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ENVIRONMENTAL PROTECTION

COMPLIANCE AND ENFORCEMENT

Water Pollution Control

Water Pollution Control Act Rules

Proposed Readoption: N.J.A.C. 7:14

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

Authority: N.J.S.A. 13:1B-3 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:10-23.11 et seq., 58-10A-1 et seq., 58:11-49 et seq., 58:11A-1 et seq., and 58:12A-1 et seq.

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

DEP Docket No:

Proposal Number: 13-09-09/728

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

Alice A. Previte, Esquire

Attention: DEP Docket Number 13-09-09/728

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street, 4th Floor

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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. Submittal of a disk or CD is not a requirement. 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. 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 web page at www.state.nj.us/dep/rules.

The agency proposal follows:

Summary

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

N.J.A.C. 7:14, the Water Pollution Control Act rules, was scheduled to expire on October 5, 2009, pursuant to the provisions of Executive Order No. 66 (1978). Timely filing of this

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proposal to readopt the rules without change extended the chapter expiration date until April 3, 2010, in accordance with N.J.S.A. 52:14B-5.1c. Chapter 14 contains the rules of the Department of Environmental Protection governing the construction of wastewater treatment facilities, and provisions regarding civil administrative penalties and adjudicatory hearings under the State's Water Pollution control Act, N.J.S.A. 58:10A-1 et seq. 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 rules without change.

Subchapter 2. Construction of Wastewater Treatment Facilities

N.J.A.C. 7:14-2 establishes construction standards for wastewater treatment facilities and defines the roles and responsibilities of the owner, the owner's representative or engineer and the construction contractor. This subchapter addresses such items as mobilization costs, payments to contractors, and eligibility of certain items for projects that receive Federal construction grant assistance.

Subchapter 8. Civil Administrative Penalties and Requests for Adjudicatory Hearings

N.J.A.C. 7:14-8 sets forth the procedures for the assessment, payment and settlement of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-64 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). In addition, it governs the Department's administrative assessment

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of costs pursuant to N.J.S.A. 58:10A-10d(1)(c), and the procedure for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or administrative order.

Social Impact

The rules proposed for readoption at N.J.A.C. 7:14-2 will continue to have positive social impacts. The rules in this subchapter apply to owners, the owners' representatives or engineers and construction contractors involved in the construction of wastewater treatment facilities in New Jersey. The standards define the roles and responsibilities of the affected parties and address the items that encourage sound contract documents and construction practices. The establishment of these standards often reduces conflicts between the owners and others on issues such as the issuance of change orders, bid protests and construction claims for additional work. As a result, conflicts between the owners and others, delays in project implementation, increased costs and other adverse impacts are minimized during the construction of wastewater treatment facilities in New Jersey.

The rules proposed for readoption at N.J.A.C. 7:14-8 will continue to have a positive social impact by discouraging noncompliance with the Water Pollution Control Act and the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.). The rules proposed for readoption will provide a uniform penalty policy for determining the amount of a civil administrative penalty for noncompliance.

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Economic Impact

The rules proposed for readoption at N.J.A.C. 7:14-2 will continue to have a positive economic impact. Cost savings related to the construction of wastewater treatment facilities are anticipated since the standardized construction requirements in this subchapter will reduce the

need for costly change orders. Thus, the standards reduce the costs to owners involved in the construction of wastewater treatment facilities.

The economic impact of the rules proposed for readoption at N.J.A.C. 7:14-8 will continue to be confined to violators of the Water Pollution Control Act and the New Jersey Underground Storage of Hazardous Substances Act. The extent of the economic impact on violators will continue to depend on the conduct of the violator, the seriousness of the violation, and the particular provision violated.

Environmental Impact

The Department anticipates that a positive environmental impact will result from the rules proposed for readoption at N.J.A.C. 7:14-2. The construction of wastewater treatment facilities is essential to the future of New Jersey. These facilities serve many purposes, including the removal of pollutants from raw sewage prior to discharge to the State's waterways and the protection of the public health. In turn, these facilities help maintain the recreational and ecological attributes of the waterways, such as swimming, shell fishing and other activities.

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The rules proposed for readoption at N.J.A.C. 7:14-8 will continue to have a positive environmental impact because the rules serve as a strong deterrent to those who would violate New Jersey's water resources statutes and the rules provide the regulated community with the incentive to conduct their activities in conformance with the Department's rules.

Federal Standards Analysis

N.J.S.A. 52:14B-1 et seq. and Executive Order No. 27 (1994) require State agencies that 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. 7:14-2 establishes construction standards and requirements for wastewater treatment facilities in New Jersey. The standards included in this subchapter are associated with such activities as mobilization costs, payment to contractors, and identifying the roles and responsibilities of the parties involved in the construction of wastewater treatment facilities to prevent conflicts, delays and cost increases.

The Department has determined that there are no Federal standards or requirements analogous to the rules proposed for readoption at N.J.A.C. 7:14-2. Accordingly, no Federal standards analysis is required.

The rules proposed for readoption at N.J.A.C. 7:14-8 contain requirements or standards that exceed Federal requirements or standards. New Jersey's Water Pollution Control Act, as amended by P.L. 1990, c.28 (see N.J.S.A. 58:10A-10), exceeds the Federal program by requiring that mandatory minimum penalties be assessed for certain types of violations and imposes

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restrictions upon settlement of these violations. The rules proposed for re adoption at N.J.A.C. 7:14-8 mandate penalties of \$1,000 for a serious violation, \$5,000 for a violation that causes the violator to be or continue to be in significant noncompliance and \$100.00 per day for up to 30 days for each effluent parameter omitted on a discharge monitoring report. Once assessed pursuant to this subchapter, penalties may be reduced up to 50 percent, provided that the reduced penalty is not less than the applicable minimum amounts set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e). The Federal statute at 33 U.S.C. §1319(g) provides the United States Environmental Protection Agency with the authority to assess administrative penalties, but there are no mandatory minimums or settlement restrictions set forth therein. The Department's experience during the approximately 17 years the mandatory penalty provisions have been in effect is that the financial effects have been, and will continue to be, minimal.

Jobs Impact

The Department does not expect that any jobs will be lost or created as a result of the rules proposed for re adoption at N.J.A.C. 7:14.

Agriculture Industry Impact

The rules proposed for re adoption are not expected to have any impact upon the agriculture industry. However, agricultural facilities that have discharges regulated under the New Jersey Pollutant Discharge Elimination System (NJPDDES) permit would be subject to the

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enforcement provisions of N.J.A.C. 7:14-8, including the assessment of civil administrative penalties, if they fail to comply with their permit discharge limitations or reporting requirements.

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 rules proposed for readoption at N.J.A.C. 7:14-2. The rules proposed for readoption apply to sewerage and utility authorities, engineering consultants and construction contractors, many of which are considered to be “small businesses” as defined by the New Jersey Regulatory Flexibility Act. To comply with these rules, the small businesses must design and construct wastewater treatment facilities in accordance with standardized procedures. The cost of compliance with these rules is anticipated to decrease the cost associated with the construction of wastewater treatment facilities because the standardized procedures will eliminate redundant and unnecessary procedures. Due to the standardization of the construction procedures, the compliance requirements of the rules are uniform in their application to those regulated. The Department has determined in order to protect public health and the environment from the pollutants in wastewater, that it would not be appropriate take into consideration the size of the business involved in the construction of wastewater treatment facilities. The Department has balanced the need to protect the environment against the economic impact of N.J.A.C. 7:14-2 and has determined that to minimize the impact on small businesses would endanger the environment, public health and public safety. No exemption from coverage, therefore, is provided.

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The Department has evaluated the rules proposed for readoption at N.J.A.C. 7:14-8, and has determined they do not impose reporting, recordkeeping, or compliance requirements upon businesses, be they large or small, provided they are operating in compliance with the Water Pollution Control Act and the rules promulgated thereunder. The rules proposed for readoption apply to municipal, county, State, Federal, commercial and industrial entities that discharge pollutants into the waters of the State. The costs associated with these rules for an entity found to be in violation of the Water Pollution Control Act would be the civil administrative penalty amounts. If the entity decided to adjudicate an enforcement action, there would be costs related to the litigation. In addition, should a violator of a NJPDES permit pursue the establishment of interim enforcement limits in an administrative consent order, the violator is responsible for providing public notice of the proposed interim enforcement limits and to make all necessary arrangements for scheduling, holding and paying for the public hearing. The Department has balanced the need to protect the environment against the economic impact of N.J.A.C. 7:14-8 and has determined that to minimize the impact on small businesses would endanger the environment, public health and public safety; therefore, no exemption from coverage is provided.

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 rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The proposed readoption of these rules does not relate to the State's land use and development policies in a way that would either encourage

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or discourage any development or redevelopment in this State contrary to guiding principles in the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008 by P.L. 2008, c. 46, the Department has evaluated the rules proposed for readoption to determine their impact, if any, on the affordability of housing. The Department has determined that the rules proposed for readoption will have no impact because it is extremely unlikely that the rules will evoke a change in the average costs associated with housing. The subject of the rules proposed for readoption is wastewater treatment facilities and penalties for violation of the NJPDES regulations, which have little if no impact on housing or its affordability.

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the rules proposed for readoption to determine their impact, if any, on smart growth development. The Department has determined that the rules proposed for readoption will result in an insignificant impact because it is an extremely unlikely that the rules will evoke a change in housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules proposed for readoption have no direct impact on the continued use and habitability of existing residences;

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rather, they regulate wastewater treatment facilities and establish penalties for entities that violate the NJPDES regulations. Therefore, the rules proposed for readoption will not evoke a change in housing production in Planning areas 1 or 2, or within designated centers.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:14.