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**ENVIRONMENTAL PROTECTION  
DAM SAFETY**

**Dam Restoration and Inland Waters Projects Loan Program**

**Proposed Readoption without Amendment: N.J.A.C. 7:24A**

Authorized By: Bob Martin, Commissioner,  
Department of Environmental Protection

Authority: N.J.S.A. 58:4-1 et seq., 13:1D-9 et seq.; Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88; and Dam, Lake, Stream, Flood Control, Water Resources and Wastewater Treatment Project Bond Act of 2003, P.L. 2003 c.162.

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

DEP Docket Number: 04-10-08

Proposal Number: PRN

Submit written comments by November 19, 2010 to :

Gary J. Brower, Esq.  
Attention: DEP Docket No.: 04-10-08  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
401 East State Street, Floor 4  
PO 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. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™

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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.

The proposed readoption without amendments can be viewed or downloaded from the Department's website at <http://www.state.nj.us/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.

Pursuant to Executive Order No. 66(1978) and N.J.S.A. 52:14B-5.1, the Dam Restoration and Inland Waters Projects Loan Program rules, N.J.A.C. 24A, expire on August 11, 2010. The Department has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, the Department proposes to readopt these rules without amendment. Because the proposed readoption was filed before the expiration of this chapter, the expiration date was statutorily extended by 180 days, until February 7, 2011. See N.J.S.A. 52:14B-5.1c.

The Dam Restoration and Inland Waters Projects Loan Program rules set forth the procedures for distribution of funds made available from the 1992 Dam Restoration and Clean Water Trust Fund established by the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88 and the 2003 Dam, Lake, and Stream Project Revolving Loan Fund established by the Dam, Lake, Stream, Flood

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Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003, P.L. 2003, c.162 (the Bond Acts).

Both Bond Acts provide for the distribution of funds for loans to local government units and to private lake associations and private dam owners as co-applicants with a local government unit for dam restoration and inland waters projects. Because they are revolving loan funds, the Department is able to award additional loans as monies are repaid to the funds.

The rules proposed for re adoption at N.J.A.C. 7:24A establish the basic eligibility criteria for receiving a dam restoration or inland waters projects loan, the procedures for applying for and awarding a loan, the priority system for ranking projects for which funding is sought, the conditions borrowers must satisfy before receiving funds under a loan, and the Department's remedies when a borrower fails to comply with these rules or the loan agreement.

### **Social Impact**

The Dam Restoration and Inland Waters Projects Loan Program rules set forth procedures for the disbursement of loans from funds made available under the Bond Acts for the repair of dams in New Jersey which have deteriorated to a degree that substantial remedial construction has become necessary. Loans will also be made for inland waters projects, which include flood control projects, pollution control projects and recreation and conservation projects.

The priority ranking procedures established in the rules consider project impacts. High hazard dams earn the highest number of points since the failure of a high hazard

dam could potentially result in the loss of life. A project undertaken to restore a high hazard dam will contribute to the safety and well-being of people who live and work downstream of such deteriorated structures, including the impoundment.

The second highest priority projects include significant hazard dams and flood control projects. The failure of a significant hazard dam could potentially result in significant property damage. Such projects will contribute to the safety and well-being of people who live and work downstream of such deteriorated structures or in flood-prone areas. Flood control projects would provide protection from property damage.

The third highest priority projects include low hazard dams and pollution control projects. The failure of a low hazard dam would not threaten lives or property downstream, but could result in the loss of the impoundment and possibly erosion of the stream bed. Pollution control projects improve water quality since the construction or rehabilitation of a water conveyance or containment facility is intended to abate pollution from stormwater runoff, soil erosion or other non-point sources in previously developed areas.

The lowest priority projects include recreation and conservation projects. Recreation and conservation projects would have a positive social impact because lake dredging and/or restoration, stream cleaning and the construction of other water-quality related facilities enhance recreational fishing and wildlife habitat.

The rules proposed for readoption without amendment enable the Department to continue in full force and effect the program of dam restoration and inland waters projects funding, which will contribute to the safety and well-being of those who live and work near deteriorated structures and enhance water quality in the State.

### **Economic Impact**

The rules proposed for re adoption without amendment will result in a continuation of the orderly distribution of dam restoration and inland waters projects loan funds under the 1992 Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and the 2003 Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act. Consequently, the Department foresees a positive economic impact. This loan program assists municipal and county government units, private lake associations or similar organizations, and private dam owners in undertaking necessary and costly dam repairs and inland waters projects. Additionally, this loan program will generate jobs in the construction trades. Since the funds will be replenished as loans are repaid, they will provide a continuing funding source for dam restoration and inland waters projects.

The loan program will have an economic impact on the borrowers in terms of payment of interest on the loan. If the applicant is a private association or owner, and a local government unit has agreed to be a co-borrower, the local government unit may incur the cost of payment of the principal and interest on the loan if the borrower defaults on the loan agreement. Also, the local government unit will incur administrative costs, such as legal fees, if the local government unit agrees to be a co-borrower. Additionally, administrative costs would be incurred by the local government unit if it is necessary to assess the cost of payment of the principal and interest on a loan against the real estate benefited by the project. However, the administrative costs can be financed through the loan.

Administrative costs will be incurred by the Department for implementing the loan program. These administrative costs will include staff necessary to review applications and prepare loan award agreements. The loan award agreements will require financial and legal review. Administrative costs will also be incurred for the disbursement of loan funds. The Acts allow for monies to be appropriated for the Department to administer the program.

### **Environmental Impact**

The rules proposed for readoption without amendment will have a positive environmental impact since the loan funds will be used to restore, rehabilitate and improve the dams and waterways of the State.

The restoration of dams in the State will protect fisheries and the habitat around the impoundments created by these dams. Since these rules require that proposed projects obtain the necessary permits for construction from the Department, any potential adverse environmental impacts will be addressed prior to their funding.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 7:24A is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or

Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis.

### **Jobs Impact**

The Department anticipates the rules proposed for re adoption without amendment will have a positive impact on jobs. The rules proposed for re adoption without amendment govern the issuance of loans for construction projects. The projects will result in a number of jobs in the construction industry.

### **Agriculture Industry Impact**

Pursuant to N.J.S.A. 52:14B-4(a)2, the Department has reviewed the rules proposed for re adoption without amendment and has determined that they have the potential for positive impact upon the agricultural industry. The rules proposed for re adoption without amendment will continue the Dam Restoration and Inland Waters Projects Loan Program which, when money is available, may assist an owner of an agricultural dam or agricultural lands by funding, through a low interest loan, the repair of a dam used for water supply or construction of a flood control or pollution control facility.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping and other compliance requirements that the rules proposed for re adoption without amendments

would impose on small businesses. The Regulatory Flexibility Act defines the term “small business” as “any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.” Based on this definition, private lake associations and private dam owners may be small businesses.

Private lake associations and private dam owners are faced with the need to maintain their dams and waterways as required by the Department’s Dam Safety Standards, N.J.A.C. 7:20. Therefore, costs involved in obtaining a loan for funding the maintenance and restoration of a dam are often part of the normal operating costs or costs which must be incurred in order to comply with the Dam Safety Standards. However, private lake associations or private dam owners may qualify for a low interest loan from the State under the loan program established by this chapter. A private lake association or private dam owner must follow the application procedures and comply with the conditions imposed by the Department under this loan program. The administrative costs of applying and complying with the conditions of the loan are minor and are minimized by the following: Department staff are available for technical assistance in the application process; the documentation required by the State generally must be produced for compliance with the Dam Safety Standards as part of normal operations for maintenance and improvement projects, so the association or owner can rely on existing staff and available resources; and all requirements are clearly explained prior to the commencement of the project, thereby reducing unnecessary work.

To comply with the conditions of the loan, the private lake association or private dam owner will need to retain the services of certain businesses such as engineering

consultants and construction contractors. The association or owner bears the cost of professional services necessary to design the project; however, the costs are relatively small compared to the total construction cost of the project and are generally required in order to comply with the Dam Safety Standards or as part of normal operations for maintenance and improvement projects.

The costs for construction are also generally required for compliance with the Dam Safety Standards or as part of normal operations for maintenance and improvement projects. However, this program is intended to assist private lake associations and private owners in funding these often costly projects by offering a low interest loan with an extended maturity period.

The costs associated with complying with the loan requirements and conditions involve repayment of the loan plus interest. The interest rate is to be established at a rate not to exceed 2 percent per year. The loan maturity period will not exceed 20 years. Some additional costs may be incurred to comply with the accounting procedures required under the loan agreement. However, these accounting procedures are generally the same procedures that must be followed on the project regardless of State funding.

The purpose of this program is to assist local government units, private lake associations and private dam owners in restoration of their dams or for inland waters projects. The requirements imposed are the minimum necessary for efficient management of the program. Therefore, no lesser requirements or exemptions for small businesses have been provided.

### **Smart Growth Impact**

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 proposed rules 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 without amendment on smart growth and the implementation of the State Plan.

The Dam Restoration and Inland Waters Projects Loan Program rules establish procedures for administering funds for the restoration of existing dams and improving existing infrastructure, thereby minimizing the threat to the public safety, health and general welfare from dam failures. The rules proposed for re adoption without amendment do not allow for use of the funds for the construction of any new dams or infrastructure that may be associated with development.

Conservation of the State's natural resources is one of the overall goals of the State Plan. The rules proposed for re adoption without amendment fund the restoration of the State's deteriorating dams. This will ensure appropriate conservation of the State's natural resources by preventing the failure of these structures or an ordered removal due to safety concerns. Failure of a dam would result in the loss of valuable open water habitat and would have a negative effect on the environment surrounding the impoundments created by the dam.

### **Housing Affordability Impact**

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the proposed rule readoption without amendment to determine what, if any, impact they will have on the affordability of housing. The Department has determined that the rules will have no impact on the affordability of housing. The Dam Restoration and Inland Water Projects Loan Program rules at N.J.A.C. 7:24A do not implicate land use policies or development and, therefore, do not have any impact on the average cost of housing.

### **Smart Growth Development Impact**

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the proposed rule readoption without amendment to determine what, if any, impact these rules will have on smart growth development. The rules do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning areas 1, 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:24A.