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ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

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

Payment Schedule for Permit Application Fees

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

Authority: N.J.S.A. 13:1D-124.

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

DEP Docket Number: 09-10-09

Proposal Number: PRN 2010-____

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

Alice A. Previte, Esq.

Attention: DEP Docket Number 09-10-09

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

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. 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

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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

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

Pursuant to the requirements of Executive Order No. 66 (1978), the Payment Schedule for Permit Application Fees rules, N.J.A.C. 7:1L, were scheduled to expire September 28, 2010. The filing of this proposal with the Office of Administrative Law on or before that date automatically extended the expiration date 180 days, until March 27, 2011, in accordance with the Administrative Procedure Act. (See N.J.S.A. 52:14B-5.1c.) As required by the Executive Order, 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 this chapter without change.

The rules at N.J.A.C. 7:1L-1.1 through 2.7 establish a payment schedule for permit application fees that exceed \$1,000. The rules apply to permits issued under Federal law, or the following State laws: the laws governing waterfront and harbor facilities (N.J.S.A. 12:5-1 through 11); Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq., including without limitation N.J.S.A.

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13:1E-5 and 26); Comprehensive Regulated Medical Waste Management Act (N.J.S.A. 13:1E-48.1 through 48.25); the laws governing leaf composting facilities (N.J.S.A. 13:1E-99.21a through 99.21f); Statewide Mandatory Source Separation and Recycling Act (N.J.S.A. 13:1E-99.11 through 99.39, including without limitation 13:1E-99.21a through 99.21f); Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 through 18); Industrial Site Recovery Act (N.J.S.A. 13:1K-6 through 13); Toxic Catastrophe Prevention Act (N.J.S.A. 13:1K-19 through 32); Wetlands Act of 1970 (N.J.S.A. 13:9A-1 through 10); Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 through 30); Coastal Area Facility Review Act (N.J.S.A. 13:19-1 through 21); Air Pollution Control Act (N.J.S.A. 26:2C-1 through 19.5); Water Supply Management Act (N.J.S.A. 58:1A-1 through 17); the laws governing well drillers and pump installers (N.J.S.A. 58:4A-5 through 28); Water Pollution Control Act (N.J.S.A. 58:10A-1 through 14.6); the laws governing the underground storage of hazardous substances (N.J.S.A. 58:10A-21 through 37); Safe Drinking Water Act (N.J.S.A. 58:12A-1 through 25); and Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 through 66).

Under the fee payment schedule, one-third of the total fee is payable when the application for the permit is submitted; one-third is payable when the application is deemed complete for purposes of beginning a technical review; and the final third is payable when the Department takes final agency action on the permit application. This payment schedule is mandated by N.J.S.A. 13:1D-120 through 124.

The Department proposes to readopt N.J.A.C. 7:1L without change. The rules set forth definitions, procedural requirements for applicants seeking to use the installment protocol, and provisions regarding the processing of permit applications if fees are being paid in installments.

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Social Impact

The Department's implementation of the Legislature's mandate at N.J.S.A. 13:1D-120(d) and (e) to allow payment of permit fees of \$1,000 or more in three installments is intended to enable the regulated community to continue to make economic use of a portion of their permit application fee while the Department reviews their applications. Applicants subject to fees over \$1,000 do not have to pay the entire application fee at one time, thereby allowing those businesses with more limited cash flow to comply more easily with environmental regulations. Readoption of the rules will ensure the continuation of these beneficial impacts.

Economic Impact

The rules allowing payment of permit fees of \$1,000 or more in three installments enable applicants to earn a return on the unpaid portion of the fee until it becomes due. The actual economic benefit to an applicant depends upon the amount of the fee, the amount of time between installments, and the return that the applicant is able to earn.

Environmental Impact

The rules proposed for readoption will, by allowing applicants with fees over \$1,000 to pay in installments, encourage the regulated community to comply with environmental regulations and obtain required permits. Such compliance will assist the Department in its protection of the State's natural resources.

Federal Standards Statement

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N.J.S.A. 52:14B-4 requires State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The rules proposed for readoption have not been formulated in accordance with the authority of or in order to implement, comply with or participate in any program established under Federal law. Accordingly, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the rule proposed for readoption will have any impact on job creation or retention in the State.

Agriculture Industry Impact

The Department does not anticipate that the rules proposed for readoption will have any impact upon agriculture in New Jersey.

Regulatory Flexibility Statement

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the rules proposed for readoption do not impose reporting, recordkeeping, other compliance requirement on small business as defined under the Act. Payment of the fee in installments is optional for applicants. They are not expected to incur additional expense due to the rules. Consequently, a regulatory flexibility analysis is not required.

Smart Growth Impact

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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 rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan).

The rules proposed for readoption do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of 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 payment of permit in installments. Because ultimately the entire permit fee must be paid before a permit is issued, the Department anticipates that the rules proposed for readoption will 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

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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; rather, they regulate the payment of permit fees in installments. Although such fees may be applicable to housing production, because the entire fee must ultimately prior to the issuance of a permit the Department anticipates that 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 rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1L.