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ENVIRONMENTAL PROTECTION

LAND USE MANAGEMENT

DIVISION OF WATER SUPPLY

Water Supply Loan Programs

Proposed Readoption: **N.J.A.C. 7:1A**

Authorized by: Lisa P. Jackson, Commissioner

 Department of Environmental Protection

Authority: Water Supply Bond Act of 1981, as amended by P.L. 1983 c.355;

 N.J.S.A. 13:1B-3; 13:1D-9; 40A:11-1 et seq.; 58:1A-1 et seq.;;

 N.J.S.A. 58:12A-1 et seq.; and N.J.S.A. 58:12A-22 through

 58:12A-25

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

 requirement.

DEP Docket Number: _____

Proposal Number: PRN-_____

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Submit written comments by (60 days after publication) to:

Oneida Cuevas, Esq.

Attention: DEP Docket Number:

Office of Legal Affairs

Department of Environmental Protection

P.O. Box 402

Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a 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.state.nj.us.dep>.

The agency proposal follows:

Summary

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

In accordance with the “sunset” provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Water Supply Loan Programs rules, N.J.A.C. 7:1A, expire on May 10, 2007. Pursuant to N.J.S.A. 52:14B-5.1c, this notice of proposal extends the expiration date by 180 days to November 6, 2007. The Department has evaluated these rules, and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated, since the rules enable the Department to continue to process and administer outstanding loan agreements for applications received prior to June 30, 1997 (as discussed further below).

The Department is proposing to readopt without amendments the Water Supply Loan Programs rules, N.J.A.C. 7:1A. The Water Supply Loan Programs rules establish consolidated loan application procedures, minimum standards of conduct for borrowers, and performance standards for work funded under the water supply loan programs, in accordance with Water Supply Bond Act of 1981, as amended by P.L. 1983, c. 355, and the Water Supply Replacement Trust Act, N.J.S.A. 58: 12A-22 et seq.

The Bond Act authorizes the issuance of \$350 million in State bonds to fund State or local projects for (1) the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply facilities; (2) the interconnection of unconnected or inadequately connected water supply systems; and (3) the planning, design, acquisition and construction of State water supply facilities, as recommended by the New Jersey Statewide Water

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Supply Plan. In 1983, the Bond Act was amended to authorize the use of water supply bond funds for financing local projects for planning, designing and constructing water supply facilities which address contamination problems, as identified by the Department.

The Trust Act created the Water Supply Replacement Trust Fund. The Trust Fund is used, in part, to provide loans to municipalities or municipally-owned public water systems (as defined at N.J.S.A. 58:12A-3) for the purpose of providing a permanent alternate water supply to persons whose principal source of potable water is contaminated or is threatened with contamination by hazardous substances, as identified by the Department. In 1989, the Trust Act was amended to authorize the use of the Trust Fund for loans to privately-owned public water supply systems in situations where a principal source of potable water fails to meet the State primary drinking water standards, as established by regulation by the Department. (See P.L. 1989, c.311)

The following is a summary of the rules proposed for re adoption.

Subchapter 1. General Provisions

N.J.A.C. 7:1A-1 contains the general provisions of these rules, including their scope, construction, purpose and severability, and the procedures to be followed in situations where the rules do not govern.

Subchapter 2. Loan Procedures and Requirements

N.J.A.C. 7:1A-2 sets forth the detailed procedures and requirements for obtaining a loan under

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the Bond Act or the Trust Act. This subchapter contains: (1) definitions; (2) mandatory preapplication and application procedures; (3) procedures for the Department's determination of loan amounts and eligible project costs; (4) procedures for the disposition of unused loan funds; (5) a requirement for the return of loan repayments to the Bond Fund and the Trust Fund; (6) a prohibition against fraud and other unlawful or corrupt practices; (7) debarment guidelines; (8) standard loan conditions applicable to all loans issued under this chapter; (9) conditions for release of State funds to borrowers; (10) rights and remedies for noncompliance; and (11) conditions under which funds may be withheld by the State. Additionally, procedures and standards for the following are enumerated: (1) project changes and loan modifications; (2) administrative loan changes; (3) issuance of stop work orders; (4) amendment and termination of loans; and (5) appeals and administrative hearings.

Subchapter 3. Rehabilitation

N.J.A.C. 7:1A-3 sets forth the eligibility criteria and priority point ranking system pursuant to which an applicant may obtain a loan under the Bond Act for the rehabilitation, improvement or repair of an antiquated, obsolete, damaged or inadequately operating water supply transmission or treatment facility.

Subchapter 4. Interconnection

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N.J.A.C. 7:1A-4 sets forth the eligibility criteria and priority point ranking system pursuant to which an applicant may obtain a loan under the Bond Act for the interconnection of unconnected or inadequately connected water supply systems.

Subchapter 5. Water Supply Replacement Projects (Type A Loans and Type B Loans)

N.J.A.C. 7:1A-5 sets forth the loan eligibility criteria and priority point ranking system to which a local unit may obtain a loan when it has received notification from the Department that ground water supply contamination problems exist within its jurisdiction which adversely affect the potable water service of at least three dwelling units. Loans will be made pursuant to the Bond Act for a water supply project designed to relieve the impact of the contaminated groundwater upon the existing water supply. This type of water supply replacement loan is designated under these rules as a Type A loan.

This subchapter also sets forth the eligibility criteria and priority point ranking system to which a municipality or municipally-owned public water system may obtain a loan pursuant to the Trust Act for a water supply project designed to address contamination problems. This type of water supply replacement loan is designated under these rules as a Type B loan.

Subchapter 6. Emergency Interim Rehabilitation Loan Procedures

N.J.A.C. 7:1A-6 prescribes detailed procedures and requirements pursuant to which a publicly

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owned water supply facility may obtain an emergency interim rehabilitation loan under the Bond Act for the purpose of interim rehabilitation and repair of critical water supply service disruptions.

Subchapter 7. Water Supply Replacement Projects (Type B Loans or Type C Loans)

N.J.A.C. 7:1A-7 governs the disposition of the Trust Fund, the amount and terms of Type B and Type C water supply replacement loans, eligibility criteria for Type B water supply replacement loans, and the priority point ranking system for Type B and Type C water supply replacement loans.

Under this subchapter, a water supply replacement loan for a water supply project to address contamination problems may be awarded from the Trust Fund to a municipality meeting the special criteria set forth at N.J.A.C. 7:1A-7.4(b). (See also N.J.S.A. 58:12A-25) This type of water supply replacement loan is designated as a Type C loan. The Department has executed one Type B and one Type C water supply replacement loan to a municipality meeting the N.J.A.C. 7:1A-7.4 criteria, for a total commitment of \$8.6 million in funding under the Trust Act.

Subchapter 8. Water Supply Treatment Projects

N.J.A.C. 7:1A-8 sets forth the eligibility criteria and priority point ranking system pursuant to which an applicant may obtain a loan under the Bond Act for water supply facilities that lack treatment facilities or for treatment facilities that are in need of improvement, rehabilitation or repair.

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As noted above, the Bond Act requires the Department to fund projects in accordance with the recommendations of the New Jersey Statewide Water Supply Plan. The Plan originally recommended appropriation levels of \$160 million in rehabilitation funding, \$15 million in interconnection funding, and \$25 million in replacement funding as necessary to meet the State's water supply goals.

To date, the Legislature has appropriated \$142 million in Bond Act funds for the Department to apply to water supply rehabilitation loans. The Department has executed 148 water supply rehabilitation loan agreements committing \$101.2 million of the \$142 million in appropriations. There are no outstanding or new water supply rehabilitation loan applications.

The Legislature has also appropriated \$8 million in Bond Act funds for the Department to apply to water supply interconnection loans. The Department has executed six water supply interconnection loan agreements committing \$1.5 million of the \$8 million in appropriations. There are no outstanding or new water supply interconnection loan applications.

The Legislature has also appropriated \$27 million in Bond Act funds for the Department to apply to water supply replacement loans. The Department has executed twenty water supply replacement loan agreements committing \$21.9 million of the \$27 million in appropriations. There are no outstanding or new water supply replacement loan applications.

The Federal Safe Drinking Water Act amendments of 1996 authorized the creation of a Drinking Water State Revolving Fund to assist water systems to finance the costs of infrastructure needed to achieve or maintain compliance with the Act. Therefore, there has been a Drinking Water Revolving Fund program financing drinking water improvement projects in all states since 1998 and

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no new applications have been accepted under the Water Supply Loan Programs rules since June 30, 1997. Currently, under the Water Supply Loan Program rules, the Department only processes and administers outstanding loan agreements for applications received prior to June 30, 1997.

Thus, N.J.A.C. 7:1A continues to be necessary to enable the Department to administer these outstanding loans over the length of the loan repayment period, and to process and administer pending loan agreements and loan agreements expected to be executed.

Social Impact

The rules proposed for readoption will continue the positive social impact of the existing rules. To date, the Water Supply Loan Programs have facilitated the execution of 176 loan agreements for the improvement of water supply systems throughout the State. As a result, the quality of life has improved in many communities formerly burdened with antiquated, obsolete, damaged or inadequately operating water supply facilities or whose water supply was contaminated by hazardous substances. In addition to enhancing and protecting public health and safety, the improvements financed under the existing rules have also served to protect property values, allow development and revitalization, and reduce future water supply maintenance and repair costs in these communities. In some cases, this has allowed municipalities to focus more attention and expenditures on other programs within their communities.

Economic Impact

The Department acknowledges that a number of positive economic impacts will continue to

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result from the rules proposed for readoption. The primary beneficial economic impact of the rules proposed for readoption are the low-interest loans that the Department continues to disburse for water supply projects. This has allowed recipient communities to decrease their debt burden by substituting less expensive financing for planned water supply work. This has also allowed less affluent communities to undertake water supply rehabilitation and replacement work that might otherwise have been deferred.

While water supply loans require repayment in accordance with the Bond Act, the Trust Act, and these rules, the affected communities have still realized economic benefits through the improvement of their water supply facilities. In addition to protecting public health and safety, these improvements have served to protect property values, allow development and revitalization, stabilize or reduce water utility rates, and lessen future water supply-related maintenance, repair and response costs in these communities.

The \$134.1 million in water supply financing awarded over the past 24 years has also had a positive impact throughout the State by making subcontracts available for the capital construction and engineering aspects of funded water supply projects. As mentioned in the Summary above, the Department has not accepted new applications for loans since June 30, 1997. However, where the Department is still disbursing funds, the Department anticipates the same positive economic impact will apply.

The cost to the Department of administering the water supply loan program has been and will continue to be funded from appropriations under the Bond Act and the Trust Act. Therefore, although the Department incurs administrative expenses and allocates staff time for the purpose of

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administering this program, an adverse economic impact on the Department is not expected.

Environmental Impact

The Department anticipates that the rules proposed for readoption will continue the environmental impact of the existing rules. To date, the water supply loan program has executed 176 loan agreements for the improvement of water supply systems throughout the State. In addition to assuring that the public has a suitable supply of potable water, the rehabilitation, replacement and interconnection of water supply systems financed under these rules has served to conserve potable water supplies throughout the State.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The rules proposed for readoption are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

Applicants for loans under the Drinking Water State Revolving Fund are specifically required to comply with the provisions of the Safe Drinking Water Act rules, N.J.A.C. 7:10, which apply generally to water supply systems. A Federal standards analysis of the Safe Drinking Water Act rules is set forth at 36 N.J.R. 295(a), specifically 305.

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Jobs Impact

The following four different job-related areas may potentially be affected by the rules proposed for readoption:

- (1) State Jobs: The Water Supply Loan Programs have been in existence since 1982, and were created by the Bond Act and recommended by the Plan. The Plan recommended continuation of the loan programs and recommended a broadening of the types of local water supply projects to be funded. There is no job growth anticipated in this program in the near future.
- (2) Water industry jobs: The water supply improvement projects provide greater water system efficiency, thus allowing water systems to utilize existing employees to provide greater focus on water facility needs that may otherwise be neglected. The rules proposed for readoption are not expected to create new jobs or eliminate any jobs in the water industry.
- (3) Other related industry jobs: The planning, design and construction of water supply improvement projects requires geological, hydrological, engineering, inspection, legal, financial, and other professional services. These professional services are necessary for the planning, design and construction of any water supply improvement project. The construction of water supply improvement projects requires construction industry services to accomplish the desired improvements intended for the benefit of water supply system customers. The jobs created in the professional and construction industries to accomplish the water supply improvements are temporary and last for the duration of the planning,

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design, and construction phases of any improvements projects. The Department anticipates that job opportunities will continue to exist upon the readoption of these rules.

(4) Other jobs: The improvements to water supply systems enhance water system reliability and improve consumer confidence. Such improvements aid the economic revitalization of communities attempting to attract businesses dependent upon adequate and reliable water supply. As a result of this continued revitalization, the Department anticipates that the rules proposed for readoption may have some indirect benefit to the creation of jobs.

Agricultural Industry Impact

The rules proposed for readoption will have no direct impact on New Jersey's agriculture industry. The agriculture industry does, however, benefit generally from improved water supply systems that benefit as a result of funding assistance facilitated by these rules.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., the Department has determined that the rules proposed for readoption will not impose reporting, recordkeeping, or other compliance requirements on small business as defined by the Act, other than requirements already imposed on these businesses by the Water Supply Bond Act of 1981, as amended by P.L. 1983 c. 355, the Water Supply Replacement Trust Act, N.J.S.A. 58:12A-22 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Local Public Contracts Rules, N.J.A.C. 5:34, and accounting

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principles required by State law.

The Bond Act provisions of these rules only apply to publicly owned water purveyors seeking to obtain loans from the Department to finance water supply projects; these entities do not qualify as a small business, as defined by the Act. Likewise, municipalities and municipally owned public water systems applying for funding under the Trust Act provisions of these rules also do not qualify as a small business. However, it is possible that the operators of privately owned public water systems, which are eligible for Trust Act funding, may meet the Act's definition of a small business. As mentioned in the Summary above, the Department has not accepted new applications under the Water Supply Loan Programs since June 30, 1997. With regards to these types of outstanding loan agreements, there are no pending loans with businesses that qualify as a small business.

Smart Growth

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the rules proposed for re adoption at N.J.A.C. 7:1A on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the impact of the rules proposed for re adoption on smart growth and the implementation of the State Plan. All loan agreements for the distribution of funds made available by the Bond Act have been executed. In all cases, construction plans and specifications have been reviewed and approved, and construction plans have been completed, except for one loan project. Since the planning aspects of this financial program have been completed, there is no impact on smart growth and the implementation of the State Plan, except to the extent that processing and administering outstanding loan agreements for applications received prior to June 30, 2007 supports water supply protection and conservation.

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Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1A.

CERTIFICATION

Based on consultation with staff, I hereby certify that the above statements including the Federal standards statement addressing the requirements of Executive Order 27 (1994), permits the public to understand accurately and plainly the purposes and expected consequences of this proposed readoption. I hereby authorize this proposal.

Date

Lisa P. Jackson, Commissioner