewater generation potential in sewer service areas, environmentally constrained land subject to regulation, such as wetlands and riparian buffers, must be removed from consideration. These areas are removed because there is no reasonable expectation that such areas will be developed, and therefore are not expected to have the potential to generate wastewater. By realistically estimating wastewater generation potential, commitment of the assimilative capacity of receiving waters can be optimized to serve sustainable development.

The proposed standards also establish a nitrate planning standard of 2.0 mg/L of nitrate that will apply to wastewater management options that involve a discharge to ground water. This standard is established to ensure that, considering the State as a whole, the ground water quality will not be degraded.

Monitoring conducted by the State has identified exceedances of the Surface Water Quality Standards in a majority of New Jersey watersheds, most frequently for fecal coliform and phosphorus. These pollutants are predominantly derived from nonpoint pollution sources. Standards provided in proposed N.J.A.C. 7:15-5.25 will help to ensure that new development will not exacerbate these impairments and, where TMDLs have been adopted, corrected. A positive environmental impact will be created by the mandate that TMDL implementation requirements will be incorporated into the plans as an aid to addressing the impairments. The proposed nonpoint source pollution standard addresses stormwater management, riparian zones and steep slope protection. The standards are designed to reinforce other requirements relative to this environmental problem, including the Stormwater Management rules. Consistency between rules will aid in the preservation of natural water tables and hydrology, which maintain drinking water supplies, stream baseflow, and wetlands, thus creating a positive environmental impact.

Amendments to Subchapter 6 combine and amend the process for developing the List of Water Quality Limited Segments and Total Maximum Daily Loads, currently Subchapters 6 and 7 of the current rules. Proposed amendments to Subchapter 6 describe the process to be used to develop and adopt the "Water Quality Limited Segments List" mandated by Section 303(d) of the Federal Clean Water Act, consistent with the USEPA Water Quality Planning and Management Regulations at 40 CFR 130.7. This list will include (1) those waterbody segments (designated as water quality limited or "impaired" or threatened) for which additional management actions (including TMDLs, point and nonpoint source measures, or other actions) will be developed, (2) the likely parameters of interest or water resource issues for each

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particular watershed, and (3) a priority ranking of the water quality limited segments. The development of the “Water Quality Limited Segments List” and associated TMDLs provide information that is essential to the development and implementation of wastewater management plans that will restore, enhance, and maintain the State’s water resources. By requiring identification of waterbodies in which water quality must be improved, as well as those waterbodies in need of increased maintenance/protection, the proposed rules will provide environmental benefits to the waters of the State, water-related resources and the citizens and ecosystems which rely on these resources.

Proposed amendments at Subchapter 8 lower the threshold for wastewater management plan modification to projects cumulatively discharging more than 2,000 gallons per day of wastewater to ground water. Whereas the existing rules focus on sewer service areas, the proposed new rules require new and expanded analyses of the potential impacts of most new development on the State’s water resources, using both sewers and septic systems. With the proposed procedures for delineating sewer service areas and the nitrate planning standard in Subchapter 5, this process is designed to ensure that new development will only be approved where and to the extent that the environment can support it.

Under N.J.S.A. 58:11A-10, all projects and activities affecting water quality must be developed and implemented consistent with the applicable areawide WQM plan and the Department cannot grant any permit(s) that conflict with the applicable areawide WQM plan. The net effect of the proposed regulations will be to allow significant progress toward the attainment and maintenance of Surface Water Quality Standards and the restoration of designated uses in impaired waterbodies of the State. New Jersey, due to its high population density and industrialized economy, has many surface waters that are water quality impaired. The water quality management planning process will be a critical component of future efforts to manage surface and ground water quality, identifying what sources contribute pollutants, how much, and what levels of controls are necessary to achieve compliance with the Surface and Ground Water Quality Standards and the protection of surface and ground water uses. In addition, through the various planning activities included in the proposed rules, strategies to restore, maintain, and enhance water quality, water quantity, and ecosystem health will be developed.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 (N.J.S.A. 52:14B-22 through 24), 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. Rules that exceed Federal standards must include an analysis that explains the reasons for imposing such standards.

Section 208 of the Federal Clean Water Act requires the governor of each state to identify those areas of their state that have substantial water quality control problems and to develop plans, or designate the appropriate entity to develop a plan, to do the following:

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- Identify treatment works necessary to meet the wastewater treatment needs of each area;
- Establish the construction priorities for such treatment works;
- Establish a regulatory program to implement those treatment works;
- Regulate the location and construction of any facility having a discharge;
- Describe a process for the identification and control of nonpoint sources of pollution from agriculture and silviculture;
- Develop a process to identify and control construction related sources of pollution; and
- Develop a process to identify and control salt water intrusion into rivers lakes and estuaries resulting from the reduction of freshwater flow from any cause.

Section 319 of the Federal Clean Water Act (33 U.S.C. §§1251 et seq.) and Section 6217 of the Federal Coastal Zone Management Act Reauthorization and Amendments (16 U.S.C. §§1451 et seq.) require that states develop effective nonpoint source pollution control strategies. These Federal programs are not prescriptive in their approach, and consequently the specific requirements of these programs are left to the states. The Department accomplishes many of these Federal programs through the Water Quality Management Planning rules. The rules proposed for readoption would continue this practice, while the proposed amendments will refine the approach to improve the maintenance, restoration, and enhancement of water quality, as well as prevent future degradation, as required under the Federal Clean Water Act.

The rules proposed for readoption with amendments provide an ongoing means to implement the Continuing Planning Process required under Section 208 of the Federal Clean Water Act (33 U.S.C. §1251 et seq.) through the areawide Water Quality Management Planning process. As part of this process, the current areawide WQM plans will be amended through updated WMPs to ensure that WQM plans are based on and integrate the most current land use and water resource planning.

The rules proposed for readoption continue provisions related to development of the list of impaired waterbodies and TMDLs for impaired waterbodies, required under Section 303(d) of the Federal Clean Water Act and relevant regulations of the USEPA at 40 CFR 130.7. Under these regulations, all states are required to prepare and adopt a listing of water quality limited segments for surface waterbodies every two years and to develop TMDLs for those waterbodies that are listed as impaired. The proposed amendments incorporate these Federal requirements by reference to ensure that the Department's process remains in step with the Federal requirements.

The 2006 Integrated Water Quality Monitoring and Assessment Report prepared by the Department, and approved by the U.S. Environmental Protection Agency (USEPA), concluded that 71 percent of HUC 14 subwatersheds and 34 percent of lakes were impaired for one or more designated uses or to failed meet the Surface Water Quality Standards. The Department has concluded that a significant contributing factor to those impairments is nonpoint source pollution. The Federal Clean Water Act requires that the states identify programs, both regulatory and non-regulatory, necessary to achieve implementation of best management practices for controlling nonpoint sources of pollution, such that waters of the state will meet the

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national clean water goals. Similarly, the Federal Coastal Zone Management Act Reauthorization and Amendments requires coastal states to identify their coastal zone and develop a program to implement coastal land use management measures to control nonpoint source pollution. In a joint report, "NOAA and EPA Region 2 Interim Findings on Information Submitted by New Jersey to Meet Coastal Nonpoint Program Conditions of Approval," dated June 17, 2004, USEPA and National Oceanic and Atmospheric Administration identified the lack of a septic management program as a significant gap, and the only remaining one, in New Jersey's nonpoint source control strategy. The proposed amendments will fill that void by requiring a septic management plan as a component of any WMP that includes septic systems as an approved wastewater management alternative. The Department has intentionally left flexibility in these rules to allow municipalities and counties the opportunity to fashion a plan that ensures routine maintenance and that meets their particular administrative style. Such a plan could be as simple as requiring submission of a voucher documenting a pump out at an established periodic interval, or could be as detailed as a municipality undertaking the role of inspection itself.

By virtue of the fact that the entire State of New Jersey lies within close proximity to the coast, there is increased likelihood that water pollution in any part of the State could contribute to coastal water quality deterioration. As noted in "State of New Jersey Coastal Nonpoint Pollution Control Program - Environmental Assessment," dated January 1997 and prepared by the U. S. Department of Commerce, National Atmospheric Administration, National Ocean Service, the Department has defined the entire geographic area of the State as part of its "coastal zone," for the purposes of implementing nonpoint pollution control. Current scientific literature has established a correlation between development, the loss of riparian forest area, the disturbance of steep slopes and those impairments. Therefore, a program to successfully control nonpoint source pollution and prevent future impairment of water quality due to nonpoint sources of pollution, as required by Federal Law, must necessarily concern itself with land use and development patterns. The rules proposed for readoption with amendments and new rules are intended to meet part of that Federal obligation by encouraging redevelopment of existing developed sites and concentrating development patterns in existing urban and unconstrained areas rather than developing previously undisturbed sites in rural areas.

In summary, the Department believes that the rules proposed for readoption with amendments are no more or less stringent than applicable Federal standards, provide the greatest flexibility reasonable to reduce compliance costs, and are appropriate based on scientific merit. Furthermore, implementation of the rules proposed for readoption with amendments will result in improved surface water quality, which better protects the public's health and all uses of the State's waters. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. do not require any further analysis.

Jobs Impact

The rules proposed for readoption with amendments will continue to require the preparation of wastewater management plans every six years, the calculation of total maximum

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daily loads and their associated restoration plans and provide for the continued availability of grant funds to designated Watershed Management Groups for the purposes monitoring, planning, management and nonpoint source pollution prevention projects. The jobs currently generated by the need for services of planners, engineers and environmental consultants to conduct these activities will continue and will be enhanced as a result of the analyses required by new section N.J.A.C. 7:15-5.25. In addition, there is a potential for additional wastewater management plans to be generated and submitted in accordance with the schedule for submission established at N.J.A.C. 7:15-5.23; therefore, these requirements may also result in additional consulting jobs in the fields of planning, engineering and environmental assessment. The rules proposed for readoption with amendments will continue and may increase monitoring, analytical, and modeling activities associated with developing TMDLs. The overall trend would be for an increase in jobs associated with these activities; however, at this time, it is not possible to determine the potential magnitude of this trend.

The rules proposed for readoption with amendments are expected to have only a limited impact on private sector development activity and associated jobs. However, the rules will affect the allocation of development throughout the State and perhaps the form of development at a given location and, in so doing, have some negative impacts to employment sectors associated with residential and commercial development in some parts of the State. Such impacts are expected to be offset by the positive impact of additional development in other parts of the State that are better suited to support development.

Agriculture Industry Impact

The rules proposed for readoption would continue policies and procedures designed to restore, enhance and maintain the chemical, physical, and biological integrity of the State's surface and ground waters, which is essential for all uses of water, including agriculture. The proposed amendments enhance achievement of these objectives as well as water resource sustainability, which is providing for present water resource needs, without compromising the ability of future generations to meet their needs. Specifically, Subchapter 5 includes standards that require comparison of water supply needs at build-out with water availability on a HUC 11 basis. Where water supplies are stressed, the proposed amendments direct actions to ensure availability of water for all needed uses, including agriculture.

Proposed amendments at Subchapter 5 also direct delineation of sewer service areas to eliminate significant areas of environmentally sensitive areas and require the wastewater generation potential of sewer service areas to align with wastewater treatment capacity. By directing the more intense land uses to areas where they can be supported, the proposed rules will enable more informed decisions that will protect water quality, provide more consistency and predictability to the land use planning process, and provide incentives for more environmentally compatible land uses. The Department believes that these proposed amendments at Subchapter 5 will encourage center-based development. The concept of center-based development is to concentrate more development density in a compact area while reducing density in the surrounding areas. This concept is essential to the preservation of agricultural

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opportunities. Therefore, while proposed amendments are not expressly directed at preserving agriculture, they may encourage ongoing agricultural uses. According to a press release by the Center for Remote Sensing and Spatial Analysis issued on March 22, 2007, from 1995 to 2002, the number of acres in agricultural production in New Jersey have decreased by 16 percent annually. With measures to direct growth, the number of agricultural acres lost to development may be reduced.

The nitrate planning standard at Subchapter 5 will ensure ground water quality is protected from degradation from future development that relies on discharge of wastewater to ground water. The density of development compatible with achieving this objective through this wastewater management method may be less, in some areas, than that which is currently allowed by zoning. Changes in land use allowed by zoning can affect the real or speculative value of the land. Farmers who rely on the speculative value of land as the basis to finance the costs of producing the upcoming season's returns could experience a decrease in the speculative value, if density is reduced on their land. Further, farmers who plan to sell their land may experience a loss of return, if density is reduced on their land. Municipalities retain the responsibility for determining the locations of various types and intensities of development within each HUC 11 that comport with achieving the standard. Therefore, it is not possible to predict which parcels may be affected by a change in the intensity of development as a result of the proposed standard. However, decreases in value in some areas may be offset by increases in the density of development and the real or speculative value in other areas either by the balancing of overall development allowed in consideration of the nitrate planning standard or by including farmland within sewer service areas and zoning accordingly. Further, proposed amendments at Subchapter 3 allow and encourage clustered development by including clusters that preserve 70 percent of the land as open space as a category of revision allowed where a wastewater management plan is not up to date. Clustered development may allow an increase in development potential and the real or speculative value of land, while also preserving land area that may continue to be used for agricultural, provided conservation management plan or natural resource management plan measures are implemented. Therefore, it is expected that the effects on the agricultural industry itself will be minimal while effects on land in general will balance out so that this rule has the potential to advance the State's goal of preserving farmland and farming opportunities for future generations.

Proposed amendments at Subchapter 8 may result in the withdrawal of sewer service area in some agricultural areas where wastewater management plans are not developed and maintained in accordance with the schedule. A withdrawal of sewer service area could result in a decrease in real or speculative value of farmland, similar to that described above. This decrease may be temporary if sewer service area is reestablished with submission of a wastewater management plan that meets the requirements of the proposed readoption with amendments, but could be permanent if the previous sewer service area does not conform to the requirements of the proposed amendments in Subchapter 5 to exclude significant areas of environmentally sensitive areas. Except for habitats of threatened and endangered species, development expectations in environmentally sensitive areas are not reasonable, so there will be no actual impact on land value. If land in agricultural use within sewer service areas also serves

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as habitat for threatened or endangered species, there could be an actual decrease in value, which is necessary in order to protect these species. This economic impact to an affected farmer can be offset, as above, by clustering.

Where implementation of these rules adversely affects the reasonable development expectations of property owners, State and local programs such as farmland preservation programs and transfer of development rights programs, which foster the retention of agriculture, may be employed to mitigate possible negative impacts.

Regulatory Flexibility Analysis

Currently, small businesses, as defined in the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.), are affected by the Water Quality Management Planning rules when they need an amendment to an adopted WQM plan in order to accommodate their development plans. To successfully prepare, submit and receive approval of an amendment application, a small business would generally hire consultants that may include a professional planner, environmental professional and/or engineer. The cost preparing a satisfactory submission depends on the complexity of what is proposed. In most cases, the components of a submission would be required in order to obtain other State or local approvals. For example, if a new treatment facility with a discharge to surface water was proposed for the new or expanded small business, demonstration of compliance with the antidegradation requirements could cost \$130,000 or more, while a project requiring only an expansion of the sewer service area of an existing treatment facility with available capacity to include the project would have less demanding demonstrations and would be much less costly. However, the demonstrations associated with the antidegradation analysis are required in order to obtain a NJPDES permit and demonstrations that a treatment facility has sufficient capacity to allow an expansion of a sewer service area are required to obtain a TWA permit. Therefore, while the overall documentation cost can be high, the increment of cost associated with the amendment application itself is likely to be insignificant. While there is a cost to prepare an amendment, without the amendment process, there would be no means to accommodate projects that need a Department approval and were not identified in a WQM plan because N.J.S.A. 58:11A-10 prohibits the Department from issuing permits for projects or activities that conflict with applicable WQM plans. The rules proposed for re-adoption continue to provide a process to amend plans and, because the incremental cost of preparing an amendment is not significant, there is no compelling reason to provide a different process for small businesses. Further, the documentation requirements for an amendment are the minimum needed by the Department to ensure that the cumulative and secondary impacts of a project are adequately considered in making a determination with respect to an amendment.

The proposed rule amendments limit the circumstances under which a WQM plan amendment or revision can be processed, requiring in most cases that the applicable WMP be up to date. This is expected to have the effect of reducing the number of project specific amendments, including those for small businesses, thereby avoiding the cost for their preparation, because the cost for planning for wastewater management needs would be accomplished through the WMP process. There are also proposed amendments to the categories

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of revisions in Subchapter 3 that would allow smaller projects to proceed, absent an up to date plan. This provision would allow a small business to avoid any delay associated with waiting for a WMP update, but would mean the small business would directly incur the cost of preparing the revision, which, as previously stated, represents the minimum necessary documentation and an insignificant incremental cost increase compared to the cost to obtain State and local approvals. Proposed rule amendments in Subchapter 5 also require compliance with the standards set forth there for most revisions, but it is expected that compliance will be determined by the Department with little or no demonstrations by the applicant because of the digital basis for most of the analyses.

The withdrawal of sewer service areas and the general wastewater service area designation of discharge to ground water less than 20,000 gallons per day where WMPs are not adopted in accordance with the rules proposed for readoption with amendments may affect small business with proposed development plans that were reliant on the provision of these designations for their development. Inclusion within a sewer service areas or the general wastewater designation of less than 20,000 gallons per day would have allowed a project to proceed without an amendment, although not without other State and local approvals needed for the project. The effect of withdrawal of sewer service area may be temporary, but could be permanent if the previous sewer service area does not conform to the requirements of the proposed amendments in Subchapter 5 to exclude significant areas of environmentally sensitive areas. Once withdrawn, the proposed rule amendments do not allow general wastewater service designation of discharge to ground water less than 20,000 gallons per day. A small business would have the same opportunities as other small scale development in situations where sewer service or the general wastewater service area for discharge to ground water less than 20,000 gallons per day are no longer available. That is, wastewater management options that involve discharge to ground water of 2,000 gallons per day or less or clustering with a larger discharge to ground water.

Through the rules proposed for readoption with amendments, the Department has balanced the need to protect the environment, public health and safety, and general welfare against the potential adverse economic impact of the rules upon small business. The Department has determined that to specifically exempt small business from any requirements, or to reduce these requirements for small businesses, would undermine the comprehensive water quality planning scheme contained in these rules to such a degree as to significantly impair the environment, public health and safety, and the general welfare. Therefore, no exemptions from the rules, or other approaches specifically targeted at small business, are provided. They are simply treated as any other development with a similar potential to impact water quality.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend, or repeal any rule to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules on the achievement of smart growth and implementation of the

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State Development and Redevelopment Plan (State Plan). The rules proposed for re adoption are necessary to support the smart growth objectives of the State Plan as the wastewater management plans will enable the State, regional and local land use planning entities to predict and plan for adequate and appropriate wastewater treatment to accommodate future development. The proposed amendments contain several provisions that support the objectives of the State Plan and Smart Growth.

Wastewater management plans will necessarily identify areas for appropriate sewer service. The rules proposed for re adoption with amendments channel growth and infrastructure into areas where it is appropriate, require protections in areas where it is not and encourage clustered development. The designation of areas for centralized sewer service limits the land supply available for intensive uses that require sewer service, and affects the location of new development for such uses by concentrating development in planned sewer service areas that have adequate sewerage capacity. The rules also allow the development of new infrastructure as necessary to support and encourage center-based development in appropriate areas. As a result, the public investment associated with new infrastructure, regulation and/or restoration as well as the many other costs of sprawl development is avoided. The overall effect on development patterns in the State will be more center-based development and a reinvestment in the redevelopment of existing urban areas. These results compliment and are consistent with the State Plan.

The rules also specifically provide for wastewater service area designations consistent with endorsed plans approved by the State Planning Commission where those plans have integrated center based development and environmental protection. Furthermore, the rules proposed for re adoption with amendments and new rules will help ensure that the economic efficiency of public infrastructure investment is maximized, provide for the wise use of limited wastewater and water supply capacity to maximize availability in areas where development is appropriate, and protect water resources and the ecological health of the environs. These are all measures that foster smart growth and therefore are consistent with and further the goals of the State Plan.

Full text of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C 7:15.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C 7:15-4.5, 5.1, 5.2, 5.5, 5.7 through 5.14, 5.21, 6, 7 and 8.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:15-1.1 Scope

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(a) This chapter [prescribes] **establishes** water quality management policies and procedures [established] pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., [and] **the Department's enabling legislation, N.J.S.A. 13:1D-1 et seq., [and] the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq., the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq., and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.** Specifically, this chapter [prescribes] **establishes** policies and procedures concerning the following subjects:

1. – 5. (No change.)

6. The adoption of other Department rules, [wastewater facilities] priority systems and project priority lists, sludge management plans, **regional stormwater management plans**, effluent limitations, wastewater management plans, 201 Facilities Plans, and other documents in WQM Plans;

7. Coordination of WQM planning with Coastal Zone, Hackensack Meadowlands, **Highlands** and Pinelands programs **and municipal zoning**;

8. – 9. (No change.)

10. The [identification of] **procedures for** WQM plan amendments [that require the adoption or amendment of wastewater management plans in areawide WQM plans] **and revisions, and the withdrawal of wastewater service areas where wastewater management plans are not current in accordance with this chapter**;

11. The assignment of the duty to prepare and update wastewater management plans to [certain sewerage agencies and municipalities,] **county boards of chosen freeholders** and the establishment of alternative assignments of such wastewater management plan responsibility **to municipalities**; [and]

12. The required contents of wastewater management plans, and schedules and procedures for their submission, adoption, and updating[.];

13. The process for identifying water bodies on the List of Water Quality Limited Segment and establishing total maximum daily loads;

14. Designation of appropriate wastewater service areas in consideration of environmentally sensitive areas; and

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15. The application and approval process for grants as authorized by the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq.

7:15-1.2 Construction

This chapter shall be liberally construed to permit the Department to discharge its statutory functions, and to effectuate the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., **the Department's enabling legislation, N.J.S.A. 13:1D-9, the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq., the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq., and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.,** the Statewide WQM Plan, and the areawide WQM plans.

7:15-1.3 Purpose

(a) The purpose of this chapter is to:

1. Implement the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., [and] **the Department's enabling legislation, N.J.S.A. 13:1D-9, the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq., the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq., and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.;**

2. Establish policies, procedures and standards which, wherever attainable, help to restore, **enhance** and maintain the chemical, physical and biological integrity of the waters of the State, including [groundwaters] **ground waters**, and the public trust therein, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water;

3. – 13. (No change.)

14. Encourage the development of comprehensive regional [sewerage facilities] **wastewater management planning** that serves the needs of the regional community and that conforms to the adopted areawide WQM plan applicable to that region.

7:15-1.5 Definitions

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The following words and terms, as used in this chapter, shall have the following meanings [for this chapter], unless the context clearly indicates otherwise.

“Acid producing soils” means soils that contain geologic deposits of iron sulfide minerals (pyrite and marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

“Actual flow” means the volume of sewage and other wastes [that] **which** a DTW **or industrial treatment works** receives[;]. [actual]**Actual** flow shall be determined by the arithmetic average of the metered daily volumes of waste received at a DTW **or industrial treatment works** for the preceding period of three consecutive calendar months. Where peak flows have been determined by the Department to be seasonal in nature, the seasonal peak flow period shall be used in determining actual flow.

...

“Applicant” means any person, corporation, government body or other legal entity which applies for an approval pursuant to this chapter.

...

“Best Management Practices (BMPs)” means:[the methods, measures, or practices to prevent or reduce the amount of pollution from point or non-point sources, including structural and nonstructural controls, and operation and maintenance procedures.]

1. Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State; or

2. Methods, measures, or practices selected by an agency to meet its nonpoint source control needs.

BMPs also include treatment requirements, operating procedures, and techniques to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

...

“[BRC] **BPU**-regulated sewer or water utilities” means sewer utilities or water utilities regulated by the Board of [Regulatory Commissioners] **Public Utilities** under N.J.S.A. 48:1-1 et seq. and N.J.A.C. 14:9.

“Category One waters” or “C1 waters” means waters designated as “C1 waters” in the Surface Water Quality Standards, N.J.A.C. 7:9B.

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“Category Two waters” or “C2 waters” means waters designated as “C2 waters” in the Surface Water Quality Standards, N.J.A.C. 7:9B.

“Clean Water Act” means the “Federal Water Pollution Control Act”, 33 U.S.C. §§ 1251 et seq., also known as the “Federal Act” including all subsequent supplements and amendments.

“Combined sewer overflow” or “CSO” means the excess flow from the combined sewer system which is not conveyed to the domestic treatment works for treatment, but transmitted by pipe or other channel directly to waters of the State.

“Combined sewer system” means a sewer system that is designed to carry sanitary sewage at all times and that also is designed to collect and transport stormwater from streets and other sources, thus serving a combined purpose.

...

“Committed flow” means the sum of the actual flow plus the sum or all flows which are anticipated from connections which have been approved but are not yet in operation. The flow to be anticipated from any such connections shall be that flow approved by the Department.

“Composite zoning” means a compilation of various similarly zoned areas into a single representative zoning designation. Under composite zoning, residential zones that would allow a similar density of units would be consolidated into a single zone with an intermediate density of units that represents a weighted average of similar zones.

“Conservation restriction” means a restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural state, scenic or open or wooded condition, or for the conservation of soil or wildlife, or for the outdoor recreation or park use, or for public access to tidal waterways and their shores, or as suitable habitat for fish and wildlife, or for preservation of continuing agricultural uses, to forbid or limit any or all of the following:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above ground;

2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;

3. Removal or destruction of trees, shrubs or other vegetation;

4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;

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5. Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; or

7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

...

["CP1 application" means the formal application for a permit from the Department.]

...

"Designated use" means those surface water or ground water uses, both existing and potential, that have been established by the Department under the Surface Water Quality Standards, N. J. A. C. 7:9B, for the waters of the State.

...

"District" means either **any** or [both] **all** of the following, depending on the context: the district of a sewerage authority as defined in N.J.S.A. 40:14A-3(6), or the district of a municipal authority as defined in N.J.S.A. 40:14B-3(6)[.], [For purposes of N.J.A.C. 7:15-5.14(a)1, 5.16(a)2i and 5.18(i), "district" shall also mean] **or** the Passaic Valley Sewerage District **as defined at N.J.S.A. 58:14-1.**

"Disturbance" means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

...

["Drawings and/or plans" means those drawings, site plans and/or blueprints prepared by a professional engineer or professional planner, as appropriate, which portray the development specifications of the site project or activity.]

...

"Dwelling unit" means any building or portion of a building, permanent or temporary in nature, used or proposed to be used as a residence either seasonally or throughout the year.

"DWM" means the Division of Watershed Management, or its successor, in the Department of Environmental Protection.

"Effluent limitation" means any restriction on quantities, quality, discharge rates and concentration of chemical, physical, thermal, biological, radiological, and other constituents of pollutants established by permit, or imposed as an interim enforcement limit pursuant to an administrative order, including an administrative consent order.

...

"Endangered species" means species of wildlife included on the list of endangered species promulgated pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-13 et seq., at N. J. A. C. 7:25 – 4.13, and any species or subspecies of wildlife

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appearing on any Federal endangered species list pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq.

“Environmentally sensitive areas” means those areas identified in a Statewide or areawide WQM plan as land areas possessing characteristics or features which are important to the maintenance or improvement of water quality, or to the conservation of the natural resources of the State. **Environmentally sensitive areas include, but are not limited to, areas mapped as endangered or threatened wildlife species habitat on the Department’s Landscape Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, wetlands and riparian zones.**

“Equivalent dwelling unit” means the standard residential unit upon which the nitrate dilution model is based, which is a single family home with three bedrooms and three residents, or its equivalent in terms of flow generated or pounds of nitrate generated. The standard residential unit is assumed to generate 500 gallons per day of wastewater or 30 pounds per year of nitrate. The equivalency measure of 500 gallons per day is to be used for systems that do not have effluent limits established through a NJPDES permit. The equivalency measure of 30 pounds per year of nitrate is to be used for systems that have effluent limits for nitrate established through a NJPDES permit.

[“Federal Act” means the Federal Water Pollution Control Act, commonly known as the Clean Water Act, 33 U.S.C. §§ 1251 et seq., including all subsequent supplements and amendments.]

[“Freshwater wetlands” means freshwater wetland as defined at N.J.S.A. 13:9B-3 and N.J.A.C. 7:7A-1.]

...

“Head of tide” means the point on a tidal watercourse at which measurement of the water surface vertical movement at Mean High Water becomes no longer practical. All points seaward of the head of tide on a tidal watercourse are tidal.

“Highlands Council” means the Highlands Water Protection and Planning Council established by N.J.S.A. 13:20-4.

“Highlands planning area” means that portion of the Highlands Region not included within the Highlands preservation area.

“Highlands preservation area” means that portion of the Highlands Region so designated by N.J.S.A 13:20-7b.

“Highlands Region” means that region so designated by N.J.S.A. 13:20-7.

“HUC 11” or “hydrologic unit code 11” means an area within which water drains to a particular receiving surface water body, also known as a watershed, which is identified

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by an 11-digit hydrologic unit boundary designation, delineated within New Jersey by the United States Geological Survey.

“HUC 14” or “hydrologic unit code 14” means an area within which water drains to a particular receiving surface water body, also known as a subwatershed, which is identified by a 14-digit hydrologic unit boundary designation, delineated within New Jersey by the United States Geological Survey.

“Impervious surface” means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

“Individual subsurface sewage disposal system” means a system for the disposal of sanitary sewage into the ground, which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and discharge the liquid effluent to a disposal field.

“Infill area” means a lot or lots existing on (the effective date of this amendment) situated between two lots improved as of (the effective date of this amendment) where the total amount of wastewater to be generated by all potential new development allowed by existing zoning at the time of application between the two previously improved lots is 2,000 gallons per day or less, as calculated in accordance with N.J.A.C. 7:14A-23.3. When calculating flow from lots zoned for single family residential development, 300 gallons per day per unit shall be utilized.

“Integrated Water Quality Monitoring and Assessment Report” means the biennial report prepared by the Department, pursuant to Section 305(b) of the Clean Water Act, 33 U.S.C. §1315(b), which inventories and assesses the quality of the waters of the State and includes the List of Water Quality Limited Segments required under Section 303(d) of the Clean Water Act, 33 U.S.C. 1313(d).

...

“Intermittent stream” means surface water drainage channels with definite bed and banks in which there is not a permanent flow of water.

...

“Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife” or “Landscape Maps” means the Department’s maps delineating areas used by or necessary for endangered and threatened species and other priority wildlife to sustain themselves successfully. The maps depict areas of contiguous habitat types (forest, grassland, forested wetland, emergent wetland and beach/dune) that are ranked based upon intersection with documented occurrences of endangered, threatened and priority wildlife species. Mapped habitat areas are classified based upon the status of the wildlife species whose presence is documented. Rank 5 is assigned to areas containing one or more documented occurrences of at least one wildlife species listed as endangered or threatened

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on the Federal list of endangered and threatened species. Rank 4 is assigned to areas with one or more documented occurrences of at least one State endangered species. Rank 3 is assigned to areas containing one or more documented occurrences of at least one State threatened species. Rank 2 is assigned to areas containing one or more documented occurrences of at least one non-listed State priority wildlife species. The maps also delineate, as Rank 1, habitat areas that meet habitat-specific suitability requirements, such as minimum area criteria for endangered, threatened and priority wildlife species, but that do not intersect with any documented occurrences of such species.

...

“Lead planning agency” means one or more public entities having stormwater management planning authority designated by the regional stormwater management planning committee pursuant to N.J.A.C. 7:8-3.2, that serves as the primary representative of the committee.

“Linear development” means land uses such as roads, drives, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, the basic function of which is to connect two points. Linear development shall not mean residential, commercial, office, or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

...

[“Multi-county joint meeting” means any joint meeting whose membership includes municipalities in two or more counties.]

...

“Natural Heritage Priority Sites” mean areas identified on the Department’s graphic information systems (GIS) coverage compiled from the Natural Heritage Database. The Natural Heritage Database is the manual and computerized file maintained by the Department at <http://www.nj.gov/dep/parksandforests/natural/heritage/index.html> that includes continuously updated information on the location and status of rare plant and animal species and ecological communities in New Jersey.

...

[“Non-point source” means a contributing factor to water pollution that cannot be traced to a specific discernible confined and discrete conveyance.]

“Nonpoint source” means:

1. Any man-made or man-induced activity, factor, or condition, other than a point source, from which pollutants are or may be discharged;

2. Any man-made or man-induced activity, factor, or condition, other than a point source, that may temporarily or permanently change any chemical, physical, biological, or radiological characteristic of waters of the State from what was or is the natural, pristine condition of such waters, or that may increase the degree of such change; or

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3. Any activity, factor, or condition, other than a point source, that contributes or may contribute to water pollution.

[“ORP” means the Office of Regulatory Policy, or its successor, in the Department of Environmental Protection.]

...

“Permitted flow” means maximum allowable flow (usually in million gallons per day, or other appropriate unit of flow such as gallons per day) for a treatment works as stated in the facility’s NJPDES permit or TWA, whichever is less.

“Planning flow” means that daily flow which is estimated or anticipated to be contributed by wastewater generating facilities for their wastewater service area. Planning flow is based upon projected flow criteria values used in computing the projected flow to wastewater conveyance and treatment facilities contained in N.J.A.C. 7:14A-23.3 or N.J.A.C. 7:9A-7.4, as applicable for the type of wastewater facilities being proposed.

“Point source” means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, **landfill leachate collection system**, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

...

[“Process waste water” means process wastewater as defined at N.J.A.C. 7:14A.]

“Process wastewater” means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater includes, but is not limited to, leachate and cooling water other than non-contact cooling water. This definition includes the terms commercial wastewater and industrial wastewater as used in 40 CFR Part 503.

...

“Public water supply” means a water supply providing piped water to the public for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals.

“Purveyor” or “water purveyor” means any person who owns or operates a public water supply.

“Reclaimed water for beneficial reuse” or “RWBR” means water that meets restricted access or public access reuse requirements specified in a NJPDES permit that authorizes that water to be directly reused for non-potable applications in place of potable water, diverted surface water, or diverted ground water. The NJPDES permit shall specify a method of disposal (for example, discharge to surface water) of that water if these requirements are not met.

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“Redevelopment” means the construction of structures or improvements on areas which previously contained structures or other improvements.

...

[“Regional wastewater management plan area” means a wastewater management plan area that includes land in two or more municipalities.]

“Restricted access reclaimed water for beneficial reuse” means the classification of reclaimed water where the possibility of exposure to the general population is minimal and/or worker exposure is controlled. This classification of water shall require at least secondary treatment and/or compliance with effluent limitation established in a NJPDES permit. Examples of “restricted access reclaimed water for beneficial reuse” are sewer jetting, street cleaning, dust control or irrigation of restricted access locations at treatment works facilities. “Restricted access reclaimed water for beneficial reuse” does not include irrigation of public places.

“Riparian zone” means the land and vegetation within and directly adjacent to all surface waters including, but not limited to, lakes, ponds, reservoirs, perennial and intermittent streams, up to and including their point of origin, such as seeps and springs, as shown the Department’s GIS hydrography coverages. There is no riparian zone along the Atlantic Ocean nor along any manmade lagoon or oceanfront barrier island, spit or peninsula.

The portion of the riparian zone that lies outside of a surface water is measured landward from the top of bank. If a discernible bank is not present along a surface water, the portion of the riparian zone outside the surface water is measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream or swale, the riparian zone is measured landward of the feature’s centerline;

2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;

3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water line; and

4. Along an amorphously-shaped feature, such as a wetland complex, through which a water flows but which lacks a definable channel, the riparian zone is measured landward of the feature’s centerline.

“Sewage” means any wastes, including wastes from humans, households, commercial establishments, industries, and stormwater runoff, that are discharged to or otherwise enter a domestic treatment works.

...

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“Sewer service area” means the land area identified in an areawide WQM plan from which wastewater generated is designated to flow to a domestic treatment works or industrial treatment works. A distinct sewer service area is established for each domestic treatment works and industrial treatment works.

...

[“Site specific allocation” means a wasteload allocation for a specific pollutant to an existing or future point source based on site specific considerations rather than from a total maximum daily load.]

...

[“State Water Quality Inventory Report” means the biennial report prepared by the Department, pursuant to Section 305 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., which inventories and assesses the quality of surface and ground waters of the State.]

...

“Step slope” means any slope equal to or greater than 20 percent as measured over any minimum run of 10 feet. Steep slopes are determined based on contour intervals of two feet or less.

“Stormwater” means water resulting from precipitation (including rain and snow) that runs off the land’s surface, is transmitted to the subsurface, is captured by separate storm sewers or other sewage or drainage facilities, or is conveyed by snow removal equipment.

[“Stormwater point source” means a point source from which stormwater is or may be discharged, but does not include a point source from which stormwater mixed with domestic wastewater, non-contact cooling water, or process wastewater other than stormwater is or may be discharged.]

“Stormwater runoff” means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

...

“Suitable habitat” means habitat featuring ecological characteristics that may provide for the breeding, feeding, resting or sheltering of any threatened and/or endangered animal species. Ecological characteristics may include, but are not limited to, seasonal wetland or dry land, roost sites, nesting grounds, spawning sites, feeding sites, vegetative community size, age, structure, or diversity; waterway or pond water quality, size, or substrate; and soil types or hydrologic characteristics.

...

“Threatened species” means species designated as “threatened” on the list defining the status of indigenous nongame wildlife species of New Jersey, promulgated pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., at N.J.A.C. 7:25 – 4.17.

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“Tidal watercourse” means a watercourse that is distinguished by periodic rise and fall of the water surface resulting from the gravitational interaction of the earth, the moon, and the sun.

[“TMDL project work plan” means a detailed plan for the development of a basic TMDL or a complex TMDL in full conformance with the requirements of N.J.A.C. 7:15-7.

“Total maximum daily load” or “TMDL” means a total maximum daily load formally established pursuant to Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7) and Section 303(d) of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. A TMDL is the sum of individual wasteload allocations for point sources, load allocations for nonpoint sources of pollution, other sources such as tributaries or adjacent streams, and allocations to a reserve or margin of safety for an individual pollutant.]

“Total maximum daily load” or “TMDL” means a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards or a different target where the water quality is better than the water quality standard. It is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources and includes a margin of safety and consideration of seasonal variations.

...

“Trout maintenance waters” or “TM waters” means waters designated as TM waters in the Surface Water Quality Standards, N.J.A.C. 7:9B.

“Trout production waters” or “TP waters” means waters designated as TP waters in the Surface Water Quality Standards, N.J.A.C. 7:9B.

...

“Undeveloped and underdeveloped areas” means areas that are either unimproved or contain existing improvements but could be further developed in a manor that would create additional wastewater flow without the need to obtain a variance, according to existing zoning.

“Upgrade” means a modification of a domestic or industrial treatment works to improve the quality of effluent discharged to surface water or ground water. **The term “upgrade” does not include the construction or modification of any wastewater facilities that will allow an increased discharge, in terms of increased quantity of wastewater, loadings, sewer service area or collection system.**

“Urbanized municipalities” means those where 90 percent of the municipality’s land area appears as “Urban Lands” as designated in the New Jersey Department of Environmental Protection’s 1995/97 and 2002 Land Use/Land Cover geographical information systems database as amended and updated, available as a digital data download from the Department at www.state.nj.us/dep/gis, based on Level I of the Anderson Classification System (Anderson et al, 1976, modified by the New Jersey Department of Environmental Protection, 1999).

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...

“Wasteload allocation” **or “WLA” means the portion of a receiving water’s total maximum daily load [that is allocated to a point source] for a specific pollutant that is allocated to one of its existing or future point sources or categories of point sources of pollution. Wasteload allocations constitute a type of water quality based effluent limitation.**

“Wastewater” means residential, commercial, industrial, or agricultural liquid waste, sewage, septage, stormwater runoff, or any combination thereof, or other residue discharged or collected into wastewater facilities. Wastewater shall not include stormwater runoff conveyed by a separate storm sewer system.

“Wastewater facilities” means facilities that include, but are not limited to, any equipment, plants, structures, machinery, apparatus, or land that shall be an integral part of a treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes. Wastewater facilities also include, but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage collection systems, individual subsurface sewage disposal systems and other equipment, personal property and appurtenances necessary thereto.

...

“Wastewater management plan area” or “WMP area” means the geographic area for which a governmental unit [or other person] has “wastewater management plan responsibility” as defined in N.J.A.C. 7:15-5.3(b).

“Wastewater management plan update” or “WMP update” means the periodic re-adoption of a wastewater management plan, with modifications as necessary from the pre-existing plan to meet the requirements of this chapter, for an entire WMP area.

“Wastewater management planning agency” means a governmental unit [or other person] that has “wastewater management plan responsibility” as defined in N.J.A.C. 7:15-5.3(b).

“Wastewater service area” means a sewer service area, a general service area approved for wastewater facilities with planning flows of less than 20,000 gallons per day (gpd) which discharge to ground water and general service area for wastewater facilities with planning flows of less than 2,000 gallons per day (gpd) which discharge to ground water.

[“Water quality based effluent limitations” means water quality based effluent limitations established pursuant to the Department’s Surface Water Quality Standards (N.J.A.C. 7:9-4), including, but not limited to, wasteload allocations.]

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“Water quality based effluent limitations” means effluent limitations established so that the quality of the waters receiving a discharge will meet the Surface Water Quality Standards, N.J.A.C. 7:9B, after the introduction of the effluent.

[“Water quality limited segment” means any segment of a waterbody that does not or is not expected to meet surface water quality standards, identified in accordance with N.J.A.C. 7:15-6.2. Each WQLS shall be entirely contained within a watershed, and may be configured using the USEPA stream segments data base or the US Geological Survey 14-digit Hydrologic Unit Code mapping of New Jersey surface waterbodies (USGS Water Resources Investigation Report 95-4134).]

“Water quality limited segment” means any waterbody segment which does not meet or is not expected to meet one or more of the Surface Water Quality Standards, N.J.A.C. 7:9B, applicable to the waterbody after implementation of technology-based or more stringent effluent limitations or pollution control requirements. A water quality limited segment requires development of a TMDL(s).

...

“Wetlands” means those areas defined as wetlands under any of the following statutes and implementing rules as applicable:

- 1. New Jersey Coastal Wetlands Act, N.J.S.A. 13:9A-1 et seq., at N.J.S.A. 13:9A-2;**
- 2. New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., at N.J.S.A. 13:9B-3, and N.J.A.C. 7:7A-1.4;**
- 3. Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., at N.J.S.A. 13:19-4, and N.J.A.C. 7:7E-3.25; and**
- 4. Pinelands Protection Act, N.J.S.A. 13:18-1 et seq., at N.J.S.A. 13:18A-3 and 13:18A-11, and N.J.A.C. 7:50-3.1, 6.3, 6.4 and 6.5.**

...

7:15-1.6 Program forms and information; Internet web site

(a) Forms or other information related to this chapter may be obtained from the Division of Watershed Management as follows:

- 1. Through the Division of Watershed Management website at www.state.nj.us/dep/watershedmgt; or**
- 2. By contacting the Division of Watershed Management at: New Jersey Department of Environmental Protection, Division of Watershed Management, PO Box 418, Trenton, New Jersey 08625, (609) 984-0058.**

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(b) Applications and correspondence shall be submitted to the address in (a)2 above, except that courier and hand deliveries shall be delivered to: New Jersey Department of Environmental Protection, Division of Watershed Management, 401 East State Street, 7th Floor West Wing, Trenton, New Jersey 08625.

(c) Applications or other materials sent or delivered to a Department address other than those in (a) and (b) shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter, until the application is actually received by the Division of Watershed Management.

(d) Other Department sources of information referred to in this chapter are available on the Department of Environmental Protection's website at www.state.nj.us/dep or from the Office of Maps and Publications, located at 428 State Street, Trenton, New Jersey 08625, (609) 777-1038.

7:15-1.7 Conservation restriction form and recording requirements

(a) A conservation restriction required at N.J.A.C. 7:15-3.5(b)4x shall be recorded in the chain of title for all properties affected by the restriction.

(b) A conservation restriction shall:

1. Be in the appropriate form and terms as specified and approved by the Department as protecting all environmental features in accordance with the definition of "conservation restriction" in this chapter and with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq. Conservation restrictions may include preservation of continuing agricultural uses pursuant to N.J.A.C. 7:15-3.5(b)4x(3);

2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq., and

3. Run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof.

(c) The Department shall not grant any approval under this chapter until the applicant has provided to the Department proof that a conservation restriction complying with this section has been recorded in the office of the clerk of the county or the registrar of deeds and mortgages of the county in which the project or activity is located.

SUBCHAPTER 2. PLANNING REQUIREMENTS

7:15-2.1 Continuing planning process (CPP)

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(a) The Department shall conduct a continuing planning process (CPP) whose written provisions shall be contained, directly or by reference, in the Statewide WQM Plan and this chapter. In conducting the CPP, the Department shall:

1. – 5. (No change.)

6. Conduct a Statewide assessment of water quality. [() The [State Water Quality Inventory Report] **Integrated Water Quality Monitoring and Assessment Report** shall be the principal water quality assessment component of the Statewide WQM Plan[]];

7. – 8. (No change.)

(b) (No change.)

7:15-2.2 Relationship between the Statewide, areawide and county Water Quality Management Plans

(a) The Statewide WQM Plan and this chapter contain the written provisions of the CPP. The Statewide WQM Plan and this chapter direct and coordinate water quality management planning and implementation activities for the entire State and serve as a guide for areawide planning. The Statewide Water Quality Management Plan adopted by the Commissioner on December 5, 1985 and all subsequent amendments and revisions thereto are hereby incorporated by reference into this chapter. This chapter is included within the Statewide WQM Plan.

[NOTE:]1. The Statewide Water Quality Management [Program] Plan may be inspected at the [Office of Regulatory Policy] **Division of Watershed Management**, Department of Environmental Protection, 401 East State Street, Trenton, New Jersey, or the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

(b) - (d) (No change.)

(e) Every county planning board may conduct a county-wide water quality management planning process and prepare a county WQM plan.

1. (No change.)

2. Each county planning board that prepares or changes a county WQM plan shall transmit a copy of that plan or change to the [ORP] **DWM**, and to any designated planning agency whose designated area includes part or all of the subject geographic area.

3. (No change.)

7:15-2.3 Role of the Department

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(a) The Department shall:

1. - 5. (No change.)

6. To the maximum extent feasible, act as a resource for designated planning agencies, [and] county planning boards, **and county boards of chosen freeholders**, providing them with technical assistance, and information on best management practices and pollution control technologies;

7. Require the preparation and updating of wastewater management plans, and provide for their review and adoption into areawide WQM [Plans]**plans**;

8. - 10. (No change.)

11. Prepare [a biennial State Water Quality Inventory Report] **an Integrated Water Quality Monitoring and Assessment Report**, and other reports required from the State under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.;

12. - 14. (No change.)

SUBCHAPTER 3. PLAN ASSESSMENT, AMENDMENT AND ADOPTION

7:15-3.1 Water quality management plan consistency requirements

(a) (No change.)

(b) The Department shall not grant permits for the following projects and activities before a formal consistency determination review under N.J.A.C. 7:15-3.2 has been completed:

1. New surface water or ground water discharges, or existing surface or ground water discharges proposing significant modifications, **as well as expansions and upgrades**, that require individual NJPDES discharge permits under **the Pollutant Discharge Elimination System rules**, N.J.A.C. 7:14A, and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

2. Treatment works that require treatment works approvals under **the Pollutant Discharge Elimination System rules**, N.J.A.C. 7:14A-[12]**22**, and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

3. Actions [regulated by the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.] **under the Coastal Permit Program rules, N.J.A.C. 7:7, that require:**

i. Individual permits; or

ii. Authorizations under the coastal general permits at N.J.A.C. 7:7-7.5, 7.8, 7.13,

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7.16, and 7.26;

4. Actions [that require Type “B” wetland permits under N.J.A.C. 7:7-2.2] **under the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, that require:**

i. Individual freshwater wetland permits;

ii. Individual open water fill permits;

iii. Authorizations under the general permits at N.J.A.C. 7:7A-5.2, 5.2A, 5.6, 5.7, 5.10A, 5.10B, 5.10C, 5.11 and 5.11A; or

iv. Transition area waivers for the following:

(1) Hardship transition area waivers under N.J.A.C. 7:7A-6.5;

(2) Transition area waivers for activities authorized under the general permits at N.J.A.C. 7:7A-5.2, 5.2A, 5.6, 5.10A, 5.10B, 5.10C, 5.11 and 5.11A;

(3) Special activity transition area waivers under N.J.A.C. 7:7A-6.3, except special activity transition area redevelopment waivers for redevelopment under N.J.A.C. 7:7A-6.3(f);

(4) Transition area averaging plan waivers under N.J.A.C. 7:7A-6.2; and

(5) Matrix type width reduction transition area waivers under N.J.A.C. 7:7A-6.4;

5. – 7. (No change.)

[8. Waterfront development activities regulated under N.J.S.A. 12:5-3, for residential developments of 25 units or greater, and for industrial, commercial, and mixed use (including residential) developments having wastewater flows of 20,000 gallons per day or more; extensions or modifications to existing projects when the cumulative total for the project is greater than 24 units, or greater than or equal to 20,000 gallons per day]

8. Any major Highlands development in the Highlands preservation area that requires a Highlands Applicability and Water Quality Management Plan Consistency Determination pursuant to N.J.A.C. 7:38-2.4;

9. Construction of 50 or more realty improvements [regulated] **requiring a Department certification** under the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq.; [and]

10. (No change.)

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11. Actions that require water supply system certifications for new, altered or replacement nonpublic or public noncommunity water systems that expand capacity or extend service to a new area issued pursuant to the Safe Drinking Water Act rules, N.J.A.C. 7:10-12, where the Department is the administrative authority;

12. Actions that require water supply system construction or operation permits for new or modified public community water systems that expand capacity or extend service to a new area issued pursuant to the Safe Drinking Water Act rules, N.J.A.C. 7:10-11;

13. Actions that require well construction permits issued pursuant to the Well Construction and Maintenance; Sealing of Abandoned Wells rules, N.J.A.C. 7:9D, for the following well categories:

i. All category 1 potable water supply wells as identified at N.J.A.C. 7:9D-2.1(a)1;

ii. Category 2 non-potable water supply wells, specifically, irrigation, test, industrial and open loop geothermal wells, as identified at N.J.A.C. 7:9D-2.1(a)2; and

iii. Category 4 special use wells, specifically, closed-loop geothermal wells, as identified at N.J.A.C. 7:9D-2.1(a)4;

14. Actions that require new water usage certifications, or the renewals of water usage certifications if an increase in water withdrawal for a new or different use is proposed as part of the renewal, pursuant to the Agricultural, Aquacultural, and Horticultural Water Usage Certification rules, N.J.A.C. 7:20A;

15. Actions that involve diversions of surface or ground waters that require water supply allocation permits pursuant to the Water Supply Allocation rules, N.J.A.C. 7:19, except for activities requiring a temporary dewatering permit, short term water use or dewatering permit-by-rule under N.J.A.C. 7:19-2.17;

16. Actions that require a Department-issued permit under the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, except for:

i. Bank stabilization projects that use only vegetation and/or soil-bioengineering as described at section 650.1601(d)(2) of Chapter 16 of the USDA Natural Resource Conservation Service (NRCS) Engineering Field Handbook, published December 1996, incorporated herein by reference. Copies of the NRCS Engineering Field Handbook can be obtained from USDA-NRCS, 220 Davidson Ave. 4th Floor, Somerset, NJ 08873-4115 (telephone (732) 537-6040)); and

ii. Permits-by-rule under N.J.A.C. 7:13-7;

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17. Actions within the Hackensack Meadowlands District (see N.J.S.A. 13:17-4), that require water quality certifications pursuant to N.J.S.A. 58:10A-5.b and Section 401 of the Clean Water Act (33 U.S.C. §§1251 et seq.); and

18. Actions that require permits under the Dam Safety Standards, N.J.A.C. 7:20, for construction of Class I through III dams that are not covered by a permit-by-rule pursuant to N.J.A.C. 7:20-1.3.

[(c) The following projects and activities do not require a formal consistency determination review under N.J.A.C. 7:15-3.2, but shall still not conflict with WQM plans:

1. Approved and non-approved water supply connections regulated by the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;
2. Construction or repair of dams regulated by N.J.S.A. 58:4-2 et seq.;
3. Well drilling regulated by N.J.S.A. 58:4A-14 et seq.;
4. Actions regulated by the Air Pollution Control Act (1954), N.J.S.A. 26:2C-9.2;
5. Renewals or modifications of existing permitted activities that do not propose significant modifications, as determined by the Department;
6. Actions that require Type "A" wetland permits under N.J.A.C. 7:7-2.2;
7. Stream encroachments regulated under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.;
8. Waterfront development activities regulated under N.J.S.A. 12:5-3, other than those identified in (b)8 above;
9. Water lowering regulated under N.J.S.A. 23:5- 29 or N.J.S.A. 58:4-9;
10. Construction or operation of water systems regulated by the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;
11. Diversion of surface or ground waters regulated by the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.;
12. Activities that require freshwater wetlands permits, open water fill permits, or transition area waivers under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.;
13. Discharges that require water quality certifications under N.J.S.A. 58:10A-5.b and Section 401 of the Clean Water Act, 33 U.S.C. § 1251 et seq.;

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14. Actions regulated by N.J.A.C. 7:26 other than actions identified in (b)5 and 6 above and actions pertaining to hazardous waste, including:

- i. Collection and haulage of solid waste;
- ii. Operation of solid waste facilities;
- iii. Permit renewals for solid waste facilities not proposing major expansions;
- iv. Vertical expansions of sanitary landfills;
- v. Construction of new solid waste transfer stations;
- vi. Construction of new solid waste composting and co-composting facilities under one acre;
- vii. Construction of new leaf composting facilities;
- viii. Sanitary landfill closure where leachate collection and control is not required; and
- ix. Disruption of sanitary landfills, where such disruption does not require construction of new sanitary landfills or treatment and disposal of leachate;

15. Hazardous waste activities regulated by N.J.A.C. 7:26 but not identified in (b)7 above, including collection and haulage of hazardous waste, operation of hazardous waste facilities, and permit renewals for hazardous waste facilities not proposing major modifications; and

16. Any other activity regulated by the Department but not identified in (b) above or deemed to be consistent under N.J.A.C. 7:15-4.2.]

(c) Projects and activities not listed in (b) above do not require a formal consistency determination review under N.J.A.C. 7:15-3.2, but shall not conflict with any applicable WQM plans.

(d) (No change.)

(e) [Except as expressly provided in this chapter or in an areawide WQM plan, the] **The** only components of the Statewide WQM Plan that shall be used in performing consistency determination reviews and other consistency reviews are [the following:] **those components of the Statewide WQM Plan specified or adopted under this chapter.**

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[1. This chapter, exclusive of those portions of the Statewide WQM Plan incorporated by reference, but not codified in this chapter; and

2. Statewide Sludge Management Plans, District Sludge Management Plans, and sludge management rules that are promulgated or approved by the Department pursuant to N.J.S.A. 13:1E-1 et seq.]

(f) (No change.)

(g) At the request of any applicant whose proposed project or activity has been found by the Department to be inconsistent with a WQM plan or this chapter, the Department may informally discuss with that applicant the possible actions which that applicant might take to attempt to resolve the conflict. Such actions may include revising the project or activity to conform with the WQM plan and this chapter, seeking an amendment to the WQM plan under N.J.A.C. 7:15-3.4, **seeking a revision to the WQM plan under N.J.A.C. 7:15-3.5**, or appealing the Department's finding under N.J.A.C. 7:15- 3.9(a) or (g). The applicant may take such actions without regard to the existence or absence of a discussion or a request for a discussion under this subsection. Information provided by the Department in such discussions is for guidance only, and is not binding on the Department or the designated planning agencies. If the project or activity is in a designated area, the Department shall invite the designated planning agency to participate in the discussion.

7:15-3.2 Procedures for consistency determination reviews

(a) [Requests] **Except for applications for projects or activities in the Highlands preservation area, which are addressed in (d) below, a complete application for a consistency determination review shall, where applicable, include, but not be limited to, [the following information:] all of the information in 1 through 13 below. If the consistency determination is being requested as part of a permit application, information contained in that application need not be duplicated.**

[1. A narrative description of the project, including county and municipality, lot and block, type of development or activity, number of dwelling units, anticipated population, anticipated wastewater flow, availability and identification of existing treatment works, proposals for new treatment works (include proposed owner and operator of treatment works, and location of discharge);

2. A United States Geological Survey quadrangle map showing the approximate boundaries of the project site and discharge location; and

3. Drawings and/or plans which illustrate the description under (a)1 above.]

1. The name and address of the applicant;

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- 2. The address of the location of the project or activity;**
- 3. The lot and block numbers for the entire site where the proposed project or activity will occur;**
- 4. The municipality and county names where the proposed project or activity will occur;**
- 5. The total land area in acreage of the entire site of the proposed project or activity;**
- 6. If there is an adopted applicable wastewater management plan, a certification by the applicant that the proposal was part of the zoning approval, without variance, upon which the wastewater management plan was based;**
- 7. The approximate boundaries of the project or activity site clearly delineated on a USGS quadrangle map, including the title-name of the quad, or geographic information systems (GIS) coverage and the State Plane coordinates in NAD 1983 for a point at the center of the site. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the endpoints of those projects that are 1,999 feet or less, and, for those projects that are 2,000 feet or longer, the endpoints as well as additional coordinates at each 1,000-foot interval. For assistance in determining the State Plane coordinates for a site, see the i-Map webpage at nj.gov/dep/gis/depsplash.htm;**
- 8. A description of the type of proposed development or activity including the number of dwelling units if residential, or the proposed square footage if commercial, institutional or industrial;**
- 9. A description of the proposed method of wastewater treatment. Indicate if the project or activity will be served by an individual subsurface sewage disposal system or identify the existing or anticipated domestic or industrial treatment works proposed to be used. If a new domestic or industrial treatment works is proposed, include the proposed owner and operator of the domestic or industrial treatment works and the proposed location of the domestic or industrial treatment works and the discharge location;**
- 10. A description of the proposed water supply. Indicate if the project or activity will be served by an individual well, public community well, non-public community well or identify the existing or anticipated water service area including name of purveyor. If a new water service area is proposed, include the proposed water purveyor and the proposed location and type of water supply;**
- 11. A folded site plan showing all of the following;**

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i. All proposed site improvements;

ii. A Department-verified wetlands delineation, if one exists;

iii. Waterbodies within 300 feet of the proposed project; and

iv. All slopes greater than 20 percent;

12. If an applicant intends to demonstrate that its project or activity site was not withdrawn from a wastewater service area because it is infill development pursuant to N.J.A.C. 7:15-8.1(b)1, the applicant shall include documentation regarding the following:

i. Proof there is a lawfully existing public sewer line in the right-of-way adjoining the project or activity site lot or lots such that a connection can be made without crossing any property lines other than that of the lot to be served and where such connection does not require the extension of a collection system;

ii. Proof the sewer lines existed on the date that wastewater service area was withdrawn; and

iii. Proof that the total flow projection from the lot or lots between the previously connected properties does not exceed 2,000 gallons per day; and

13. If an applicant intends to demonstrate that its project or activity is part of a residential development or subdivision of fewer than six dwelling units pursuant to N.J.A.C. 7:15-8.1(c)2, the applicant shall include documentation regarding previous development and development on contiguous parcels or property in accordance with N.J.A.C. 7:15-8.1(c)2, including, but not limited to, the size of the lot and the date the lot was created.

(b) Based upon potential negative water quality impacts of the project, the Department may require the [narrative description] **applicant for a consistency determination** [under (a) above] to also include **in its application information on** potential water quality impacts and a site specific pollution control plan. In most cases, the Department intends that requirements for such inclusion shall be established through amendments to areawide WQM plans. Any areawide WQM plan that establishes such requirements shall specify the categories of projects that are subject to the requirements, the pollutants or sources of pollution that shall be addressed, and the geographic region in which the requirements apply, if that region is less than the entire designated area or non-designated area.

(c) [The] **Except for applications for projects or activities in the Highlands preservation area, which are addressed in (d) below, the** Department shall perform consistency determination reviews in accordance with the following procedures:

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1. Upon receipt of a complete [request] **application** for consistency determination review [and] **or** a complete permit application, the Department shall review the appropriate WQM plan and this chapter to determine whether the project or activity is consistent with the written provisions of the plan and this chapter. This review shall include, but not be limited to, the following plan components where applicable:

i. – ii. (No change.)

iii. [Availability of] **Available capacity at DTW or industrial treatment works;**

iv. Identification of appropriate DTW **or industrial treatment works;**

v. - vi. (No change.)

vii. Use of Best Management Practices for pollution control **in accordance with the Stormwater Management rules, N.J.A.C. 7:8;**

viii. Identification of areas suitable or unsuitable for development with consideration of [environmentally sensitive areas,] **riparian zones and steep slopes;** [and]

ix. Other water quality based policies, goals, objectives, or recommendations[.];

x. 201 Facilities Plan grant conditions;

xi. Total maximum daily load conditions or limitations; and

xii. Water supply availability.

2. The Department shall complete this review within 90 days of receipt of a complete [request] **application** for consistency determination review [and a complete permit application] **or within the timeframe as established in the rules for the applicable permit(s).** [This time period may be extended for a one time only 30 day period by the mutual consent of the applicant and the Department.]

3. – 7. (No change.)

(d) For projects or activities in the Highlands preservation area, a complete application for a consistency determination review shall include all relevant information identified pursuant to N.J.A.C. 7:38-9.2 and 9.3. The Department shall perform consistency determination reviews for projects and activities in the Highlands preservation area in accordance with N.J.A.C. 7:38-11.2, 11.3 and 11.7.

7:15-3.4 Water quality management plan amendment procedures

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(a) (No change.)

(b) Procedures for amendment of the Statewide WQM Plan are as follows:

1. – 3. (No change.)

4. Lists of water quality limited segments, [lists of segments where TMDLs will be developed,] and [project priority lists] **schedules** for TMDL development, which are developed by the Department under N.J.A.C. 7:15-6, shall be adopted as amendments to the Statewide WQM Plan. TMDLs developed in accordance with N.J.A.C. 7:15-[7]**6.3** shall be adopted as amendments to the relevant [Areawide]**areawide** WQM [Plan(s)]**plan(s)**. However, such lists, and TMDLs shall be adopted or revised in accordance with N.J.A.C. 7:15-6 [or 7:15-7, as appropriate,] and shall not be adopted or revised through the WQM plan amendment process under (b)6 below. [The Department may also publish a draft amendment as an Interested Party Review document or as a pre-proposal prior to formal proposal of the amendment.]

5. – 6. (No change.)

(c) Areawide WQM plans for designated areas may be amended by designated planning agencies pursuant to their approved plan amendment procedures. The Department may amend the areawide WQM plan for any non designated area, pursuant to the procedures under (g) below. Amendments or provisions thereof for any areawide WQM plan whose specific purpose or effect is to address projects or activities covered by (i) [and (j)] below, or that are either proposed, constructed, operated or conducted by the State or Federal government, or that are regulated by the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), shall be processed only by the Department, regardless of whether the areawide WQM [Plan]**plan** is for a designated area or a non-designated area. By the mutual consent of the Department and the designated planning agency, the Department may also process all other amendments to an areawide WQM plan for a designated area.

(d) Plan amendment procedures developed by the designated planning agencies shall be consistent with this section and approved by the Department. Such procedures shall include, but need not be limited to, provisions that:

1. – 2. (No change.)

3. Allow the Department to identify governmental entities, sewerage agencies, and [BRC] **BPU**-regulated sewer or water utilities that shall be requested to issue written statements of consent for proposed amendments, such parties being in addition to any governmental entities, sewerage agencies, and [BRC] **BPU**-regulated sewer or water utilities identified by the designated planning agency;

4. – 5. (No change.)

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(e) Every designated planning agency shall, by December 31, 1989, submit for Department approval plan amendment procedures that have been revised for consistency with this section. Such procedures shall identify the newspaper in which public notices of plan amendments shall be published. All plan amendment procedures that the Department approved before October 2, 1989, but that are not revised and approved by the Department as being consistent with this section, shall become void on March 31, 1990. If a plan amendment procedure becomes void in this manner, the Department shall immediately provide to the designated planning agency a plan amendment procedure that is consistent with this section, and that shall be used by the designated planning agency until a plan amendment procedure is submitted by the designated planning agency and approved by the Department under this subsection.]

(e) Designated planning agency plan amendment procedures approved by the Department prior to (the effective date of this amendment) shall remain in full force and effect, unless or until modified by the designated planning agency and approved by the Department under this section. Where a designated planning agency does not have its own plan amendment procedure or where a designated planning agency is de-designated, the Department's plan amendment procedure in (g) below shall be used.

(f) Within 15 days of approving an amendment, a designated planning agency shall submit to the [ORP] **DWM** a copy of the amendment, together with background information for that amendment. WQM plan amendments approved by designated planning agencies are valid only upon the subsequent adoption of such amendments by the Governor or his **or her** designee.

(g) Except as provided in (h) below the Department procedure for amendment of areawide WQM plans is as follows:

1. For amendments which are the Department's responsibility under (c) above, any interested person may petition the Department to amend the areawide WQM plan, or the Department may propose to amend the areawide WQM plan on the Department's own initiative. [Requests] **Applications** for amendments shall be submitted [in writing] to the [Office of Regulatory Policy] **Division of Watershed Management**, Department of Environmental Protection, PO Box [029] **418, 401 East State Street, 7th Floor**, Trenton, New Jersey 08625-0029.

2. [Requests] **Except for applications for plan amendments for projects or activities in the Highlands preservation area, which are addressed in (j) below, applications** for amendments shall include, but need not be limited to, a description of the proposed amendment, including documentation substantiating the need for the amendment, and other documentation as determined by the Department **to be necessary to determine compliance with the criteria established at N.J.A.C. 7:15-5.24 and 5.25**. Within 90 days of receiving [such requests] **an amendment application**, the Department shall review [such requests] **the application** and shall either:

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- i. Disapprove the amendment [request] **application**, and return it to the applicant; or
- ii. Return the amendment [request] **application** to the applicant for additional information or other necessary changes. If the applicant then submits a revised amendment [request] **application**, the Department shall, within 90 days of receiving the revised amendment [request] **application**, review such [request] **application** and render a decision under (g)2i above, this subparagraph, or (g)2iii below; or
- iii. Decide to proceed further with the amendment [request] **application**.

3. The Department shall notify the applicant and the applicable designated planning agency, if any, in writing of its decision under (g)2 above. If the Department's decision is to proceed further with the amendment [request] **application** under (g)2iii above, then this notification shall include the public notice that shall be given for the proposed amendment. If the proposed amendment is a regional stormwater management plan, the Department shall also notify the Department of Community Affairs and the Department of Agriculture. The applicant shall request written statements of consent under (g)4 below, and shall give public notice by publication in a newspaper of general circulation at the applicant's expense. The Department shall maintain a list identifying the newspaper that shall be used for this purpose in each planning area. The public notice shall also be published in the New Jersey Register. In cases where such Department decisions include a requirement for a non-adversarial public hearing, the public notice shall provide at least 30 days notice of the hearing.

4. Requirements concerning written statements of consent for plan amendments are as follows:

- i. As part of each notification of a decision under (g)2iii above, the Department may identify a list of governmental entities, sewerage agencies, and [BRC] **BPU**-regulated sewer and water utilities that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment, and that shall be asked to issue written statements of consent for the proposed amendment. Within 15 days of receiving such notification, the applicant shall submit by certified mail (return receipt requested) a copy of the proposed amendment to these parties, with a request that they issue written statements of consent for the proposed amendment within 60 days of their receipt of the request.

- ii. (No change.)

- iii. The applicant shall promptly forward to the [ORP] **DWM** a copy of all written statements of consent and other written comments received, and a copy of all requests for consent (with return receipts) sent to parties that did not provide written statements of consent or other written comments within 60 days of their receipt of such requests.

- iv. (No change.)

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5. (No change.)

6. Interested persons, including, but not limited to, those from whom written statements of consent are requested under (g)4i or 5 above, may submit written comments to the [ORP] **DWM** within 30 days of the date of the public notice. Interested persons may request that the public comment period be extended up to 30 additional days, and such extensions may be granted to the extent they appear necessary. Requests for such extensions shall be submitted in writing to the [ORP] **DWM** within 30 days of the date of the public notice.

7. Interested persons may also request that the Department hold a non-adversarial public hearing; such requests shall be submitted in writing to the [ORP] **DWM** within 30 days of the date of the public notice. If there is significant interest, as determined by the Department, in holding a public hearing, then a public hearing will be held. A public notice providing at least 30 days notice of the hearing will be published in the New Jersey Register and in [two] **one** newspaper[s] of general circulation, and will be mailed to the applicable designated planning agency, if any, and to each party who was requested to issue a written statement of consent for the amendment. The public comment period will be extended until 15 days after the hearing. Except when the Department proposes to amend areawide WQM plans on its own initiative, the applicant shall, at the applicant's expense, mail the public notice, provide for publication of the public notice in [two] **one** newspaper[s], secure a court stenographer, and provide three copies of a verbatim transcript of the hearing to the [ORP] **DWM**.

8. (No change.)

9. Except where the Department has already disapproved or returned the proposed amendment under (g)8 above, the Governor or his **or her** designee shall render a final decision on the amendment. **Wastewater management plans and wastewater management plan updates shall not be approved unless documentation has been submitted to the Department demonstrating that municipal ordinances required under N.J.A.C. 7:15-5.25 have been adopted and conform to the requirements of this chapter.** The Governor or his **or her** designee shall either:

i. – iii. (No change.)

10. - 11. (No change.)

(h) [For amendments identified in (h)3 below, the Department shall modify the plan amendment procedure specified in (g) above in the manner set forth in (h)1 and 2 below. Except as provided in (h)1 and 2 below, the entire procedure specified in (g) above remains applicable to such amendments.

1. In lieu of the consent requirements in (g)3 and 4 above, the Department shall identify a list of potentially affected or interested parties that shall receive notice of the proposed amendment, but that need not be asked to consent to the proposed amendment. Such parties

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shall include the applicable designated planning agency, if any. Within five days of receiving such a list, the applicant shall submit by certified mail (return receipt requested) to these parties a copy of the proposed amendment and a copy of the public notice that will be published pursuant to (g)3 above. The applicant shall promptly forward to the ORP a copy of all letters (with return receipts) sent to these parties under this paragraph. For sewers and pumping stations identified in (h)3ii below, written statements of consent are still required from owners or operators of affected DTW.

2. Instead of the 30 day period specified for these actions in (g)6 and 7 above, interested persons may take the following actions within 10 working days of the date of the public notice:

- i. Submit written comments on the proposed amendment to the ORP;
- ii. Submit written requests to the ORP that the Department extend the public comment period up to 30 additional days; or
- iii. Submit written requests to the ORP that the Department hold a non-adversarial public hearing.

3. The modifications set forth in (h)1 and 2 above shall be used only for amendments whose sole purpose is to address the following projects:

- i. Schools, health care facilities, or correctional facilities, if such schools or facilities are publicly owned or operated; or
- ii. New sewers or pumping stations to serve a project or activity that is partially within a future sewer service area depicted in an areawide WQM plan, if such sewers or pumping stations would convey wastewater from such project or activity to the existing DTW whose sewer service area is depicted in that WQM plan, and if a resolution of consent is received from the owner or operator of that DTW. If a project or activity is partially or entirely within two or more depicted sewer service areas, the new sewers or pumping stations may convey wastewater to one or more such existing DTW, provided that resolutions of consent are received from the owners or operators of the affected DTW in each of the sewer service areas. This subparagraph shall apply only to wastewater service area modifications of less than 10 acres.
- iii. Notwithstanding (h)3ii above, the modifications set forth in (h)1 and 2 above shall not be used for sewers or pumping stations whose construction would violate N.J.A.C. 7:14A-12.21, or that would convey wastewater to DTW whose capacity must by statute, rule or other legal requirement be reserved for other projects or activities. The Department may require the applicant to provide proof from the owner or operator of DTW that would receive the conveyed flow that capacity is available for the applicant's project or activity. This paragraph applies whether treatment works approvals are sought for both construction and operation, or for construction only, of sewers or pumping stations.] **Reserved**

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(i) Effluent limitations, including, but not limited to, water quality based effluent limitations, and schedules of compliance established [in accordance with N.J.A.C. 7:15-3.1] as NJPDES permit conditions under N.J.A.C. 7:14A-[8.6] **13** shall be considered to be part of the areawide WQM plans. NJPDES permit conditions shall be modified only through the procedures specified in the Department's New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A), in accordance with applicable Department rules, and shall not be modified through the WQM plan amendment process under (c) or (g) above. This subsection, however, shall not preclude the adoption of effluent limitations or schedules of compliance in areawide WQM plans under (g) above, prior to the establishment of such effluent limitations or compliance schedules as new or revised NJPDES permit conditions.

(j) [(Reserved)] **Applications for plan amendments for projects located in the Highlands preservation area that require a Highlands Preservation Area Approval shall be governed by the application filing and related procedures set forth in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38-11.6. If the Department determines to proceed with the amendment application, then the amendment shall be processed in accordance with (g)3 through 11 above.**

(k) Water quality management planning related documentation in [present and future] 201 Facilities Plans [that are] approved by the Department and USEPA after May 31, 1975 shall constitute amendments to areawide WQM plans. This documentation may include, but is not limited to: selected facilities alternative, future design capacity and flows, treatment levels, sewer service areas, septage management areas, sludge and septage management and disposal plans, environmental constraints mapping, identification of management agencies, and grant conditions. Itemized abstracts of the appropriate documentation shall be available at the Division of [Water Resources] **Watershed Management**. Water quality management planning related documentation in 201 Facilities Plans completed on or prior to May 31, 1975 may be adopted into areawide WQM plans on a case-by-case basis under (c) or (g) above.

(l) In preparing amendments to areawide WQM plans[, the following policies shall be adhered to:

1. Existing regional DTW shall be used where such use is cost-effective, environmentally sound, and feasible from an engineering standpoint. Expansion or upgrading of existing regional DTW is generally preferable to construction of additional DTW that would produce additional direct discharges to surface water at new locations.

2. Where] **where** a sewer connection ban is in effect under N.J.A.C. 7:14A-[12.21]**22.17** on a DTW **or a wastewater management plan is not in compliance with the schedule at N.J.A.C. 7:15-5.23**, the **Department will not consider the alteration of the** sewer service area for that DTW [shall not be altered unless such alteration would, even in the absence of the sewer connection ban, be cost-effective, environmentally sound, and feasible from the engineering standpoint] **through an amendment of the WQM plan unless it is part of a WMP.**

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7:15-3.5 Water quality management plan review, revision, and certification

(a) (No change.)

(b) **An application for a revision shall be submitted in writing to the Department in accordance with (d) below.** The Department and the designated planning agencies shall prepare revisions to Statewide and areawide WQM Plans under this section whenever such revisions are necessary to:

1.-2. (No change.)

3. Revise schedules for submission of wastewater management plans under N.J.A.C. 7:15-5.23[(g)]**(f)**;

4. Provide for the following substantive changes in Statewide and areawide WQM [plans] **Plans** where the Department determines, **based on its assessment that the project for which the revision is proposed complies with the environmental standards established at N.J.A.C. 7:15-5.24 and 5.25, as applicable, that** no significant individual or cumulative impacts will occur to environmentally sensitive areas or other natural resources (such as water supplies) due to the proposed revision (individually or in combination with past revisions in the area), that the changes are consistent with N.J.A.C. 7:15-3.6, [and] 3.7, **and 3.10** and that certain directly affected municipal and county agencies and other interests as identified by the Department have been provided an opportunity to review and comment on the proposed revision:

i. Any increase in flow (including both increased loadings and no increased loadings) from industrial treatment works where no change in **wastewater** service area or discharge type (for example, discharge to surface water or ground water) is proposed [and], the discharge is not to [a] **an impaired** waterbody segment for which a TMDL has been proposed or adopted under N.J.A.C. 7:15-[7]**6.3 and where the applicant demonstrates there is adequate water supply in accordance with the most recent New Jersey State Water Supply Plan for the proposed additional flow. If the discharge is to an impaired waterbody and the discharge contains any of the parameters that are the basis for the impaired listing, the expansion may be allowed if the expansion is consistent with the WLAs set forth in an adopted TMDL developed for the affected waterbody for the listed parameters in the discharge.** The Department may process such revisions prior to or simultaneously with a NJPDES permit for the same change in flow;

ii. The transfer of sewer service area from one domestic treatment works to another, provided that **all affected wastewater management plans are current in accordance with the schedule at N.J.A.C. 7:15-5.23,** the approved sewer service areas in the areawide WQM plan are currently contiguous in the area to be transferred, neither domestic treatment works is subject to a sewer connection ban, the proposed revision includes only areas currently designated for sewer service, both the sending and receiving wastewater management planning agencies concur

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with the proposed revision, and no new or expanded treatment works other than sewer line extensions is proposed as part of the revision;

iii. Any increase of [20,000] **8,000** gpd or less in [planned wastewater] **planning** flow to an on-site [NJPDES-permitted] discharge to ground water for [a] **an existing public** school or public institution, using the same general type of treatment works (for example, direct discharge to ground water, spray irrigation);

iv. Any change in the estimated [wastewater] **planning** flow (see N.J.A.C. 7:15-5.16(b)8) or [design capacity] **permitted flow** (see N.J.A.C. 7:15-5.16(b)9) **of less than 8,000 gallons per day** to [a] **an existing** NJPDES-[permitted] **regulated** discharge to ground water [from less than 20,000 gpd to more than 20,000 gpd], provided (b)4v below is satisfied and the same general type of treatment works is proposed;

v. Expansion of a future sewer service area to contiguous lots, where the expansion involves less than 100 acres, contributes less than 8,000 gallons per day of additional wastewater flow, and does not create a significantly new pattern of sewered development such that a significant potential or incentive is created for additional revisions or amendments to open new areas to sewered development[; or]. **A revision under this subparagraph shall be processed only if the applicant demonstrates that the receiving domestic treatment works has sufficient capacity under the projected build-out to serve the proposed development in addition to its existing approved sewer service area, and any affected wastewater management plan is current in accordance with the schedule at N.J.A.C. 7:15-5.23;**

vi. The utilization of individual subsurface sewage disposal systems where the project for which the revision is requested involves less than 100 acres and generates less than 8,000 gallons per day of wastewater flow (or a total of fewer than 23 residential dwelling units), only where the WMP is not in compliance with the schedule at N.J.A.C. 7:15-5.23 and the applicant demonstrates that the project for which the revision is proposed meets the nitrate dilution standard at N.J.A.C. 7:15-5.25(h)2;

vii. The utilization of a RWBR project to reduce either existing or proposed wastewater discharges to surface waters below the head of tide or ground water discharges located within HUC 14 drainage areas which are wholly below the head of tide;

viii. The utilization of a RWBR project to reduce existing wastewater discharges to surface waters above the head of tide or ground water discharges located within HUC 14 drainage areas any part of which is above the head of tide, provided the following are met:

(1) The utilization of RWBR will not increase or create an exceedance of the water availability in any HUC 11 in accordance with the assessment of water availability identified in the New Jersey State Water Supply Plan; and

(2) The utilization of RWBR does not cause an adverse effect on any downstream

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designated use, including without limitation, water supply, sewage treatment plant discharges, or aquatic life support;

ix. Connection of an existing structure with a malfunctioning subsurface sewage disposal system that is not currently within an approved sewer service area to an identified sewage treatment plant, provided the applicant demonstrates that it is not feasible to repair or replace the malfunctioning subsurface sewage disposal system under N.J.A.C. 7:9A-3.4 and the property where the existing structure is located is contiguous to the existing sewer line; or

x. The utilization of individual subsurface sewage disposal systems or a NJPDES-regulated discharge to ground water for a clustered residential development, where the applicant ensures that a minimum of 70 percent of the property is permanently restricted from development, subject to a conservation restriction prepared in accordance with N.J.A.C. 7:15-1.7, and provided that the following conditions are met:

(1) Where individual subsurface sewage disposal systems will be utilized, the density necessary to achieve the 2.0 mg/L nitrate planning standard in N.J.A.C. 7:15-5.25(e) and (h)2 is met for the overall project site and the ground water quality criteria of 10 mg/L is met at the edge of the developed portion of the clustered residential development;

(2) Except to account for unique site conditions, the development shall be located to maximize continuity of the preserved area and in areas that do not contain Natural Heritage Priority Sites or habitat patches identified as Rank 3, 4, or 5 on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife; and

(3) Existing agricultural land uses allowed to continue on the restricted portion are required to implement Best Management Practices by implementing the findings of a Conservation Management Plan or a Natural Resources Management Plan developed by the Natural Resources Conservation Service; or

5. (No change.)

(c) (No change.)

(d) An application for a revision under (b)4 above shall include a detailed basis for the revision, including any documentation supporting the assertion that the project or activity qualifies as a revision, all applicable information listed in N.J.A.C. 7:15-3.2(a) and other documentation as determined by the Department to be necessary to determine compliance with the criteria established at N.J.A.C. 7:15-5.24 and 5.25. The Department will notify the applicant of any additional information it needs to determine if the proposal qualifies as a revision. If the Department is unable to determine that a proposed project or activity qualifies to be processed as a revision based on information in the revision

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application or submitted by the applicant after notification, the Department will review the proposal as a potential amendment pursuant to N.J.A.C. 7:15-3.4. Once the Department determines that a project or activity qualifies as a revision, the Department shall provide a copy of the proposed revision to the agencies identified in N.J.A.C. 7:15-5.22 and provide 21 days for these entities to comment on the proposed revision.

Recodify existing (d) - (f) as **(e) - (g)** (No change in text.)

7:15-3.6 Coordination with Coastal Zone and Hackensack Meadowlands programs

(a) In accordance with N.J.A.C. 7:7E-1.2(h), the Department's Rules on Coastal Zone Management, including, but not limited to, provisions concerning the [Hackensack] **New Jersey** Meadowlands [Development] Commission at N.J.A.C. [7:7E-1.5(a) and] 7:7E-3.45, shall provide the basic policy direction for WQM planning in the New Jersey Coastal Zone defined at N.J.A.C. 7:7E-1.2(b), including, but not limited to, the Hackensack Meadowlands District described in N.J.S.A. 13:17-4.

(b) – (c) (No change.)

(d) For WQM plan amendments relating to the Hackensack Meadowlands District, the consultation requirement in N.J.S.A. 13:17-9(c) shall be met as follows:

1. For amendments processed under N.J.A.C. 7:15-3.4(b)[4]**5, (b)6** or (c), the [Hackensack] **New Jersey** Meadowlands [Development] Commission shall be requested to issue written statements of consent for such amendments under N.J.A.C. 7:15-3.4(g)3 and 4 or N.J.A.C. 7:15-3.4(d)3, as appropriate.

2. For other amendments to WQM plans under N.J.A.C. 7:15-3.4(b)1 through (b)[3]**4**, (i), [(j),] or (k) that automatically incorporate **into Statewide or areawide WQM Plans** any Department or USEPA actions taken through rulemaking [proceedings or water pollution control programs,] **or other proceedings** the consultation requirement in N.J.S.A. 13:17-9(c) shall be addressed, as necessary, through those [rulemaking] proceedings [or programs,] and shall not be independently addressed under this section.

7:15-3.7 Coordination with Pinelands program

(a) (No change.)

(b) [For WQM plan amendments processed under N.J.A.C. 7:15-3.4(b)4 or (c), the] **The** Department shall seek comments from the Pinelands Commission **on proposed WQM plan amendments and revisions pertaining to the Pinelands Area and Pinelands National Reserve** before making the decision required by N.J.A.C. 7:15-3.4(g)2 or 7:15-[3.4(d)2] **3.5(e)**, as appropriate.

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(c) For other amendments to WQM plans under N.J.A.C. 7:15-3.4(b)1 through (b)[3]4, (i), [(j),] or (k) that automatically incorporate **into Statewide or areawide WQM Plans any** Department or USEPA actions taken through rulemaking [proceedings or water pollution control programs,] **or other proceedings,** any need to seek comments from the Pinelands Commission shall be addressed, as necessary, through those [rulemaking] proceedings [or programs,] and shall not be independently addressed under this section.

7:15-3.8 Validity of **site specific** water quality management plan amendments **and revisions**

(a) No WQM plan amendment **or revision** hereafter adopted by the Governor or his **or her** designee is valid unless adopted in substantial compliance with this chapter. [A proceeding to contest any WQM plan amendment on the ground of noncompliance with the procedural requirements of this chapter shall be commenced within one year from the adoption date of the amendment.]

[(b) A proceeding to contest any WQM plan amendment adopted by the Governor or his designee prior to October 2, 1989, on the ground of noncompliance with the procedural requirements of this chapter as it existed prior to October 2, 1989, shall be commenced by October 2, 1990.]

(b) Proposed site specific WQM plan amendments for which notice has been filed for publication or published in the New Jersey Register pursuant to N.J.A.C. 7:15-3.4(g)3 or 3.4(g)5 as of (the effective date of this amendment) shall be subject to the rules in effect on (one day prior to the effective date of this amendment). Where the Department disapproves or returns the proposed amendment pursuant to N.J.A.C. 7:15-3.4(g)8, and the applicant submits a new or modified site specific plan amendment, the new or modified proposed plan amendment shall be subject to the rules in effect at the time of the subsequent submittal.

(c) Proposed WQM plan revisions that have been submitted to the Department but not adopted pursuant to N.J.A.C. 7:15-3.5(e)1 as of (one day prior to the effective date of this amendment) shall be subject to the rules in effect as of (the effective date of this amendment).

(d) Site specific amendments and revisions adopted prior to (the effective date of this amendment) shall be valid for six years from the date of adoption or until the sewer service or wastewater service area is revoked under N.J.A.C. 7:15-8.1, whichever is later.

(e) Site specific amendments or revisions adopted after (the effective date of this amendment) shall be valid for six years from the date of adoption, unless a wastewater management plan updated in accordance with N.J.A.C. 7:15-5.23 includes the site specific amendments or revision.

7:15-3.9 Appeals of Department decisions

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(a) [Within 20] **Except as provided in (g) below, within 30** calendar days from receipt by the applicant of a written notification from the Department of the decision of the Department made pursuant to N.J.A.C. 7:15-**3.1 or 3.2**, 3.4(g)2i or ii or **3.4(g)8ii** through iv, the applicant may request an adjudicatory hearing to contest the Department decision by submitting a written request to the Department, addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, [CN]**PO Box 402, 401 East State Street, 4th Floor**, Trenton, New Jersey 08625-0402. **A copy of the request shall be submitted to Division of Watershed Management, Department of Environmental Protection, P.O. Box 418, 401 East State Street, 7th Floor, Trenton, N.J. 08625.** The request shall include the following information:

1. - 5. (No change.)

(b) A hearing request not received within [20] **30** days after receipt by the applicant of a written notification from the Department of the decision of the Department, shall be denied.

(c) - (f) (No change.)

(g) An appeal of a [decision made by the Department pursuant to N.J.A.C. 7:15-3.1 or 3.2] **consistency determination** shall be made in accordance with the statutes and rules that govern the permit that is the subject of the decision. Such an appeal shall not be governed by (a) through (e) above.

(h) (No change.)

(i) An appeal to contest any WQM plan amendment or revision on the ground of noncompliance with the procedural requirements of this chapter shall be commenced within one year from the adoption date of the plan amendment or revision.

7:15-3.10 Coordination with Highlands Council

(a) In accordance with the Highlands Water Protection and Planning Act (Highlands Act), N.J.S.A. 13:20-1 et seq., and the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38, the Department shall seek comments from the Highlands Council on proposed WQM plan amendments and revisions pertaining to the Highlands Region as defined at N.J.S.A. 13:20-7, before making the decision required by N.J.A.C. 7:15-3.4(g)2 or 7:15-3.5(e), as appropriate.

(b) For amendments to WQM plans under N.J.A.C. 7:15-3.4(b)1 through (b)4, (i), or (k) that automatically incorporate into Statewide or areawide WQM Plans any Department or USEPA actions taken through rulemaking or other proceedings, any need to seek comments from the Highlands Council shall be addressed, as necessary, through those proceedings and shall not be independently addressed under this section.

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SUBCHAPTER 4. WATER QUALITY AND WASTEWATER MANAGEMENT POLICIES AND PROCEDURES

7:15-4.2 Projects and activities deemed to be consistent with WQM plans and this chapter

(a) The following treatment works are deemed to be consistent with WQM plans and this chapter:

1. – 4. (No change.)

5. Improvements to conveyance systems necessary to comply with the combined sewer overflows (CSOs) policy at N.J.A.C. 7:14A-11.12. This provision does not apply to wastewater facility expansions or upgrades.

(b) The initial performance of emergency activities, including, but not limited to, emergency activities allowed by emergency permits issued pursuant to N.J.A.C. 7:14A-[2.2]**6.14**, is deemed to be consistent with the WQM plans and this chapter. The Department may require the results of an emergency activity to be removed or modified after such initial performance, in order to obtain conformance with a WQM plan or this chapter.

(c) Restricted access reclaimed water for beneficial reuse activities for sewer jetting, street cleaning, dust control, and irrigation of restricted access locations at treatment works facilities are deemed to be consistent with the WQM plans and this chapter.

7:15-4.3 Treatment works not identified in Water Quality Management Plans

(a) Except as provided in N.J.A.C. 7:15-4.2 or 4.4, the following treatment works are considered to be inconsistent with the areawide WQM plan, and shall require an amendment **or revision** to that plan to be eligible for treatment works approvals, NJPDES discharge permits, or financial assistance under the Clean Water Act, U.S.C. §§ 1251 et seq., or under N.J.A.C. 7:22[.]:

1. New domestic or industrial treatment works, or expansions of existing domestic or industrial treatment works, if such new treatment works or expansions are not identified in the existing areawide WQM plan, are not sewers, [or] pumping stations, **or significant indirect users (SIU) as defined in N.J.A.C. 7:14A-1.2** and would:

- i. (No change.)
 - ii. Have a design capacity of **greater than** 2,000 gallons per day[or larger].
2. (No change.)

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(b) (No change.)

(c) This section does not apply to the following treatment works:

1. Activities identified under N.J.A.C. 7:14A-[12.4]**22.4** as not requiring treatment works approval;

2. (No change.)

3. Industrial treatment works that do not handle process [waste water] **wastewater** or sanitary sewage **except that these discharges shall comply with any wasteload allocation established in an adopted TMDL**; [or

4. DTW that meet the criteria in N.J.A.C. 7:15-5.18(c)6ii, if such DTW would provide service only in:

i. Areas depicted under N.J.A.C. 7:15- 5.18(c)6 in adopted wastewater management plans; or

ii. Areas identified as “on-site ground water disposal areas”, or identified by substantially equivalent names, in wastewater management plans that are adopted or in effect under N.J.A.C. 7:15-5.2.]

4. A permanent holding tank that complies with N.J.A.C. 7:14A-22.13(c); or

5. Discharges to ground water of non-contact cooling water or discharges to ground water of filter backwash water from potable water treatment plants.

7:15-4.4 Individual subsurface sewage disposal systems and other small domestic treatment works in sewer service areas

(a) Subject to the provisions of (b) and (c) below and of N.J.A.C. 7:15-5.19, depiction of future sewer service areas in wastewater management plans or elsewhere in areawide WQM plans shall not be construed to prohibit the lawful construction in such areas of the following DTW:

1. Individual subsurface sewage disposal systems for individual residences pursuant to N.J.A.C. 7:9A, **provided that the cumulative amount of wastewater to be generated by the project or activity does not exceed 2,000 gallons per day or five dwelling units**; or

2. Other DTW that would have a design capacity of [less than] 2,000 gallons per day **or less**, and use either subsurface sewage disposal systems or other sewage disposal systems that would not directly discharge to surface water or onto the land surface.

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(b) DTW identified in (a) above shall be constructed in depicted sewer service areas only if legally enforceable guarantees **at the local government level** are provided before such construction that the depicted sewer service will be used when it becomes available, and that any discharge to ground water will then be discontinued.

(c) DTW that are identified in a(2) above and that require treatment works approval shall not be constructed in the depicted sewer service area of a DTW on which a sewer connection ban is in effect under N.J.A.C. 7:14A-[12.21]**22.17**, unless such construction would, even in the absence of the sewer connection ban, be cost-effective, environmentally sound, and feasible from the engineering standpoint.

SUBCHAPTER 5. WASTEWATER MANAGEMENT PLANNING REQUIREMENTS

7:15-5.1 Wastewater management plan requirement for water quality management plan amendments and revisions

(a) The Department will reject an application for an amendment or revision under N.J.A.C. 7:15-3.4(c) or (g) in areas where a wastewater management plan has not been adopted in accordance with the schedule established at N.J.A.C. 7:15-5.23, except as provided below:

1. The revision meets the requirements of N.J.A.C. 7:15-3.5(b)1 through 3, 4i, 4iii through iv, or 4vi through x; or

2. The specific purpose or effect of the amendment is to address projects or activities that are either proposed, constructed, operated or conducted by the State or Federal government, or that are regulated by the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

(b) The Governor or designee shall adopt an amendment or revision only if the amendment or revision complies with this chapter.

7:15-5.2 Validity of previously adopted or submitted wastewater management plans

(a) Wastewater service area designations in wastewater management plans that are in compliance with the schedule established at N.J.A.C. 7:15-5.23 as of (the effective date of this rule) shall remain in effect for a period of six years from the date of WMP adoption or until (one year from the effective date of this rule), whichever is later.

(b) Proposed wastewater management plans that have been filed with the Department as of (the effective date of this rule) shall be subject to the rules in effect on (one day prior to the effective date of this rule) unless the Department disapproves or returns the proposed amendment pursuant to N.J.A.C. 7:15-3.4(g)2 or (g)8. If adopted, the wastewater service area designations shall remain in effect for a period of six years.

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(c) Wastewater service area designations in wastewater management plans that are not in compliance with the schedule established at N.J.A.C. 7:15-5.23 or the sewer service area designations in the portions of areawide Water Quality Management plans where no wastewater management plan was ever prepared as of (the effective date of this rule) shall remain in effect until (nine months from the effective date of this rule).

(d) If a wastewater management plan is submitted by (nine months after the effective date of this rule), the wastewater service area designations in the wastewater management plan and the sewer service area designations in portions of areawide Water Quality Management plans where no wastewater management plan was ever prepared shall remain in effect until the submitted WMP or WMP update is either:

1. Disapproved or returned by the Department pursuant to N.J.A.C. 7:15-3.4(g)2 or (g)8; or

2. Adopted as a new wastewater management plan in accordance with this chapter.

(e) If the wastewater management planning agency does not submit a WMP or WMP update for a wastewater management plan that is not in compliance with the schedule established at N.J.A.C. 7:15-5.23 by (nine months after the effective date of this rule), or if the Department disapproves or returns the wastewater management plan, the Department shall withdraw the wastewater service area pursuant to N.J.A.C. 7:15-8.1.

(f) General wastewater service area designations for wastewater facilities with planning flows less than 20,000 gallons per day which discharge to ground water shall not be established or reestablished as part of a new or updated WMP.

7:15-5.3 Wastewater management planning agencies, wastewater management plan areas and wastewater management plan responsibility: general statement

(a) A “wastewater management planning agency” (“WMP agency”) is a governmental unit [or other person] that has “wastewater management plan responsibility” as defined in (b) below. A “wastewater management plan area” (“WMP area”) is the geographic area for which a wastewater management planning agency has “wastewater management planning responsibility.”[.]

(b) N.J.A.C. 7:15-5.4, [through] **5.6 and 5.8** identify [governmental units] **entities** that have **either** “wastewater management plan responsibility” (“WMP responsibility”) for the wastewater management plan areas specified in those sections, unless alternative assignments of wastewater management plan responsibility are established under N.J.A.C. 7:15-[5.9] **5.13, or that have the responsibility to prepare and submit required elements of a wastewater management plan to the wastewater management planning agency.** “Wastewater management plan responsibility” means the duty to:

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1. Prepare, submit, and periodically update a wastewater management plan for the wastewater management plan area; [and]
2. Provide comments on proposed amendments to wastewater management plans under N.J.A.C. 7:15- 3.4[.]; **and**

3. Provide comments on proposed revisions to wastewater management plans under N.J.A.C. 7:15-3.5.

(c) (No change.)

(d) N.J.A.C. 7:15-5.4 [through] **and** 5.13 apply notwithstanding any statements about wastewater planning responsibility contained in management agency designations or WQM Plans, or amendments thereto, issued or adopted before [the effective date of this subchapter] **(the effective date of this amendment).**

(e) (No change.)

(f) Except [for wastewater management plans] as identified in N.J.A.C. 7:15-5.2(a) **through (d)**, wastewater management plans and amendments [thereof] **thereto** are valid only upon their adoption by the Governor or his **or her** designee as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4.

(g) Wastewater management planning agencies may submit wastewater management plans that cover only a portion of their wastewater management planning area provided that the submitted wastewater management plan(s) addresses an entire municipality or municipalities.

7:15-5.4 Responsibility of [designated planning agencies] **County Boards of Chosen Freeholders**

A [designated planning agency] **county board of chosen freeholders** shall have wastewater management plan responsibility for a wastewater management plan area consisting of all [or part] of its [designated area, if the governing body of that agency adopts and submits to the Department a resolution requesting such responsibility by December 1, 1989. In wastewater management plan areas identified in such resolutions, no other governmental units shall have wastewater management plan responsibility under N.J.A.C. 7:15-5.5 through 5.8] **county except as provided in N.J.A.C. 7:15-5.13.**

7:15-5.5 Reserved

7:15-5.6 Responsibility of sewerage authorities and municipal authorities

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(a) [Except as provided in (b) or (e) below or in N.J.A.C. 7:15-5.4 or 5.5,] **The Passaic Valley Sewerage Commissioners (PVSC), joint meetings, county utilities authorities, and every sewerage authority and every municipal authority [has] that performs sewerage-related functions in at least part of its district shall provide, upon the request of the WMP agency, the following sewerage-related information regarding its district or wastewater service area to the wastewater management [plan responsibility] planning agency or agencies responsible for a wastewater management plan area [consisting of that authority's entire district] in which it lies partially or wholly within:**

- 1. The name and NJPDES discharge permit number of any DTW owned or operated by the entities in (a) above;**
- 2. The existing permitted flow of each named DTW in million gallons per day;**
- 3. The actual wastewater flow, by municipality, for each municipality within the sewer service area of each named DTW in million gallons per day;**
- 4. The capacity allocation to each municipality within the sewer service area of each named DTW in million gallons per day;**
- 5. A description of the legal or financial arrangement concerning the capacity allocation in (a)4 above;**
- 6. Identification of total committed flow not presently connected to each named DTW in million gallons per day for each municipality within the sewer service area;**
- 7. Any information relevant to a future DTW expansion demonstrated to be needed in accordance with N.J.A.C. 7:15-5.25(d), including, but not limited to, stream studies or effluent characteristics;**
- 8. Identification of any wasteload allocations in a total maximum daily load assigned to any named DTW and a proposed schedule to meet any non-compliance with the wasteload allocation;**
- 9. Maps, prepared in accordance with the requirements at N.J.A.C. 7:15-5.20, showing the name, NJPDES discharge permit number, and the existing collection and conveyance systems of any named DTW; and**
- 10. Any other information needed to satisfy the requirements of N.J.A.C. 7:15-5.16.**

(b) [A municipal authority does not have wastewater management plan responsibility if that municipal authority does not perform sewerage-related functions in at least part of its district, and does not request wastewater management plan responsibility.] Except as provided in (c) below, a municipal authority performs “sewerage-related functions” if it:

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1. – 6. (No change.)

(c) (No change.)

(d) The Department may, at any time, send a letter to any municipal authority, requesting that authority to declare in writing [to the ORP] whether or not that authority performs any of the sewerage-related functions listed under (b) and (c) above[, and whether or not that authority requests wastewater management plan responsibility]. If that authority does not make such a declaration within 90 calendar days of receipt of the letter, the Department shall, in the absence of information to the contrary, presume that the authority performs sewerage-related functions [or requests wastewater management plan responsibility].

[(e) Where there is overlap between the districts of two or more authorities that would otherwise have wastewater management plan responsibility for their entire districts under this section, wastewater management plan responsibility in the overlap is assigned by the following criteria:

1. If only one of the authorities is a county utilities authority, only that county utilities authority has wastewater management plan responsibility in the overlap.

2. If none of the authorities is a county utilities authority, and if only one of the authorities is a regional authority, only that regional authority has wastewater management plan responsibility in the overlap.

3. If both of the conditions in (e)1 or 2 above are not met, and if only one of the authorities owns, leases, operates, or maintains a DTW that requires a NJPDES permit, and that is located within or serves all or part of the overlap, then only that authority has wastewater management plan responsibility in the overlap.

4. If none of the conditions in (e)1, 2, or 3 above is met, arrangements shall be made under N.J.A.C. 7:15-5.9 to assign wastewater management plan responsibility in the overlap to a single governmental unit.]

(e) Where one or more entity has responsibility for an area within one or more wastewater management planning areas, each entity shall provide all necessary sewerage-related information in accordance with (a) above regarding their district to each wastewater management planning agency responsible for wastewater management planning within the entity's district.

(f) (No change.)

[(g) When wastewater management plan responsibility is assigned under (e) above to an authority or other governmental unit that also has wastewater management plan responsibility

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outside the overlap, the entire geographic area for which the authority or other governmental unit has wastewater management plan responsibility shall constitute a single wastewater management plan area.]

7:15-5.7 Reserved

7:15-5.8 Responsibility of municipalities

(a) Upon the request of the WMP agency, every municipality shall provide the following information to the wastewater management planning agency:

1. Ordinances as required to demonstrate compliance with N.J.A.C. 7:15-5.25(f)3iii, (g)1, (g)3 or (g)6;

2. A map, prepared in accordance with the requirements at N.J.A.C. 7:15-5.20, identifying any public water supply service areas;

3. Where applicable, a septic management plan in accordance with N.J.A.C. 7:15-5.25(e)3;

4. In addition to (a)1 through 3 above, for urbanized municipalities provide:

i. Population projections; and

ii. Employment projections;

5. In addition to (a)1 through 3 above, for municipalities not subject to (a)4 above provide:

i. The current zoning map and associated ordinances; and

ii. A modified zoning map and associated ordinances as revised to demonstrate compliance with N.J.A.C. 7:15-5.25, as applicable.

7:15-5.9 through 5.12 Reserved

7:15-5.13 Alternative assignment of wastewater management plan responsibility

(a) Alternative assignments of wastewater management plan responsibility, different from the assignment set forth in N.J.A.C. 7:15-5.4, shall be made and subsequently changed as revisions to WQM plans under N.J.A.C. 7:15-3.5.

(b) The Department may assign wastewater management plan responsibility to a municipality, if the municipality requests such responsibility and provided that the county

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WMP agency has not submitted or stipulates it does not intend to submit a WMP. As part of the application, municipalities requesting wastewater management plan responsibility must certify that the information it was required to submit at N.J.A.C. 7:15-5.8 was submitted to the county. Requests for municipal wastewater management plan responsibility shall be made by the municipality as part of an application for a revision to an areawide WQM plan or plans under N.J.A.C. 7:15-3.5. A municipality that becomes the wastewater management planning agency for itself through alternate assignment of wastewater management plan responsibility may submit a wastewater management plan directly to the Department.

(c) A municipality that becomes the wastewater management planning agency in accordance with (b) above shall have 90-days after the date of adoption of the revision assigning it wastewater management planning responsibility to submit its wastewater management plan.

7:15-5.14 Wastewater management plan partition by municipality

(a) A county-wide wastewater management plan shall include an independent chapter for each municipality in the county. Each chapter shall address the entire municipality.

(b) Each chapter within a county-wide wastewater management plan may be adopted, returned or disapproved under N.J.A.C. 7:15-3.4(g)2 and 8 independent of other chapters.

(c) Where a wastewater management plan chapter has not been adopted for a municipality in accordance with the provisions at N.J.A.C. 7:15-5.2 or the schedule established at N.J.A.C. 7:15-5.23, wastewater service area designations within that municipality shall be withdrawn in accordance with N.J.A.C. 7:15-8.1.

7:15-5.15 Contents of wastewater management plans; general statement

(a) Each wastewater management plan shall consist of written **and electronic** descriptions and maps of existing and future wastewater-related jurisdictions and wastewater service areas, **public water supply service area served by each purveyor**, and of selected environmental features. A wastewater management plan shall also include written **and electronic** descriptions and maps of specified categories of existing and future treatment works, if such treatment works presently exist or are necessary to meet anticipated wastewater management needs. More specific requirements for these written **and electronic** descriptions and maps are set forth in N.J.A.C. 7:15-5.16 through 5.20, **5.24 and 5.25 and 7:15-8.**

(b) In accordance with N.J.A.C. 7:15-5.16 through 5.20 **and 5.25 and 7:15-8**, each wastewater management plan shall address all types of DTW and all methods of domestic wastewater disposal, including, but not limited to, **individual subsurface sewage disposal**

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systems, [surface water] discharges **to surface water** and [ground water] discharges[,] **to ground water** to the extent that such DTW and methods of domestic wastewater disposal presently exist or are necessary to meet anticipated wastewater management needs. In accordance with N.J.A.C. 7:15-5.16 [and] **through 5.20 and 5.25 and 7:15-8**, each wastewater management plan shall provide information about specified categories of [existing] industrial treatment works.

7:15-5.16 Existing jurisdictions, wastewater service areas, and treatment works

(a) Each wastewater management plan shall include maps of existing wastewater jurisdictions, existing wastewater service areas, and any existing treatment works in the categories specified in (a)3 or 5 below. These maps shall depict the following information:

1. (No change.)
2. The boundaries, within the wastewater management plan area, [or within any 20-year sewer service area identified under N.J.A.C. 7:15-5.18(c)4,] of the following:
 - i. Any existing districts, [and the existing] franchise areas, **and** [for] **water** or [sewerage] **sewer** service [and] **areas** of any public utilities; and
 - ii. Any areas within the Hackensack Meadowlands District defined at N.J.S.A. 13:17-4, the Pinelands Area defined at N.J.S.A. 13:18A-11, the Pinelands National Reserve defined at 16 U.S.C. § 471i(c), **the Highlands preservation area, the Highlands planning area defined at N.J.S.A. 13:20-3**, or the “coastal area” described in N.J.S.A. 13:19-4.
3. The location, within or outside the wastewater management plan area, of each existing treatment works, if any, that is not a sewer or a pumping station, but that receives wastewater that arises within or is conveyed into or through the wastewater management plan area, if such treatment works is:
 - i. (No change.)
 - ii. A DTW that has a design capacity of **greater than** 2,000 gallons per day [or larger], and stores or disposes of sewage by any means; or
 - iii. (No change.)
4. – 5. (No change.)
6. [Except as provided under (a)9 below, the] **The** present sewer service area, within or outside the wastewater management plan area, for each:

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i. [Each] DTW mapped within the wastewater management plan area under (a)3 above, distinguishing the separate area served by each DTW; and

ii. [Each industrial] **Industrial** treatment works that is mapped within the wastewater management plan area under (a)3 above[, and that serves] **including** property other than the property on which the industrial treatment works is located, distinguishing the separate area served by each industrial treatment works.

7. [Except as provided under (a)9 below, the] **The** present sewer service area, within the wastewater management plan area, for **each**:

i. [Each] DTW mapped outside the wastewater management plan area under (a)3 above, distinguishing the separate area served by each DTW; and

ii. [Each industrial] **Industrial** treatment works that is mapped outside the wastewater management plan area under (a)3 above[, and that serves] **including** property other than the property on which the industrial treatment works is located, distinguishing the separate area served by each industrial treatment works[.]; **and**

8. Any areas within the wastewater management plan area that, as regards DTW, are presently served only by either or both of the following:

i. (No change.)

ii. Other DTW that have a design capacity of less than [20,000] **2,000** gallons per day, use either subsurface sewage disposal systems or other sewage disposal systems that have no direct discharge to surface water or onto the land surface [and do not have aggregate service areas mapped under (a)9 below];

[9. The requirements in (a)6 and 7 above do not apply to DTW that are mapped under (a)3ii above, but that have a design capacity of less than 20,000 gallons per day. However, if two or more such DTW, on a single lot or on two or more adjacent lots, in combination have a design capacity of 20,000 gallons per day or larger, the aggregate service area of such DTW shall be depicted and distinguished from other areas mapped under (a)6 through 8 above.]

(b) Each wastewater management plan shall provide the following information, in narrative, outline, or tabular form, for each existing treatment works or each existing DTW, as appropriate, mapped within the wastewater management plan area under (a)3 above:

1. - 5. (No change.)

6. Name and classification, under N.J.A.C. [7:9-4]**7:9B** and [N.J.A.C. 7:9-6]**7:9C**, of any surface and ground waters receiving any discharges from the treatment works;

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7. - 8. (No change.)

9. Existing [design capacity] **permitted flow** of the DTW.

(c) - (e) (No change.)

(f) For purposes of (a), (b) and (c) above, “existing” or “present” means [existing or present] **permitted and/or constructed** at the time the particular wastewater management plan is being prepared or updated, as the case may be.

7:15-5.17 Mapping [of environmental] features **requirements**

(a) Each wastewater management plan shall include mapping of each of the following [environmental] features in the wastewater management plan area, and in any additional [sewer] **wastewater** service area identified in that wastewater management plan under N.J.A.C. 7:15-5.18(c)4, **5.24, or 5.25**:

1. (No change.)

2. Other freshwater and estuarine wetlands, based on maps prepared by the Department under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-25c[, or if such Department maps are not available, the National Wetlands Inventory maps prepared by the United States Fish and Wildlife Service];

3 - 5. (No change.)

6. Category One [Waters] **waters**, trout production waters, and trout maintenance waters designated in the Department’s Surface Water Quality Standards, N.J.A.C. [7:9-4]**7:9B**, based on the Department’s maps of such waters; and

7. Surface waters, as mapped on [USGS quadrangle maps.] **the Department’s graphic information systems (GIS) hydrography coverage**;

8. Suitable habitat for endangered and threatened species as identified on the Department’s Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife as Rank 3, 4 and 5;

9. Natural Heritage Priority Sites;

10. Riparian zones;

11. Steep slopes greater than 20 percent;

12. Current composite or municipal zoning;

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13. Municipal parcel mapping, if available;

14. All undeveloped and underdeveloped property, which could support additional or new sewage generating development, under current zoning;

15. All existing water service areas as defined at N.J.A.C. 7:10-11.5(c)6; and

16. All areas where sanitary or combined sewer collection and conveyance systems exist.

7:15-5.18 Future wastewater jurisdictions, wastewater service areas, and domestic treatment works

(a) In accordance with the provisions of this section, N.J.A.C. 7:15-5.24 and 5.25, each wastewater management plan shall include a description of wastewater service areas and DTW necessary to meet anticipated wastewater management needs over a 20-year period **for urbanized municipalities or at build-out for all other municipalities**. [A wastewater management plan may also include such descriptions for shorter or longer periods.] **The description shall include:**

1. [Each wastewater management plan shall provide for cost] **Cost**-effective, environmentally sound wastewater management, including [existing or new comprehensive regional DTW or] regional management where appropriate[.]; **and** [Upgrading or expansion of existing regional DTW is generally preferable to construction of additional DTW that would produce additional direct discharges to surface water at new locations.]

2. [On a case-by-case basis, the Department may require wastewater management planning agencies to examine] **Examination of** specific wastewater management alternatives as part of the preparation of the wastewater management plan **in accordance with N.J.A.C. 7:15-5.25**. The Department [may] **shall** require such examination to include analysis of critical economic, social, environmental, or institutional factors pertaining to such alternatives.

(b) [Subject] **Except for urbanized municipalities, subject** to the requirements, qualifications, and exceptions listed in (b)3 through [8]**6** below, wastewater service areas and DTW shall[, to the maximum extent practicable,] be identified in such a manner as to provide adequate wastewater service for:

1. (No change.)

[2. Future land uses shown in municipal or county master plans that have been adopted and are in effect under N.J.S.A. 40:55D-28 or N.J.S.A. 40:27- 2. If such master plans are used, wastewater service areas and DTW shall, to the maximum extent practicable, be identified in a manner consistent with any sewerage provisions in such master plans.]

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[3.]**2.** The wastewater management plan shall [list all of the] **identify relevant** zoning ordinances[, municipal master plans, or county master plans] on which the wastewater management plan is based [. If any zoning ordinance is used, the documentation for the wastewater management plan shall include a copy of the map of the districts in that ordinance, and of the regulations in that ordinance which specify] **specifying** the type, density, and intensity of land use allowed in each district. [If any master plan is used, documentation for the wastewater management plan shall include a copy of the map of proposed future land uses contained in that master plan, a copy of any text in the master plan which is needed to interpret the map, and a copy of any provisions in the master plan that address sewerage and waste treatment.]

[4. Due regard shall be given to the degree of likelihood that land development allowed in zoning ordinances will occur in the 20-year period, and to any substantial differences between dates associated with future land uses shown in master plans and the dates on which the 20-year periods end.]

[5.]**3.** If, for particular locations, a zoning variance under article 9 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., allows land development that would generate more wastewater than would the development allowed in the zoning ordinance [or shown in the master plan], then for some or all of those locations the wastewater management plan may be based on the zoning variance rather than on the zoning ordinance [or the master plan].

[6.]**4.** If, for particular locations, preliminary or final subdivision or site plan approvals under article 6 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., have allowed land development that would generate more wastewater than would the development allowed in the zoning ordinance [or shown in the master plan], then for those locations the wastewater management plan shall be based on such approvals rather than on the zoning ordinance [or the master plan].

[7.]**5.** Wastewater management plans relating to the New Jersey Coastal Zone, the Hackensack Meadowlands District, the Pinelands Area, or the Pinelands National Reserve are subject to the requirements of N.J.A.C. 7:15-3.6 or 3.7, as appropriate. **Wastewater management plans relating to the Highlands Region are subject to the requirements of N.J.A.C. 7:15-3.10.**

[8.]**6.** The **proposed** wastewater management plan may be inconsistent with zoning ordinances [or master plans] for [other] compelling reasons, provided that the wastewater management plan specifically identifies such inconsistencies and sets forth such reasons with adequate documentation.

(c) Each wastewater management plan shall include maps of future wastewater service areas, and of specified categories of future DTW, that are necessary to meet anticipated wastewater management needs at the end of the 20-year period **for urbanized municipalities, or**

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at build-out for all other municipalities [and at the end of any shorter or longer period identified under (a) above]. These maps shall depict the following:

1. The location, within or outside the wastewater management plan area, of each existing, expanded, or new DTW, if any, that would not be a sewer or a pumping station, but that would receive sewage that would arise within or be conveyed into or through the wastewater management plan area, if such DTW would require a NJPDES discharge permit and:

i. (No change.)

ii. Have a design capacity of [20,000] **greater than 2,000** gallons per day [or larger], and store or dispose of sewage by any means;

2. – 4. (No change.)

5. The sewer service area, within the wastewater management plan area, for each DTW mapped outside the wastewater management plan area under (c)1 above, distinguishing the separate area to be served by each DTW; **and**

[6. The area, if any, within the wastewater management plan area that would be served only by either or both of the following:

i. Individual subsurface sewage disposal systems for individual residences; or

ii. Other DTW that would have a design capacity of less than 20,000 gallons per day, and use either subsurface disposal systems or other sewage disposal systems that would have no direct discharge to surface water or onto the land surface; and]

[7.]**6.** The area, if any, within the wastewater management plan area that would be served only by either or both of the following:

i. (No change.)

ii. Other DTW that would have a design capacity of [less than] 2,000 gallons per day **or less**, and use either **individual** subsurface **sewage** disposal systems or other sewage disposal systems that would have no direct discharge to surface water or onto the land surface.

(d) For each DTW mapped within the wastewater management plan area under (c)1 above, each wastewater management plan shall further identify the future DTW that are necessary to meet wastewater management needs by providing, in narrative, outline, or tabular form, the following information applicable to such DTW at the end of the 20-year period **for urbanized municipalities, or at build-out for all other municipalities**[, and at the end of any shorter or longer period identified under (a) above]:

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1. – 5. (No change.)

6. Name and present classification, under N.J.A.C. [7:9-4]**7:9B** and [N.J.A.C. 7:9-6]**7:9C**, of any surface and ground waters that would receive any discharges from the DTW;

7. (No change.)

8. Estimated average **planning** flow of wastewater **in accordance with N.J.A.C. 7:15-5.25(d)** to be received by the DTW, in millions of gallons per day, disaggregated by municipality and expressed as total flow, as flow arising within and outside the wastewater management plan area, and as flow attributed to each of the following sources: residential, commercial, and industrial.

(e) For each DTW mapped outside the wastewater management plan area under (c)1 above, each wastewater management plan shall further identify the future DTW that are necessary to meet wastewater management needs by providing, in narrative, outline, or tabular form, the following information applicable to such DTW at the end of the 20-year period **for urbanized municipalities, or at build-out for all other municipalities**, and at the end of any shorter or longer period identified under (a) above:

1. – 2. (No change.)

3. Estimated average **planning** flow of wastewater **in accordance with N.J.A.C. 7:15-5.25(d)** to be conveyed to the DTW from the wastewater management plan area, in millions of gallons per day, disaggregated by municipality and expressed as total flow and as flow attributed to each of the following sources: residential, commercial and industrial.

(f) The wastewater management plan shall document the basis for the estimated **planning** flows attributed to residential, commercial, and industrial sources under (d)8 and (e)3 above. Where actual, accurate gauging is available for a sewer system already in existence, such gauging shall be used in preparing these flow estimates, with an allowance for future changes in wastewater flow. There shall be a reasonable relationship between these flow estimates and [sewer] **wastewater** service areas identified under (c)4 and 5 above. There shall be a reasonable relationship, consistent with (b) above, between these [sewer] **wastewater** service areas and residential population estimates under (d)7 and (e)2 above. The average domestic flow from new development, exclusive of industrial flows, shall be calculated utilizing the projected flow criteria found at N.J.A.C. 7:14A-23.3 **or 7:9A-7.4, as applicable, for the type of wastewater facilities proposed. Wastewater flows shall be expressed as a 30-day average flow from DTW that discharge to surface water and as a daily maximum flow from DTW that discharge to ground water.** In instances where future specific residential dwelling types are unknown, the residential flow calculation may be computed using 75 gallons per capita per day. No additional provisions for inflow and infiltration shall be made as the above flows include allowances for inflow and infiltration.

UPDATED AS OF JUNE 4, 2007

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(g) - (i) (No change.)

7:15-5.19 Individual subsurface sewage disposal systems and other small domestic treatment works in sewer service areas

(a) (No change.)

(b) A wastewater management plan shall require that individual subsurface sewage disposal systems for individual residences can be constructed in depicted sewer service areas only if legally enforceable guarantees **at the local government level** are provided before such construction that use of such systems will be discontinued when the depicted sewer service becomes available.

(c) - (d) (No change.)

7:15-5.20 Specifications for text and graphics

(a) Wastewater management plans should be concise, using the minimum feasible narrative and mapping. All pages, tables, and figures in wastewater management plans shall be legible and numbered. **The text of wastewater management plans, wastewater management plan updates, WQM plan amendments and revisions shall be submitted in hard copy and in an electronic format that is compatible with the Department's software capabilities. Information regarding the Department's software capabilities may be obtained by contacting the Department at New Jersey Department of Environmental Protection, Division of Watershed Management, P.O. Box 418, Trenton, New Jersey 08625, (609) 984-6888. The applicant shall submit a minimum of five hard copies to the Department and, if the Department determines that more are needed based on the particulars of the proposal, the Department will notify the applicant.**

(b) [All maps in wastewater management plans shall use 1:24,000 scale United States Geological Survey quadrangle maps as a base, except that other maps at other scales may be provided as supplements. Each wastewater management plan shall include the following main maps at 1:24,000 scale:] **All maps in wastewater management plans, wastewater management plan updates, and WQM plan amendments and revisions shall be prepared and submitted in hard copy in a format which is consistent with the Department's mapping standards at N.J.A.C. 7:1D Appendix A and shall be in New Jersey State Plane Feet using the North American Datum of 1983 (NAD83), use 1:24,000 scale United States Geological Survey quadrangle maps as a base and shall meet "United States National Map Accuracy Standards," incorporated herein by reference as amended or updated, for that scale. The United States National Map Accuracy Standards were issued by the U.S. Bureau of the Budget, Revised June 17, 1947, and can be obtained at <http://rockyweb.cr.usgs.gov/nmpstds/nmas.html>. Other maps at other scales may be provided as supplements. Mapping information for wastewater management plans shall also be submitted in digital form compatible with the mapping standards at N.J.A.C. 7:1D**

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Appendix A. The digital maps shall be accurate, at a minimum, to a scale of 1:12,000. The Department recommends that the creation of new digital mapping information for wastewater management plans be prepared in a format that conforms to the “New Jersey Department of Environmental Protection Geographic Information System Mapping and Digital Data Standards” guidance document, as amended or updated. Guidance related to the mapping and digital data standards is available at the Department’s website at <http://www.state.nj.us/dep/gis>. Each wastewater management plan shall include the following main maps in hard copy and in digital form, except digital maps in (b)3 below already generated by the Department in GIS do not have to submitted to the Department:

1. A map depicting the existing boundaries of the wastewater management plan area and the existing treatment works and **wastewater** service areas identified under N.J.A.C. 7:15-5.16(a)3 through [9]8;

2. A map depicting future DTW and **wastewater** service areas identified at the end of the 20-year period **for urbanized municipalities, or at build-out for all other municipalities**, under N.J.A.C. 7:15-5.18(c)1 through [6]5 [and a corresponding map for any shorter or longer period identified under N.J.A.C. 7:15-5.18(a)]. Wherever feasible, the boundaries of future **wastewater** service areas shall coincide with recognizable geographic or political features. The existing boundaries of the wastewater management plan area shall also be depicted on any map under this paragraph; and

3. One or more maps depicting the existing boundaries of the wastewater management plan area, and the [environmental] features identified under N.J.A.C. 7:15-5.17. This map shall also state that development in areas mapped as wetlands, flood prone areas, **suitable habitat for endangered and threatened species as identified on the Department’s Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife as Rank 3, 4 and 5, Natural Heritage Priority Sites, riparian zones, steep slopes greater than 20 percent**, or designated river areas may be subject to special regulation under Federal or State statutes or rules, and that interested persons should check with the Department for the latest information. Depiction of environmental features shall be for general information purposes only, and shall not be construed to define the legal geographic jurisdiction of such statutes or rules.

(c) Any other mapping required by N.J.A.C. 7:15-5.16 through 5.18, **5.24 and 5.25** may be included on one or more of the main maps listed in (b) above **if the information is legible**, or on other 1:24,000 scale maps.

7:15-5.21 Reserved

7:15-5.22 Consultation and consent for wastewater management plans

(a) Every wastewater management planning agency that prepares a wastewater management plan **or wastewater management plan update**, and every governmental unit or

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other person that prepares an amendment to a wastewater management plan, shall, during such preparation, notify and seek comments from and offer to confer with:

1. All governmental units that have regulatory or planning jurisdiction over wastewater, **water supply**, or land use in that wastewater management plan area, or in any additional sewer service area identified or being considered for identification under N.J.A.C. 7:15- 5.16(a)6, [or] 5.18(c)4, **5.24 or 5.25**. Such governmental units shall include, but not be limited to: designated planning agencies, wastewater management planning agencies, county planning boards, municipal governing bodies and planning boards, sewerage authorities, municipal authorities, joint meetings, the Passaic Valley Sewerage Commissioners, the [Hackensack] **New Jersey Meadowlands [Development] Commission**, **water purveyors**, the Pinelands Commission, **the Highlands Council**, and the Delaware River Basin Commission, as appropriate.

2. All governmental units and public utilities, and all vendors of wastewater treatment systems or services under the “New Jersey Wastewater Treatment Privatization Act”, N.J.S.A. 58:27-1 et seq., that:

i. Own, lease, operate, or maintain DTW that receive wastewater that arises within, or that is conveyed into or through, that wastewater management plan area, or in any additional sewer service area identified or being considered for identification under N.J.A.C. 7:15-5.16(a)6, [or] 5.18(c)4, **5.24 or 5.25**;

ii. – iv. (No change.)

3. (No change.)

(b) (No change.)

(c) Wastewater management plans relating to the New Jersey Coastal Zone, the Hackensack Meadowlands District, the Pinelands Area, or the Pinelands National Reserve are also subject to the requirements of N.J.A.C. 7:15-3.6 [or], 3.7[,] **or 3.10** as appropriate.

7:15-5.23 Schedule for submission of wastewater management plans

(a) Each wastewater management planning agency shall [periodically] prepare and submit a wastewater management plan[s] **update every six years from the date of last adoption unless an alternate schedule is established pursuant to (e) or (f) below** as a request[s] to [amend] **revise the applicable** areawide WQM plan[s] under N.J.A.C. 7:15-[3.4]**3.5. Where no wastewater management plan has ever been adopted or a wastewater management plan has been adopted prior to (six years prior to effective date of this amendment), the wastewater management plan is not current and is not in compliance with this section.** [The first such submission shall be made in accordance with the schedule established in (b) through (e) below. Thereafter, an updated wastewater management plan shall be submitted at least once every six years from the date of the previous submission. Alternative

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schedules for submission of wastewater management plans may be established and changed under (f) or (g) below. Early submissions of wastewater management plans may also be made under (j) below.]

[(b) The following governmental units shall submit wastewater management plans by October 2, 1990 or within 12 months after the creation of the governmental unit, whichever is later, if such units have wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.7:

1. Designated planning agencies;
2. The Passaic Valley Sewerage Commissioners;
3. County utilities authorities;
4. Regional authorities; and
5. Multi-county joint meetings.]

(b) If a wastewater management plan in compliance with the schedule in (a) above is not in place on (the effective date of this amendment), the WMP agency shall submit a WMP or WMP update by (nine months from the effective date of this amendment). If a municipality accepts wastewater management plan responsibility through alternative assignment under N.J.A.C. 7:15-5.13, the municipality shall submit a wastewater management plan by (one year from the effective date of this amendment) or in accordance with the schedule established in (e) below.

[(c) Other sewerage authorities, municipal authorities, joint meetings, and municipalities that have wastewater management plan responsibility under N.J.A.C. 7:15-5.6 through 5.8 shall submit wastewater management plans during the period specified in the following table or within 12 months of the creation of the governmental unit, whichever is later:

Table I

Wastewater Management Plan Submission Schedule

Location of Wastewater Management Plan	Period of Submission
Burlington, Cape May, Middlesex, Ocean, Passaic, and Union Counties	October 3, 1990 through October 2, 1991
Atlantic, Morris, Salem, Sussex, and Warren Counties	October 3, 1991 through October 2, 1992

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Bergen, Essex, Gloucester, Hunterdon, and Monmouth Counties	October 3, 1992 through October 2, 1993
Camden, Cumberland, Hudson, Mercer, and Somerset Counties	October 3, 1993 through October 2, 1994]

(c) If the wastewater management planning agency fails to comply with the schedule in (a) or (b) above or an alternative schedule established under (e) or (f) below, the general service areas for wastewater facilities with planning flows of less than 20,000 gallons per day which discharge to ground water, the general service area for wastewater facilities with planning flows of less than 2,000 gallons per day which discharge to ground water, and sewer service areas shall be withdrawn in accordance with N.J.A.C. 7:15-8.1.

[(d) Notwithstanding the schedule in (b) and (c) above, if an entire wastewater management plan area is already addressed by one or more wastewater management plans identified in N.J.A.C. 7:15-5.2, the governmental unit that has wastewater management plan responsibility for that wastewater management plan area under N.J.A.C. 7:15-5.4 through 5.8 shall submit an updated wastewater management plan for that wastewater management plan area between October 3, 1994 through October 2, 1995, or within 12 months of the creation of the governmental unit, whichever is later.]

(d) Each municipal wastewater management plan chapter established through alternative assignment of WMP responsibility under N.J.A.C. 7:15-5.13 and adopted in accordance with the schedule established at (e) or (f) below shall be current for a period of six years unless the WMP chapter becomes part of a county-wide WMP. Where a municipal WMP chapter is incorporated into a county-wide WMP, the municipal WMP chapter shall assume the same six-year WMP update schedule as the county-wide WMP in accordance with the schedule at (a) above.

(e) Each [WQM plan amendment or] WQM plan revision that makes or changes alternative assignments of wastewater management plan responsibility under N.J.A.C. 7:15-[5.9] **5.13** shall include a schedule for submission of the corresponding wastewater management plan. [This requirement does not apply to automatic expansions of wastewater management plan areas under N.J.A.C. 7:15-5.11(b).]

(f) Alternative schedules for submission of wastewater management plans, different from those set forth under (a) through (e) above, shall be established and subsequently changed only if such alternative schedules or changes thereto are adopted as [amendments to areawide WQM plans under N.J.A.C. 7:15-3.4, or as] revisions to WQM plans [under (g) below]. [Amendments or revisions that change alternative schedules may establish different alternative schedules, or, where reasonable, may restore schedules set forth under (a) through (e) above.] Reasons that may justify the establishment or changing of alternative schedules include, but are not limited to:

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1. – 2. (No change.)

3. The need for additional time to perform specific examinations required under N.J.A.C. 7:15-5.18(a)2 **or 5.25(a) through (g)**;

4. – 5. (No change.)

[(g) With the consent of the Department and the wastewater management planning agency, an alternative schedule for submission of wastewater management plans may be established and changed by a WQM plan revision under N.J.A.C. 7:15-3.5, rather than by a WQM plan amendment under N.J.A.C. 7:15-3.4.]

[(h)] **(g)** The Department may at any time request a wastewater management planning agency to submit written reports on the progress that such agency is making in meeting its wastewater management plan responsibility. Such agency shall submit such reports to the [ORP] **DWM** within [90] **30** calendar days of receiving such requests.

[(i)] **(h)** Each wastewater management plan that updates one or more already existing wastewater management plan shall comply with N.J.A.C. 7:15-5.20 and include:

1. Updated maps and descriptions of the then existing wastewater jurisdictions, **wastewater** service areas, and facilities under N.J.A.C. 7:15-5.16;
2. Updated maps of [environmental] features under N.J.A.C. 7:15-5.17; [and]
3. Updated maps and descriptions of future wastewater jurisdictions, **wastewater** service areas, and facilities under N.J.A.C. 7:15-5.18, with due regard to changes in factors discussed in that section, such as adoption of new or amended zoning ordinances [or municipal or county master plans.]; **and**

4. A demonstration of compliance with the criteria at N.J.A.C. 7:15-5.24 and 5.25(a) through (g).

[(j)] **(i)** [At the written request of a person who seeks a WQM plan amendment that requires a wastewater management plan under N.J.A.C. 7:15-5.1(a), a] **A** wastewater management planning agency may submit a wastewater management plan at any time prior to the period when such submission is required under [(b)] **(a)** through [(g)] **(f)** above. The establishment of an alternative schedule under (f) [or (g)] above is not required for such early submission.

7:15-5.24 Delineation of sewer service areas

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(a) Sewer service may only be provided to areas that are not identified as environmentally sensitive areas at (b) below, coastal planning areas listed at (c) below, or special restricted areas at (d) below, except as provided at (e) through (h) below. Nothing in this section shall preclude the wastewater management planning agency from excluding additional areas from sewer service based on local planning objectives, the lack of wastewater treatment capacity or other environmental concerns, including, but not limited to, source water protection.

(b) Environmentally sensitive areas shall be defined based on a composite geographic information systems (GIS) analysis, as any contiguous area of 25 acres or larger consisting of any of the following features alone or in combination:

1. Areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Species. The data are available as a download at the Department's webpage <http://www.nj.gov/dep/gis/listall.html> titled "Landscape Project Data";

2. Areas mapped as Natural Heritage Priority Sites, excluding those lands within the boundaries of these sites mapped in the "Urban Lands" layer extracted from the Department's 1995/97 and 2002 Land Use/Land Cover geographical information systems database as amended and updated. Both the Natural Heritage Priority Site data and the Urban Lands data are available as a digital data download at the Department's webpage <http://www.nj.gov/dep/gis/listall.html> titled "Natural Heritage Priority Sites";

3. Special water resource protection areas along a Category One waters and their tributaries established under the Stormwater Management rules, N.J.A.C. 7:8. Surface waters that are designated Category One are listed in the Surface Water Quality Standards at N.J.A.C. 7:9B. These waters can be determined using the download available on the Department's webpage at <http://www.nj.gov/dep/gis/listall.html> titled "Surface Water Quality Standards"; and

4. Wetlands as mapped pursuant to N.J.S.A. 13:9A-1 and 13:9B-25. This data is available as a download on the Department's webpage <http://www.nj.gov/dep/gis/listall.html> titled "Wetlands."

(c) The following coastal planning areas identified on the CAFRA Planning Map, available at <http://www.nj.gov/dep/gis/listall/cafralayers.html> shall not be identified as sewer service areas:

1. Coastal Fringe Planning Areas;

2. Coastal Rural Planning Areas; or

3. Coastal Environmentally Sensitive Planning Areas.

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(d) The following special restricted areas shall be excluded from the extension of new sewer service either through sewer service area mapping where local mapped information exists delineating these areas, or through narrative description in a wastewater management plan where a reliable mapping source does not exist:

1. Environmentally sensitive areas in which Federal 201 grant limitations prohibit the extension of sewer service;

2. Beaches as defined at N.J.A.C. 7:7E-3.22;

3. Coastal high hazard areas as defined at N.J.A.C. 7:7E-3.18; and

4. Dunes as defined at N.J.A.C. 7:7E-3.16.

(e) The applicant for a Water Quality Management plan amendment, including wastewater management plans, wastewater management plan updates or site specific amendments may rebut the presumption that the environmental data identified in (b) above is correct by providing the following information:

1. All of the information required at N.J.A.C. 7:15-5.26 for a habitat suitability determination that demonstrates that an area is not suitable habitat for endangered or threatened species;

2. A Letter of Interpretation issued by the Department pursuant to N.J.A.C. 7:7A-8 to demonstrate that an area is not wetlands; or

3. Any other information that demonstrates that the Department's GIS coverage is inaccurate at a particular location.

(f) Any area identified in (d) above may be added to the sewer service area upon submission of the information listed at (f)1 and 2 below. Where areas identified in (d) above are excluded in the mapping of sewer service areas, a formal amendment or revision to the wastewater management plan and areawide WQM plan under N.J.A.C. 7:15-3.4 or 3.5, as appropriate, shall be required. Where the areas are excluded by narrative criteria only, the submission of the information listed in (f)1 and 2 below shall be sufficient to make the project consistent with the areawide WQM plan for the particular criteria addressed:

1. A mapping revision or grant condition waiver issued by the U. S. Environmental Protection Agency for a project or site that would otherwise be subject to a 201 grant condition prohibiting the extension of sewers into environmentally sensitive areas; or

2. A CAFRA permit issued by the Department for a specific site and use approved under the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

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(g) Sewer service areas may include environmentally sensitive areas listed at (b) above provided:

1. The environmentally sensitive area is included either to allow infill development, or to remove undulations in the sewer service area boundary as necessary to create a linear boundary that relates to recognizable geographic features as allowed by N.J.A.C. 7:15-5.20(b)2; and

2. The Department determines that the environmentally sensitive areas included in the sewer service area are not critical to a population of endangered or threatened species, the loss of which would decrease the likelihood of the survival or recovery of the species in the State.

(h) Sewer service areas may include environmentally sensitive areas listed at (b) above provided it is designed to accommodate center based development and is an element of an endorsed plan approved by the State Planning Commission where:

1. The Department determines that the environmentally sensitive areas included in the sewer service area are not critical to a population of endangered or threatened species, the loss of which would decrease the likelihood of the survival or recovery of the species in the State;

2. The Department has determined that the endorsed plan adequately addresses the protection of environmentally sensitive areas located outside of the designated sewer service area; and

3. The wastewater management planning agency has identified an adequate wastewater management alternative in accordance with N.J.A.C. 7:15-5.25(a) through (c).

7:15-5.25 Evaluation criteria for wastewater management plans and amendments

(a) The Department will only adopt a wastewater management plan, wastewater management plan update or wastewater management plan amendment if the applicant demonstrates compliance with the requirements in this section for existing and future wastewater treatment needs, water supply demands, and nonpoint sources of pollution. The Department will only process a revision under N.J.A.C. 7:15-3.5(b)4 if the Department determines, based on its assessment of the revision proposal, that it complies with the requirements in this section. The standards set forth in this section represent the minimum standards for approval of a wastewater management plan, wastewater management plan update or wastewater management plan amendment. WMP planning agencies or municipalities may incorporate more protective standards.

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(b) Except as provided for a site specific amendment in (h) below, an application for approval of a wastewater management plan or wastewater management plan update shall include environmental analyses or assessments and meet the standards set forth in (c) through (g) below.

(c) An environmental build-out analysis shall be developed for each existing and proposed wastewater service area, except for those portions of sewer service areas that are located in urbanized municipalities. The build-out analysis shall be developed on a HUC 11 basis. Each HUC 11 shall be further disaggregated by municipality. Development shall also be broken down between areas within and outside of public water supply service areas. These delineations and associated analyses shall be based on the mapping and narrative requirements in N.J.A.C. 7:15-5.16 through 5.18 and 5.20 and shall be prepared in accordance with the following:

1. In areas not currently connected to sewers that are in an existing or proposed sewer service area, identify the development that is currently existing and intended to be connected to sewers, as well as the future development that can occur under existing zoning in undeveloped areas and is expected to connect to sewers, after removing wetlands and riparian zones. At the option of each municipality, other areas may be removed if they are not expected to connect to sewers, including, but not limited to, permanently preserved agricultural lands or public open space. Identify the development to be connected to sewers by acres and type, including number of residential units and measures of nonresidential development in terms used to calculate wastewater flow at N.J.A.C. 7:14A-23.3;

2. For undeveloped and underdeveloped areas outside of sewer service areas, identify the number of dwelling units that can occur consistent with the analysis at (e) below, without removing wetlands and riparian zones; and

3. The information required in (c)1 and 2 above must be presented in tables and maps sufficient to demonstrate compliance with analyses of wastewater and water supply in (d) through (f) below.

(d) The existing and future wastewater treatment needs of each sewer service area and the specific treatment alternatives proposed to meet these needs shall be identified and evaluated in conformance with the following:

1. For areas identified to be served by existing or proposed expanded or new domestic or industrial treatment works that require a NJPDES permit, the applicant shall identify the existing wastewater generated and future wastewater generation potential within each existing or proposed new or expanded sewer service area as follows:

i. Determine the existing flows attributed to portions of the sewer service area that are connected to the facility based on the monthly average over the most recent 12 months.

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or the peak monthly average flow for treatment facilities that experience a seasonal peak resulting from transient populations, as reported in the Discharge Monitoring Reports required pursuant to N.J.A.C. 7:14A-6.8 for the facility;

ii. For urbanized municipalities, estimate future wastewater flows by multiplying the incremental population increase projected within a 20-year planning horizon from the date of WMP preparation, developed using the municipal master plan or other governmental or academic source, by a value of 75 gallons per capita per day and adding any known new non-residential flows including from, without limitation, expanded or redeveloped industries, landfill leachate or septage; and

iii. For municipalities not subject to ii above, estimate future wastewater flows from existing development that is not currently connected and future development using information developed in the environmental build-out in (c) above, and flow projections from N.J.A.C. 7:14A-23.3, and adding any known new non-residential flows including from, without limitation, new or expanded industries that do not conform to the categories at N.J.A.C. 7:14A-23.3, landfill leachate or septage;

2. Potential wastewater generation from each sewer service area shall not exceed the permitted capacity for each facility. Where the sewer service area encompasses more than one municipality, the potential wastewater generated in each municipality shall be compared to the amount of capacity allocated to that municipality. Where potential wastewater generation from any contributing municipality calculated in accordance with (d)1 above exceeds the flow allocated to that contributing municipality or if the total wastewater generation potential exceeds the permitted flow for each domestic or industrial treatment works, the WMP agency and/or affected municipalities shall either:

i. Reduce the sewer service area;

ii. Change zoning to reduce the wastewater generation potential in the sewer service area;

iii. Identify new or expanded domestic or industrial treatment works sufficient to address the difference between the permitted flow and wastewater generation potential calculated in accordance with (d)1 above; or

iv. Submit a plan, including a commitment by the owner of the affected facilities to implement the plan and approved by the Department, to eliminate excessive infiltration and inflow sufficient to accommodate the increase in wastewater flow;

3. For each proposed new or expanded domestic or industrial treatment works with discharge to surface water, the applicant shall perform an antidegradation analysis in accordance with the antidegradation policies in the Surface Water Quality Standards at

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N.J.A.C. 7:9B-1.5(d). The applicant shall propose a wastewater treatment and disposal alternative only as consistent with the following hierarchy:

i. The applicant shall evaluate the feasibility of reclaiming wastewater for beneficial reuse by conducting a study in accordance with the Department's "Technical Manual for Reclaimed Water for Beneficial Reuse," as amended or supplemented, incorporated herein by reference. The Technical Manual for Reclaimed Water for Beneficial Reuse is available to be viewed or downloaded at <http://www.state.nj.us/dep/dwq/techman.htm>. RWBR shall be implemented to the extent determined to be feasible;

ii. Expansions of existing permitted domestic or industrial treatment works facilities shall maintain the current pollutant load, after compliance with any wasteload allocations imposed through an adopted total maximum daily load wasteload allocation, by increasing flow and improving the quality of treatment at the treatment works;

iii. To the extent that load increases cannot be avoided in accordance with (d)3ii above, new or expanded domestic or industrial treatment works shall achieve no measurable change in water quality in the receiving stream by adhering to water quality based effluent limits calculated based on a stream study approved by the Department or limits needed to comply with adopted total maximum daily load wasteload allocations;

iv. Where a new or expanded domestic or industrial treatment works discharging to Category Two waters will result in a measurable change in receiving water quality based on the stream study in (d)3iii above, the applicant shall make the demonstrations at N.J.A.C. 7:9B-1.9 to justify the proposed lowering of existing water quality; and

v. Where the demonstrations in (d)3i through iv cannot be made, the Department will not approve the proposed new or expanded domestic or industrial treatment works and the sewer service area must be adjusted such that wastewater generation potential does not exceed the permitted capacity;

4. For areas to be served by a proposed new or expanded domestic or industrial treatment works with a discharge to ground water that will require a NJPDES permit, the applicant shall demonstrate compliance with Ground Water Quality Standards, N.J.A.C. 7:9C, through the permitting process and, for domestic treatment works, shall demonstrate consistency with the number of equivalent dwelling units, using the flow or mass basis as applicable, allowable based on the nitrate planning standard as determined at (e) below;

5. Where new or expanded domestic or industrial treatment works are proposed, demonstrate that water supply commensurate with the new or expanded capacity is available from a source that is consistent with water availability identified in the most current New Jersey State Water Supply Plan; and

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6. For areas within the Highlands preservation area, the applicant shall additionally demonstrate that proposed wastewater facilities are consistent with the requirements as set forth in the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38.

(e) For areas not covered by (d) above, the future wastewater treatment needs of the entire remaining wastewater management planning area shall be evaluated in conformance with the following:

1. Except as provided in (e)2 below, in areas proposed to be served by individual subsurface sewage disposal systems discharging 2,000 gallons per day or less to ground water, the applicant shall determine the development density that can be accommodated in undeveloped and underdeveloped areas that will result in attainment of 2.0 mg/L nitrate in the ground water on a HUC 11 basis, as follows:

i. Determine the number of acres per equivalent dwelling unit using either:

(1) "A Recharge-Based Nitrate-Dilution Model for New Jersey v5.1" developed by the New Jersey Geological Survey incorporated herein by reference, as amended and supplemented, available at www.state.nj.us/dep/watershedmgt/rules.htm; or

(2) A simplified model using HUC 11 recharge values called "A Recharge-Based HUC11-Scale Nitrate-Carrying-Capacity Planning Tool for New Jersey, MS Excel Workbook, v1.0," incorporated by reference, as amended and supplemented available at <http://www.nj.gov/dep/watershedmgt/rules.htm>;

ii. Determine the number of undeveloped and underdeveloped acres in each municipality or portion thereof in each HUC 11 and divide the number of acres by the number of acres per unit calculated in (e)1i above to determine the number of additional allowable equivalent dwelling units;

iii. Apply existing zoning to all undeveloped and underdeveloped areas to determine the number of equivalent dwelling units for comparison to (e)1ii above. For nonresidential areas, convert the proposed development type to equivalent dwelling units by dividing the flow projected to be generated in accordance with N.J.A.C. 7:9A-7.4 by 500 gallons per day;

iv. If the wastewater management planning entity determines that the number of additional equivalent dwelling units calculated in (e)1iii above exceeds the allowable number of additional equivalent dwelling units in (e)1ii above then the plan shall include an adjustment to the zoning in order to achieve consistency between zoning and the allowable number of additional equivalent dwelling units at build-out in the undeveloped and underdeveloped areas; and

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v. The allowable number of additional equivalent dwelling units may be distributed within the HUC 11 at the discretion of the municipality(ies) provided that the total number of additional equivalent dwelling units in the HUC 11 does not exceed the allowable number calculated in (e)1ii above;

2. In the Highlands preservation area, the applicant shall demonstrate that proposed wastewater facilities are consistent with the requirements as set forth in the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38; and

3. Demonstrate that areas to be served by individual subsurface sewage disposal systems are subject to a mandatory maintenance program, such as an ordinance, which ensures that all individual subsurface sewage disposal systems are functioning properly. This shall include requirements for periodic pump out and maintenance, as needed.

(f) The Department will only adopt a WMP, WMP update or WMP amendment if water supply needs associated with the environmental build-out are demonstrated to be met with existing, new or expanded water supplies that do not conflict with the most current New Jersey State Water Supply Plan, regional water supply plans, or TMDLs adopted as WQM plan amendments including, but not limited to, any limitations on withdrawals due to ecological and saltwater intrusion concerns. The following information and analyses are required to be submitted by the WMP agency to allow a determination by the Department:

1. For each public water supply service area and for the area outside public water supply service areas, provide the following for each municipality, disaggregated by wastewater service area and on a HUC 11 basis:

i. An estimate of the amount of future water supply demand determined utilizing information developed under the environmental build-out analysis at (c) above and N.J.A.C. 7:10-11.5(f) or, in urbanized municipalities, assuming the equivalent of the wastewater generation of the incremental population increase; and

2. Where the Department determines that there is insufficient existing water supply available to provide for the needs identified in (f)1 above based on existing water allocation permits and the available water supply established in the most recent New Jersey State Water Supply Plan, regional water supply plans or adopted TMDLs, the WMP agency must identify measures to ensure an adequate water supply, including one or more of the following:

i. Obtaining additional water supply through reuse as identified in accordance with the Department's "Technical Manual for Reclaimed Water for Beneficial Reuse" as amended or supplemented, incorporated herein by reference. The Technical Manual for Reclaimed Water for Beneficial Reuse is available to be viewed or downloaded at <http://www.state.nj.us/dep/dwq/techman.htm>;

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ii. Obtaining water from a source with available capacity consistent with the most current version of the New Jersey State Water Supply Plan and consistent with the findings of any applicable regional water supply plan or an applicable Total Maximum Daily Load where one has been adopted;

iii. Adopting water conservation ordinances to reduce demand to match available supply; or

iv. Reducing the amount of water demand by reducing the amount or altering the type of planned future development.

(g) An assessment of nonpoint source pollution impacts of planned future development shall be conducted and it shall be demonstrated that the environmental standards for stormwater, riparian zones, and steep slopes established in this section, as well as measures identified in adopted TMDLs or watershed restoration plans, shall be met.

1. Ground water recharge shall be maintained and stormwater runoff quantity and quality shall be controlled in accordance with the requirements of the Stormwater Management rules, N.J.A.C. 7:8. Compliance with this standard shall be demonstrated by submission of an adopted stormwater management plan and an ordinance that conforms with the requirements of N.J.A.C. 7:8.

2. Riparian zones adjacent to all waters as described below in this paragraph shall be protected from avoidable disturbance:

i. The riparian zone is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC 14 watershed;

ii. The riparian zone is 150 feet wide along both sides of the following waters not identified in (g)2i above:

(1) Any trout production water and any upstream tributary to a trout production water;

(2) Any trout maintenance water and all upstream tributaries within one mile;

(3) Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream tributaries within one mile; and

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(4) Any segment of a water flowing through an area that contains acid producing soils; and

iii. A riparian zone 50 feet wide shall be maintained along both sides of all waters not subject to (g)2i or ii above.

3. Compliance with the riparian zone standard shall be demonstrated by submission of copies of municipal ordinances that prevent new disturbance for projects or activities except as provided in (g)3i and ii below:

i. Redevelopment within the limits of existing impervious surfaces; and

ii. New disturbance in the riparian zone necessary to protect public health, safety or welfare; to provide an environmental benefit; to prevent extraordinary hardship on the property owner peculiar to the property; or to prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment.

4. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the riparian zone or buffer requirements imposed under any other Federal, State or local statute, regulation or ordinance.

5. Adjustments to the riparian zones established by this subsection are allowed to the extent they comply with the Stormwater Management rules, N.J.A.C. 7:8, the Flood Hazard Area Control Act rules, N.J.A.C. 7:13, the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38, and the Coastal Zone Management rules, N.J.A.C. 7:7E.

6. Steep slopes shall be protected from avoidable disturbance in accordance with this section. Compliance with this standard shall be demonstrated by submission of copies of municipal ordinances that prevent new disturbance for projects or activities except as provided in (f)6i and ii below:

i. Redevelopment within the limits of existing impervious surfaces; and

ii. New disturbance necessary to protect public health, safety or welfare; to provide an environmental benefit; to prevent extraordinary hardship on the property owner peculiar to the property; or to prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment.

7. A WMP, WMP update or WQM plan amendment shall include additional measures as specified in an adopted TMDL or watershed restoration plan.

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(h) Site specific wastewater management plan amendments shall not create a significantly new pattern of sewer development such that a significant potential or incentive is created for additional revisions or amendments to open new areas to sewer development. Site specific wastewater management plan amendments and revisions at N.J.A.C. 7:15-3.5(b)4 shall comply with the environmental standards of (d), (e), (f) and (g) above except as provided in (h)1 through 6 below:

1. Instead of performing the calculation at (d)1 above for the entire sewer service area, the calculation required at (d)1 above shall be performed for the proposed project or activity. Where a project or activity is proposed to be included within an existing sewer service area, the planning flow shall be compared to the wastewater generation potential previously calculated for the sewer service area and the permitted capacity of the receiving wastewater treatment facility. If the project or activity will cause the wastewater generation potential of the expanded sewer service area to exceed the permitted capacity of the receiving wastewater treatment facility, or if the project or activity is proposed to be served by a new wastewater treatment facility, then the analyses at (d)2 through (d)4 above apply;

2. Instead of the analyses at (d)4 and (e)1 and 2 above, the following apply:

i. For projects utilizing discharge to ground water that are allowed to proceed in accordance with this chapter where a wastewater management plan is not in compliance with the schedule at N.J.A.C. 7:15-23, demonstrate that the wastewater generated by the project or activity can be discharged in conformance with the nitrate planning standard of 2.0 mg/L, considering dilution available on the project site, using one of the methods in (h)2i(1) through (3) below, as appropriate to the type of development:

(1) For residential development, “A Recharge-Based Nitrate-Dilution Model for New Jersey v5.1” developed by the New Jersey Geological Survey, incorporated herein by reference, as amended and supplemented available at www.state.nj.us/dep/watershedmgt/rules.htm;

(2) For nonresidential development, “A Recharge-Based Nitrate-Dilution Model for Small Commercial Establishments in New Jersey, v1.1” developed by the New Jersey Geological Survey, incorporated herein by reference, as amended and supplemented available at www.state.nj.us/dep/watershedmgt/rules.htm; or

(3) An alternative analytical method approved by the Department that is designed to assess the impacts of nitrate discharged from individual subsurface sewage disposal systems;

ii. For projects utilizing discharge to ground water where a wastewater management plan is in compliance with the schedule at N.J.A.C. 7:15-23, demonstrate that the discharge of wastewater generated by the project or activity is consistent with attaining

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the nitrate planning standard within the HUC 11, taking into account the demonstration in the approved WMP;

3. Instead of providing the information at (f)1 above for the entire wastewater management planning area, the information required at (f)1 above shall be provided for the proposed project or activity. The water supply need for the proposed project or activity shall be compared to water availability as established in the most recent New Jersey State Water Supply Plan, regional water supply plans or adopted TMDLs, and in consideration of other needs within the HUC 11, where the WMP is in conformance with the schedule at N.J.A.C. 7:15-5.23. If the project or activity would cause an exceedance of the established water availability, either alone or in combination with the other water supply need identified in a WMP in conformance with the schedule, then the analyses at (f)3 above apply;

4. Instead of the stormwater management requirements at (g)1 above provide:

- i. Proof that the project or activity is exempt from the requirements of N.J.A.C. 7:8;**
- ii. Site specific stormwater design documentation to demonstrate the project or activity is in compliance with the requirements of N.J.A.C. 7:8; or**
- iii. Proof of a municipal waiver or variance for the proposed project or activity in accordance with N.J.A.C. 7:8 through a municipal mitigation plan;**

5. Instead of the riparian zone protection requirements at (g)2 above, demonstrate compliance with one of the following:

- i. The proposed project or activity is not in the riparian zone established at (g)2 above;**
- ii. The proposed disturbance in a riparian zone is for a linear development with no feasible alternative route. If the riparian zone is associated with Category One waters, the linear development must also meet the requirements of N.J.A.C. 7:8-5;**
- iii. The proposed disturbance of a riparian zone is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the Department;**
- iv. The proposed disturbance of a riparian zone is necessary to provide for public pedestrian access or water dependent recreation that meets the requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, the Flood Hazard Area Control rules, N.J.A.C. 7:13, or the Coastal Zone Management rules, N.J.A.C. 7:7E;**

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v. The proposed disturbance of a riparian zone is required for the remediation of hazardous substances performed with Department or Federal oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.;

vi. The proposed disturbance is for redevelopment that does not exceed the limits of existing impervious surfaces; or

vii. The proposed disturbance would prevent extraordinary hardship on the property owner peculiar to the property; or prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment; and/or

6. In lieu of the requirements at (g)6 above, demonstrate through site plans depicting proposed development and topography that new disturbance is not located in areas with a 20 percent or greater slope, except as provided in (g)6i and ii above.

7:15-5.26 Habitat Suitability Determination

(a) Where an area is excluded from a sewer service area in accordance with N.J.A.C. 7:15-5.24 on the basis that it is within habitat patch of Rank 3, 4 or 5 on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife, an applicant may seek a Habitat Suitability Determination from the Department if it wishes to rebut the presumption that a habitat patch of Rank 3, 4 or 5 on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife is accurate.

(b) An application for a Habitat Suitability Determination shall include:

1. A letter from the Department's Natural Heritage Program issued within six months of the date of application, stating if any threatened or endangered animals listed in the Natural Heritage database exist on or near the site. Information and forms relating to the Natural Heritage Program may be found on the Division of Parks and Forestry web page at www.nj.gov/dep/parksandforests/natural/heritage or obtained from the Office of Natural Lands Management, Natural Heritage Program at:

**Division of Parks and Forestry
New Jersey Department of Environmental Protection
P.O. Box 404
Trenton, New Jersey 08625-0404
Phone: (609) 984-1339
Fax: (609) 984-1427**

2. A description of the habitat requirements for each species identified in the

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Natural Heritage Program letter, including citations to appropriate literature and studies;

3. Three copies of a description of the parcel, including, but not limited to:

i. Vegetation, elevation, slope and aspect, and a description of any important topographic features such as cliffs, bluffs and sinkholes on or within 0.25 miles of the boundary of the site;

ii. The geology of the site as described in the most current USGS bedrock geologic maps, a description of bedrock and surficial deposits, and the location and description of any important geologic features such as talus and caves within 0.25 miles from the boundary of the site;

iii. The soil types on the site as most currently classified and mapped by the U.S. Department of Agriculture (U.S.D.A.) Natural Resources Conservation Service and the location and description of any important soil features present within 0.25 miles of the boundary of the site;

iv. The location and a description of all hydrologic features on the site such as rivers, streams, lakes, ponds, springs, seeps, vernal pools and waterfalls, as well as those located within 0.25 miles from the boundary of the site;

v. The location and a description of all evidence of natural or man-made disturbance both on the site and within 0.25 miles from the boundary of the site;

vi. The location and a description of all upland, wetland, and aquatic ecological vegetative communities on the site, based on quantitative data collected during the optimal time(s) of the year using appropriate, scientifically accepted terms of description and analysis techniques. Guidance with regard to appropriate classification systems and techniques may be found in Guidelines for Describing Associations and Alliances of the U.S. National Vegetation Classification by Jennings et al. (2003), The Ecological Society of America -- Vegetation Classification Panel, available at: www.esa.org/vegweb/NVC_guidelines_v3.pdf; Ecological Systems of the United States: A Working Classification of U.S. Terrestrial System by Comer et al. (2003), NatureServe, available at: www.natureserve.org/library/usEcologicalsystems.pdf; and Classification of Vegetation Communities of New Jersey: Second Iteration by Breden et al. (2001), Association for Biodiversity Information and New Jersey Natural Heritage Program, available at: <http://njedl.rutgers.edu/njdlib>, Record ID#1980. For each ecological community identified on the site, the evaluation shall include physiognomy, species composition with a list of the most abundant plant species by strata (canopy tree, subcanopy tree, shrub, vine, herbaceous, bryophyte), a description of successional stage, slope degrees and aspect, geologic substrate (as indicated in the most recent USGS bedrock geologic maps), soil texture and pH (as indicated in the most recent Soil Survey and

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verified by field sampling), depth to water table (as indicated in the most recent Soil Surveys), and hydrologic influences;

vii. A map showing the location and composition of ecological communities on the site and the location of important topographical, geological and hydrological features identified in (b)3iv above;

viii. The results of threatened or endangered animal species surveys for the purpose of supplementing scientific data regarding the suitability of a particular habitat for a particular species that were conducted in consultation with the Department and in accordance with all Federal and State laws and regulations, including for each species surveyed: the survey method, the surveyor's name(s), dates and times surveys were performed, number of samples, and number of replications;

ix. The names, addresses and professional qualifications of all persons who performed habitat evaluations, and/or species surveys relied upon to support the application for the Habitat Suitability Determination;

x. A copy of any other relevant animal survey or report to which the applicant or their agent has access; and

xi. Any other information relevant to assessing the suitability of habitat on the site for any threatened or endangered animal species.

(c) In making a Habitat Suitability Determination, the Department shall consider as suitable habitat any site that, based on the best available scientific information, provides all of the components necessary to sustain any threatened or endangered animal species, including, but not limited to, nesting or breeding areas, foraging or feeding areas, resting or roosting areas, hibernacula or denning areas, migratory and/or movement pathways, areas necessary for lifecycle completion, or any site that is a part of a larger habitat area that provides all of the components necessary to sustain the threatened or endangered animal species in question. The determination shall be based upon evaluation of the following:

i. The information provided by the applicant under (b) above;

ii. Information available to the Department identifying which, if any, threatened or endangered animal species may have suitable habitat on the site. Such information includes, but is not limited to, the Landscape Maps, Natural Heritage Database, records of documented species occurrences and public comment;

iii. Scientific information related to the life history characteristics and habitat needs of the species;

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iv. The results of any animal species surveys done in consultation with the Department and in accordance with the survey procedures at N.J.A.C. 7:7E-3C.4(a) and (b); and

v. The extent to which the site contains the characteristics of suitable habitat for each threatened and endangered animal species, including onsite and adjacent vegetation structure and composition, soil characteristics, wetland characteristics and hydrologic conditions, surrounding land use and disturbance levels, and any other factor that may affect the habitat suitability for any threatened or endangered animal species that are identified as part of on-site inspection(s).

(d) Based on the information provided in (b) above and the Department's analysis at (c) above, the Department will:

- 1. Issue a letter finding that the parcel is not suitable habitat;**
- 2. Issue a letter finding that the parcel is suitable habitat; or**
- 3. Notify the applicant that seasonal conditions do not permit an accurate assessment of habitat, explain the seasonal conditions involved, and give the applicant the option of either accepting a finding that the site constitutes suitable habitat for that species, or waiting until the Department can determine the suitability of habitat.**

SUBCHAPTER 6. WATER QUALITY LIMITED SEGMENTS LISTS AND TOTAL MAXIMUM DAILY LOADS

7:15-6.1 Scope and purpose

This subchapter sets forth the processes for identifying and listing water quality limited segments, setting the priorities and schedule for development of total maximum daily loads (TMDLs) to address impairments in water quality limited segments, and for developing TMDLs and plans to implement TMDLs.

7:15-6.2 Listing of water quality limited segments

(a) The Department shall develop lists of water quality limited segments in accordance with the Federal requirements at 40 CFR 130.7(b), incorporated herein by reference; Federal information or guidance concerning the Clean Water Act Section 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions; the USEPA guidance document titled Information Concerning 2008 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions – Diane Regas – October 12, 2006 (available at <http://www.epa.gov/owow/tmdl/policy.html>) incorporated herein by reference, as amended and supplemented; and pursuant to the process set forth in (b) through (g) below.

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(b) The Department has developed and shall, from time to time, revise a document known as the Integrated Water Quality Monitoring and Assessment Methods document in accordance with 40 CFR 130.7(b)6 that sets forth assessment methods used to develop the List of Water Quality Limited Segments required by Section 303(d) of the Federal Clean Water Act (33 U.S.C. §1313(d)).

(c) The Department shall publish a notice in the New Jersey Register and on its website <http://www.state.nj.us/dep/wms/bwqsa/generalinfo.html> to solicit water quality data to be considered in the development of the List of Water Quality Limited Segments.

(d) The Integrated Water Quality Monitoring and Assessment Methods document describes:

1. The quality assurance requirements for data used to evaluate water quality and support of designated uses;

2. The methods used to evaluate water quality data, assess water quality standards attainment and identifying water quality limited segments; and

3. The basis for assigning the priority for development of TMDLs for the waterbody and pollutant combinations identified on the List of Water Quality Limited Segments, also known as the 303(d) list.

(e) The Department shall publish a notice in the New Jersey Register and on its website to provide the public with the opportunity to provide comment on revisions to the Integrated Water Quality Monitoring and Assessment Methods Document prior to applying the revised assessment methods in developing the next List of Water Quality Limited Segments in (f) below.

(f) The Department shall revise, on a biennial basis, the List of Water Quality Limited Segments in accordance with the Integrated Water Quality Monitoring and Assessment Methods in effect at that time. The list shall indicate those water quality limited segments that are scheduled for the development of TMDLs while the list is in effect.

(g) The Department shall propose the List of Water Quality Limited Segments as an amendment to the Statewide Water Quality Management Plan, provide an opportunity for public comment and adopt the amendment in accordance with N.J.A.C. 7:15-6.4.

7:15-6.3 Total maximum daily loads

(a) Pursuant to the process set forth in (b) and (c) below, the Department shall develop total maximum daily loads (TMDLs) for water quality limited segments in

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accordance with:

1. The Federal requirements at 40 CFR 130.7(c) and (e), incorporated herein by reference, including all future amendments and supplements; and

2. The following USEPA guidance documents, incorporated herein by reference, including all future amendments and supplements, available at www.nj.gov/dep/watershedmgt/tmdl.htm:

i. USEPA. 2002. EPA Review of 2002 Section 303(d) Lists and Guidelines for Reviewing TMDLs under Existing Regulations issues in 1992. Office of Wetlands, Oceans and Watersheds Memorandum from: C.H. Sutfin, dated October 2002;

ii. USEPA. 2002. Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs. Office of Wetlands, Oceans and Watersheds Memorandum from: R.H. Wayland, III, dated November 22, 2002; and

iii. USEPA. 2006. Establishing TMDL “Daily” Loads in Light of the Decision by the U.S. Court of Appeals for the D.C. Circuit in *Friends of the Earth, Inc. v. EPA, et al.*, No.05-5015, (April 25, 2006) and Implications for NPDES Permits. Office of Water Memorandum from: B. H. Grumbles, dated November 15, 2006.

(b) A TMDL document shall include the following components:

1. An identification of segment(s), pollutant(s) of concern, pollutant sources and the priority for the subject TMDL as identified in the 303(d) list;

2. A description of applicable water quality standards and the water quality target(s) selected for the pollutant(s) of concern;

3. Identification of critical conditions considering seasonal variation;

4. The loading capacity of the segment with respect to the pollutant(s) of concern under the identified critical conditions and identification of the means used to relate actual and predicted water quality to pollutant loads;

5. Allocation of the loading capacity among the following:

i. Load allocations for nonpoint sources of pollutant load;

ii. Wasteload allocations for point sources of pollutant load;

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iii. A margin of safety required to included the overall load reductions required to account for uncertainties in the data used in the analysis, the model or other tool use to link water quality and pollutant loads, or the effectiveness of controls available to reduce pollutant loads; and

iv. An optional reserve capacity to allow for future growth;

6. An implementation plan that shall include the strategies designed to achieve attainment of the Surface Water Quality Standards or other more stringent target, a proposed schedule for implementation, and the methods to measure the effectiveness of the strategies; and

7. A summary of the opportunities provided and outcomes of public participation in the development of the TMDL.

(c) In addition to the public participation opportunities identified at N.J.A.C. 7:15-6.4, the Department may provide opportunities for public participation in the TMDL development process, based upon anticipated interest, which may include the following:

1. The Department may hold one or more informational meetings, at any point during the development of a TMDL and solicit comments on the components of the TMDL; and

2. The Department may inform or consult with the public through web postings or electronic communication with groups or individuals that have an interest in the affected watershed, regarding components of the TMDL.

7:15-6.4 Amendment procedures

(a) The Department shall propose an amendment to the Statewide Water Quality Management Plan for a revised List of Water Quality Limited Segments or to the applicable areawide Water Quality Management plan(s) for a TMDL document(s) as follows:

1. The Department shall publish a notice of proposed amendment to the Statewide or applicable areawide WQM Plan in the New Jersey Register, on the Department's website at www.state.nj.us/dep and in a newspaper(s) of general circulation in the affected area(s). The public notice shall specify the means to access the subject document electronically or by hard copy and the procedure for submitting comments. The Department may determine to hold a nonadversarial public hearing in anticipation of sufficient public interest. If so, the location, time and place of the hearing will be identified in the notice. A minimum comment period of 30 days will be provided. If a public hearing is to be held, at least 30 days notice of the hearing will be provided and the comment period will remain open until 15 days after the public hearing;

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2. The Department may alternatively determine to hold a nonadversarial public hearing in response to expression of sufficient public interest, as defined under N.J.A.C. 7:1D-5.2, received within 30 days of the publication of the notice in (a)1 above. If the Department determines to hold a nonadversarial public hearing in response to a request, notice of the public hearing shall be provided on the Department's website at www.state.nj.us/dep and in a newspaper(s) of general circulation in the affected area. The Department shall additionally provide notice of the public hearing to those requesting the hearing. The Department shall provide a 30-day notice period prior to the public hearing and a 15-day public comment period after the hearing;

3. At the conclusion of the public comment period, the Department will make any appropriate revisions to the document(s) and for TMDLs, prepare a response document to the comments. The Department shall either:

i. Establish the List of Water Quality Limited Segments or the TMDL as proposed;

ii. Establish all or portions of the List of Water Quality Limited Segments or the TMDL with changes which do not effectively destroy the value of the public notice regarding the proposed List of Water Quality Limited Segments or TMDL, as applicable; or

iii. Re-propose in accordance with (a)1 above, all or portions of the List of Water Quality Limited Segments or the TMDL with substantive changes; and

4. The Department shall submit the established List of Water Quality Limited Segments or the established TMDL, including the response to comments received, to the USEPA for approval.

(b) Upon receipt of a response from USEPA, the Department shall:

1. Amend the document in accordance with USEPA comments and repropose the amendment if USEPA requests substantive changes that effectively destroy the value of the original public notice; or

2. Adopt the document(s) as an amendment to the Statewide Water Quality Management Plan or areawide Water Quality Management plan(s), as applicable, by placing a notice in the New Jersey Register and the Department's website at www.state.nj.us/dep/wms/bwqsa for the List of Water Quality Limited Segments and www.nj.gov/dep/watershedmgt/tmdl.htm for TMDLs. This step constitutes final agency action.

SUBCHAPTER 7. (RESERVED)

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SUBCHAPTER 8. WITHDRAWAL AND REDESIGNATION OF WASTEWATER SERVICE AREAS

7:15-8.1 Withdrawal of wastewater service area designations

(a) Except as provided in (b) and (d) below, wastewater service area designations shall be withdrawn in areas which fail to adopt and maintain a wastewater management plan in accordance with the requirements of N.J.A.C. 7:15-5.2(b), 5.13 and 5.23. Withdrawal of wastewater service area designations under this subsection shall not impact areas where sewers are physically installed and wastewater generating structures are lawfully connected to the collection and treatment system at the time of withdrawal.

(b) Wastewater service area designations for the following are not withdrawn under (a) above:

1. Projects involving the lateral connection of an infill area to an existing public sewer line, where sanitary or combined sewer infrastructure lawfully exists in the right-of-way adjoining the lot or lots such that a connection can be made without crossing any property lines other than that of the lot to be served and where such connection does not require the extension of a collection system. The sewer line, lots, and improvements on the lots must exist on the date that wastewater service area was withdrawn;

2. Except as provided in (d) below, projects that have received, prior to the effective date of the wastewater service area withdrawal, both a local preliminary or final site plan approval or subdivision approval where subsequent site plan approval is not required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (MLUL) or a municipal construction permit; and a Department TWA or NJPDES permit, if one is required, until such time as one of those qualifying approvals expires;

3. Projects that have received a site specific WOM plan amendment or revision adopted prior to the date of wastewater service area withdrawal remain valid for a period of six years from the date of adoption of the amendment or revision; and

4. Projects that require an industrial treatment works that does not handle process wastewater or sanitary sewage.

(c) Areas for which wastewater service area designations are withdrawn under this section are re-designated as ground water general wastewater service area designation for planning flows of 2,000 gallons per day or less. The following wastewater facilities with discharges to ground water are deemed to be consistent with this new designation:

1. Wastewater facilities serving non-residential development that discharge to ground water with a daily maximum planning flow of 2,000 gallons per day or less when

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calculated in accordance with the expected volume of sanitary sewage criteria at the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A-7.4; or

2. Individual or other subsurface sewage disposal systems serving residential development or subdivisions resulting in a total of fewer than six dwelling units.

i. For the purpose of determining the total number of dwelling units, previous development shall be taken into account. Previous development includes development constructed after (the effective date of this rule). Previous development to be taken into account in determining if the development qualifies includes:

(1) The construction of any residential development on contiguous parcels of property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drainage fields;

(2) The construction of any residential development on contiguous parcels of property which were under common ownership on or after (the effective date of this rule), regardless of present ownership, or on parcels created by subdivision or resubdivision of land which occurred after (the effective date of this rule);

(3) The construction of any residential development on contiguous parcels of property after (the effective date of this rule) where there is some shared pecuniary, possessory or other substantial common interest by one or more individuals in the units; and

(4) The addition of one or more dwelling units where such addition, when combined with the dwelling units constructed after (the effective date of this rule), results in a total of six or more dwelling units;

3. Wastewater facilities with a discharge to ground water including individual and other subsurface sewage disposal systems, associated with a development for which one of the following applies:

i. Projects that have a valid approval issued by the Department, as of (the effective date of these rules), for construction of 50 or more realty improvements issued pursuant to the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq.;

ii. Except as provided in (d) below, projects that have received, prior to (the effective date of this rule), both a local preliminary or final site plan approval or subdivision approval where subsequent site plan approval is not required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. or a municipal construction permit and a permit to construct or alter issued by the administrative authority under N.J.A.C. 7:9A-3.5 until such time as one of those qualifying approvals expires; and

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4. Repair or minor expansions of existing wastewater facilities with a discharge to ground water provided the total wastewater generated is 2,000 gallons per day or less.

(d) For a public school, in lieu of the MLUL approvals in (b)2 or (c)3ii above, a facility that provides evidence of compliance with statutory provisions of the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. in the form of a planning board response dated prior to (the effective date of this rule) or expiration of the 45-day courtesy comment period that municipal planning boards are allotted to provide recommendations to the school board and Department of Education prior to (the effective date of this rule).