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ENVIRONMENTAL PROTECTION

WATER RESOURCE MANAGEMENT

OFFICE OF WATER RESOURCE MANAGEMENT COORDINATION

Water Quality Management Planning

Proposed Repeal and New Rules: N.J.A.C. 7:15

Proposed Amendments: N.J.A.C. 7:14A-4.3 and 7:38-1.1

Authorized By:

Bob Martin, Commissioner,

Department of Environmental Protection.

Authority:

As to N.J.A.C. 7:15:

N.J.S.A. 13:1D-1 et seq., 13:1B-15.146 to -15.150, 13:19-1 et seq., 13:20-1 et seq., 23:2A-1 et seq., 40:55D-93-99, 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.

As to N.J.A.C. 7:14A-4.3:

N.J.S.A. 13:1B-3 et seq., 13:1D-1 et seq., 13:1D-29 et seq., 13:1E-1 et seq., 26:2C-1 et seq., 26:3A2-21, 40:55D-1 et seq., 58:10-23.11 et seq., 58:10A-1 et seq., 58:11-23 et seq., 58:11-49 et seq., 58:11-64 et seq., 58:11A-1 et seq., and 58:12A-1 et seq.

As to N.J.A.C. 7:38:

N.J.S.A. 13:1B-15.128 et seq., 13:1D-1 et seq., 13:9B-1 et seq., 13:20-1 et seq., 23:2A-1 et seq.,

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58:1A-1 et seq., 58:10A-1 et seq., 58:11-23 et seq.,
58:11A-1 et seq., 58:12A-1 et seq., and 58:16A-50
et seq.

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

DEP Docket Number: 10-15-09.

Proposal Number: PRN 2015-136.

Public hearings concerning this proposal will be held as follows:

Date: Tuesday, November 10, 2015

Time: 1:00 P.M. to 4:00 P.M.

Location: Freylinghuysen Arboretum

Haggerty Room

353 E. Hanover Avenue

Morris Township, NJ 07962

Date: Tuesday, November 17, 2015

Time: 5:00 P.M. to 8:00 P.M.

Location: Gloucester County Clayton Complex

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Clayton Auditorium

1200 Delsea Drive

Clayton, NJ 08312

Date: Monday, November 30, 2015

Time: 10:00 A.M. to 1:00 P.M.

Location: New Jersey Department of Environmental Protection

Public Hearing Room

401 E. State Street, 1st floor

Trenton, NJ 08625

Submit comments by December 18, 2015, electronically at

<http://www.nj.gov/dep/rules/comments>. The Department of Environmental Protection

(Department) encourages electronic submittal of comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment. In the alternative, comments may be submitted on paper to:

Gary J. Brower, Esq.

Attention: DEP Docket Number 10-15-09

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street, 7th Floor

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Mail Code 401-04L; P.O. Box 402

Trenton, NJ 08625-0402

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

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.

The Water Quality Management Planning (WQMP) rules, N.J.A.C. 7:15, implement the Water Quality Planning Act (WQPA), 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. The 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 Department is proposing to significantly revise the WQMP rules in order to streamline the planning process and better integrate it with existing permitting programs. Because these revisions are extensive, the Department is proposing to repeal and replace the existing WQMP rules at N.J.A.C. 7:15. These

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new rules are intended to obviate the need for the provisions of P.L. 2011, c. 203, as amended and supplemented by P.L. 2013, c. 188, summarized below, and to meet the purposes of the WQPA. In addition, the Department is proposing to amend N.J.A.C. 7:14A-4.3 of the New Jersey Pollutant Discharge Elimination System rules, and N.J.A.C. 7:38-1.1(k) of the Highlands Water Protection and Planning Act Rules, to make them consistent with the proposed new WQMP rules.

The WQMP rules are one component of the State's water quality continuing planning process (CPP) required by Sections 201, 208 and 303 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§ 1281, 1288, and 1313), commonly known as the Clean Water Act (CWA), as well as the State WQPA and the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-1 et seq. The CPP is intended to integrate and unify water quality management planning processes, assess water quality, 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.

Under both the Federal and State water quality statutory and regulatory frameworks, the areawide WQM plans are key water quality planning documents. Among other things, areawide WQM plans identify treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area covered by the plan. 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. 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. Areawide plans (formerly known

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as 208 plans) are umbrella plans, each with various adopted components that address different aspects of water resource planning. The WQMP rules focus on the adoption and amendment of areawide water quality management plans (areawide WQM plans or areawide plans), including Wastewater Management Plans (WMPs) that are a component of areawide plans, establishing the list of water quality limited waters, and adoption of total maximum daily loads (TMDLs).

WMPs address wastewater management planning within each county or municipality. In general, WMPs identify the wastewater generation potential within a county or municipality and designate which areas are appropriate for sewer service. Sewer service areas are areas where wastewater is conveyed by a collection system and interceptors to a centralized facility for treatment and ultimate discharge into the surface or ground water. Such infrastructure is regulated and requires a New Jersey Pollutant Discharge Elimination System (NJPDDES) permit. If an area is not designated as a sewer service area in the WMP, it is designated as non-sewer service area. Non-sewer service area is an area that may not be suitable for wastewater service or an area that may be suitable for individual subsurface sewage disposal systems (ISSDS), through which wastewater is managed using on-site disposal systems that discharge less than or equal to 2,000 gallons per day (gpd) to ground water. Because use of centralized wastewater treatment can accommodate a dense pattern of development, and areas served by ISSDSs cannot, the WMP considers the impact of different types of development on water quality and natural resources, and reflects planning and development goals in a particular area. When a WMP is approved by the Department in accordance with the process specified in the WQMP rules, it is incorporated into the areawide WQM plan as an amendment. Thus, if a development project is located outside of the designated sewer service area of an areawide plan, the project must be

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developed using ISSDSs or the applicant must obtain a site specific amendment to the areawide plan to include the project in the sewer service area.

The rules require that WMPs be updated periodically to ensure that the most recent municipal zoning, State, and regional planning activities, and regulatory standards are considered in future decisions concerning wastewater management options. In this manner, the WMP is designed to provide up-to-date information on water quality management planning within sub-areas of an areawide plan.

TMDLs are another major component of the areawide plan. A TMDL is required when a waterbody does not meet water quality standards for one or more pollutants. A TMDL is a scientific study of an impaired water based on Federal and State statutory and regulatory requirements, and identifies the pollutant reduction necessary for the waterbody to meet water quality standards.

In 2008, the Department significantly amended the WQMP rules and codified criteria and standards for WMPs. The rules adopted in 2008 restrict, at N.J.A.C. 7:15-5.24, the extension of sewer service in environmentally sensitive areas, such as endangered and threatened wildlife species habitat, finding that centralized wastewater treatment is inappropriate for these areas because it supports and otherwise encourages development at a density that is inconsistent with protection of these areas.

The 2008 rules also incorporate explicit standards to determine the adequacy of wastewater management, water supply, and nonpoint source pollution control as part of the evaluation for WMPs and site specific amendments. These standards, set forth at N.J.A.C. 7:15-5.25, require a demonstration that adequate capacity exists to treat all the wastewater that could

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be generated in each wastewater service area without degrading water quality. For areas designated for sewer service, the rules require a demonstration that the wastewater generation potential of a sewer service area, based on existing land use, local zoning and environmental constraints information, aligns with the permitted capacity for the receiving treatment facility. If it does not, the WMP is to identify proposed new or expanded facilities and assess the impact of the new or expanded facility on surface and ground water quality, or, in the alternative, the WMP may reduce the sewer service area by requiring a change in zoning to reduce potential wastewater to achieve the required alignment. For areas that were not designated as appropriate for sewer service, the rules require a demonstration that the overall density for areas to be served by ISSDS would be protective of ground water quality on a drainage area basis. This section also requires a demonstration that the water supply needs of the projected future development can be met, based on the patterns and types of development identified in the WMP. In addition, the existing rules require an assessment of nonpoint sources of pollution of planned future development, and a demonstration that a regulatory program to control those impacts, including ordinances addressing stormwater control, riparian zone protection, and steep slope protection, is in place at the municipal level.

One goal of the 2008 rule was to encourage the adoption of up-to-date WMPs. In 2008, only 13 of the 161 required WMPs had been adopted and updated in compliance with the WQMP rules. The rest were outdated and could not be relied upon to provide an accurate baseline from which to conduct a water quality planning review that could accurately predict the future wastewater management needs of the WMP area or protect sensitive environmental features.

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To encourage timely and updated WMPs, the 2008 rules placed primary responsibility for developing a WMP on the 21 counties, and provided grants to help defray the costs of WMP preparation. To prompt timely preparation and submittal of WMPs, the rules were amended to provide that, if a WMP was not in compliance with the schedule established in the rules at N.J.A.C. 7:15-5.23 by April 7, 2009, the Department would withdraw sewer service area designations, except in areas where sewer lines and existing structures were installed and connected. Further, the rules significantly limited the number and types of project specific amendments that could be processed if the WMP was not current.

The 2008 rules resulted in an extremely difficult regulatory program to implement for all entities affected, public and private, by the rulemaking. Upon initial implementation, it quickly became clear that the multiple analyses necessary for updating the WMPs were more complex and time consuming than the Department had anticipated. As a result, the majority of the entities taking on planning responsibilities requested and were granted approval of an alternate schedule for submission of a WMP in accordance with the rules. Taking this into account, and to eliminate the uncertainty surrounding potential withdrawal of sewer service area and ensure that non-compliant or incomplete plans were not submitted, on March 24, 2010, the Commissioner signed Administrative Order 2010-3 which extended the original WMP due dates from April 7, 2009 (for areas where the county was preparing the WMP), and July 7, 2009 (for municipalities where the county declined and WMP responsibility was reassigned to them), until April 7, 2011. The Administrative Order also directed the Department to conduct additional public outreach as part of the WMP approval process.

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It was not just the complexities of the analyses that proved difficult to administer. Under the program envisioned in the 2008 rules, no sewer service areas would be extended, and the sewer service area would be withdrawn, if a WMP was not adopted in a timely manner.

However, the WMP could only be adopted after municipalities passed a variety of nonpoint source pollution control ordinances (such as steep slopes, riparian zone, and stormwater) and amended local zoning, if necessary. While some municipalities accomplished these tasks, the vast majority did not, and the Department and the WMP agencies could not mandate compliance.

In response to the 2008 rules, P.L. 2011, c. 203 (chapter 203 or the 2011 legislation) was enacted. The 2011 legislation found that there may be unacceptable, adverse economic, environmental, and planning impacts from the non-discretionary and mandatory withdrawal of wastewater service areas. Therefore, the legislation provided that it was “in the public interest that wastewater service areas, including sewer service areas, not be withdrawn except in conjunction with the promulgation of wastewater management plans prepared with appropriate public participation.” P.L. 2011, c. 203, subsection 1.h. The 2011 legislation directed the Department to proceed with the timely review and approval of site specific amendments or revisions to wastewater management plans and water quality management plans after submission by the wastewater management planning agency of that portion of the WMP designating a sewer service area. Sections 3 and 4 of the 2011 legislation provided the WMP agencies additional time to submit the WMP, and authorized the submission of a partial WMP that only identified the areas appropriate for sewer service. At Section 5, the legislation provided that the Department may approve inclusion of land within a sewer service area notwithstanding that the existing treatment works may not currently have the capacity to treat the additional wastewater

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without infrastructure improvements or permit modifications. The Department was directed to review site specific amendments under a specified process and time frame, and the legislation at Section 8 allowed development projects outside of the sewer service areas to be processed as site specific amendments or revisions if the WMP agency submitted the WMP component designating the sewer service area to the Department, and the proposed development on ISSDS was below a specified projected flow amount and met the technical requirements for a NJPDES Discharge to Ground Water permit.

The 2011 legislation was amended and supplemented by P.L. 2013, c. 188 (chapter 188 or the 2013 amendments). The 2013 amendments extended the January 17, 2014, expiration of the 2011 legislation until January 17, 2016, or upon the adoption of rules intended to obviate the need for the provisions of chapter 203, whichever is earlier. Chapter 188 also extended and revised various procedures and time frames for review by the Department of certain amendments and revisions to WMPs and areawide WQM plans.

Since 2008, new sewer service area mapping has been adopted covering all or parts of 16 counties and over a dozen municipalities where the county did not take WMP responsibility. Of the 17 counties that have accepted WMP responsibility, 16 counties have adopted future wastewater service area maps. The map for the 17th county, Cumberland, was proposed on November 5, 2012. The Department continues to work with the remaining four counties, Warren, Union, Bergen, and Passaic, and municipalities in those counties to address their water quality planning responsibilities and needs. The new mapping identifies where centralized sewer service is appropriate and where such infrastructure is not appropriate based on environmentally sensitive features. As a result of this Statewide mapping effort, approximately 180,000 acres of

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environmentally sensitive areas were removed from areas previously identified as within a sewer service area while 10,000 acres of sewer service area were added.

The completed sewer service area mapping establishes an appropriate baseline that captures the fundamental cumulative impact considerations related to wastewater management from which more detailed and technically informed decisions about managing wastewater can be made. Through the sewer service area mapping, the universe of areas for which sewerage is appropriate is identified, giving due consideration to protection of environmentally sensitive areas and local planning objectives. This baseline was lacking with the limited number of current wastewater management plans prior to the 2008 rules.

Recognizing the significant delineation of sewer service areas that has been accomplished, and based on its experience in implementing the 2008 rules, and P.L. 2011, c. 203 as amended and supplemented by P.L. 2013, c. 188, the Department has determined that it is an appropriate time to revise its regulatory approach to water quality management planning. This determination is also consistent with Governor Chris Christie's Executive Order No. 2, which requires the Department and other State agencies to review their rules for redundancies.

The Department's revised approach to water quality planning is based on the principle that "planning" involves the ability to consider a range of options to solve or avoid problems; planning should not be directive or rigid. As part of its revised approach, the Department is reducing the number of analyses required, and revising the timing of their required submission, simplifying the water quality planning process, and committing to providing assistance to local communities as necessary to address water quality issues within particular communities. The Department will no longer mandate that the WMP agencies conduct all of the analyses

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previously required as part of the WMP, or that local communities downzone or enact nonpoint source pollution prevention ordinances as a condition of WMP adoption. Determinations regarding the land use impacts of future development and the means to address wastewater treatment needs are more appropriate at the permitting stage, when detailed site specific information is available. While the information and analyses required under the existing 2008 rules are valuable, it is not necessary to require all of it during the planning process. At the planning stage, it is a more appropriate use of Department resources to focus on delineating sewer service areas and to work collaboratively with local governments to identify unmet capacity needs and to evaluate nitrate loads.

The revised approach proposed by the Department complies with the statutory requirements of the CWA and the WQPA, continues to protect water quality throughout the State, and complements the Department's existing comprehensive water resource and wastewater management program.

In addition to its NJPDES and other permitting programs, the Department continues to focus resources on water quality priorities, including combined sewer system overflow (CSO) abatement through permits and Long Term Control Plans (LTCP), investing money and resources to support improvements in water quality infrastructure, overhauling the municipal separate sewer service systems (MS4) permit system, and developing guidance for asset management, resiliency, and emergency preparation. The Department also develops and implements studies and TMDLs to provide for water quality improvements in targeted areas. Further, each year the Department develops a "Proposed Priority System, Intended Use Plan and Project Priority List" as required under Federal and State law, which describes how the State

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plans to spend Federal funds granted to the State under the Clean Water Act, and focus on correcting water quality issues and water supply deficiencies. In the 2015 "Proposed Priority System, Intended Use Plan, and Project Priority List," the Department continues to prioritize low-cost financing for urban centers/complexes, combined sewer system abatement, on-site rehabilitation of existing septic systems, rehabilitation of designated brownfield areas, and development of designated transit villages and designated transfer of development rights (TDR) receiving areas. By supporting the redevelopment and rehabilitation of urban areas, and limiting the potential expansion of infrastructure into areas of the State planned for conservation/preservation, these programs directly benefit water quality. Additionally, the New Jersey Environmental Infrastructure Trust (EIT) is an independent State financing authority which provides low-cost financing for the construction of environmental infrastructure projects that enhance and protect ground and surface water resources, ensure the safety of drinking water, and facilitate responsible, sustainable economic development.

Notably, as evidenced in building permit data from the New Jersey Department of Community Affairs, market conditions are resulting in development and redevelopment in urban centers, "first ring" suburbs, and other areas with preferred access to public transportation. Studies from the National Association of Realtors report that the next generations of home buyers/renters are seeking to reside closer to jobs and amenities in mixed use, higher density communities with better access to public transportation. The data also supports that the construction of multi-family homes (requiring centralized wastewater) is now a greater percentage of the construction market than single-family homes (typically on ISSDSs). Employers and developers are making investment and locational decisions based on these trends,

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and the Department anticipates that these investments and decisions will continue in the foreseeable future. These trends represent a positive trend for the environment. Redevelopment, rehabilitation, and infill development means that undeveloped areas are under reduced development pressure and may remain undeveloped longer or, perhaps, in perpetuity through other Department initiatives, such as the Green Acres or Blue Acres compensated land preservation programs, or through other land preservation techniques.

A discussion of the major changes follows. Additional changes are discussed by subchapter.

Elimination of Mandatory Withdrawal of Sewer Service for Failure to Adopt a WMP

(N.J.A.C. 7:15-4.2)

The WQMP rules will no longer provide that the Department will withdraw wastewater service area designations if the WMP agency fails to submit a WMP in accordance with the time frames required under the rule. Instead, at proposed N.J.A.C. 7:15-4.2(d), if a county WMP agency fails to submit a WMP in accordance with the time frames specified in this chapter and the municipality does not request WMP planning responsibility under N.J.A.C. 7:15-2.8, the Department may, under its own authority, prepare and adopt the WMP or WMP components.

With the adoption of 16 county-wide Future Wastewater Service Area maps, most of the State has sewer service areas delineated and a number of other areas have the wastewater capacity and/or the nitrate dilution analyses required under the current rule at N.J.A.C. 7:15-5.25 complete or in process. A significant amount of financial and technical support has been provided by the Department and the Federal government to WMP agencies to accomplish this

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work to date. With the proposed simplified requirements for a WMP, the Department expects that the WMP agencies will meet the schedule contained in this rule. However, Department resources will be available to address any significant planning gaps that remain at the end of the initial year provided to complete WMP components in accordance with the proposed rule or should subsequent updates of the WMP not be completed in accordance with the rules. (See WMP submission schedule at proposed N.J.A.C. 7:15-4.2(b) and (c)).

Simplified Analyses

The proposed new rules simplify the required wastewater treatment capacity analysis, nitrate dilution analysis, and nonpoint source pollution analyses, as described below.

Wastewater Treatment Capacity Analysis (N.J.A.C. 7:15-4.5(b) and related definitions at N.J.A.C. 7:15-1.5)

Proposed N.J.A.C. 7:15-4.5(b) establishes the wastewater treatment capacity analysis and specifies how this analysis must be conducted. As in the current rule, the WMP agency will be required to conduct a capacity analysis and determine future wastewater needs based on population and existing and planned future development as part of the WMP. However, as allowed under the 2011 legislation and the 2013 amendments, the WMP agency will not be required to demonstrate that any identified deficiency between existing capacity and future wastewater needs has been fully resolved before the WMP can be adopted.

This proposed modification to the rules recognizes two key points. First, any estimation of future needs is preliminary and may not be realized because of changes in local planning

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needs or desires, as well as prevailing market conditions. Second, the environmental constraints and opportunities affecting infrastructure choices will vary over time, reflecting changes in land use, ambient water quality, water quality standards, and other environmental factors, as well as advances in technology available to treat, reuse, or recycle wastewater. For example, the method for estimating wastewater flows from sewer service areas is intentionally conservative.

Requiring build-out solutions for technical merit too far in advance of the actual need could result in over-planning, where the planned future flows never materialize. Further, the analysis to demonstrate viability of new or expanded infrastructure is costly and could be in vain because the level of analysis conducted at the planning stage based on a hypothetical need will not be sufficient to satisfy the technical review associated with obtaining the necessary permits.

Accordingly, much of the analysis may need to be repeated when an actual permit to build or expand a facility is sought. Further, the planning analysis may not reflect the environmental conditions present at the time of permitting.

Under the proposed rules, the WMP agency will be required to identify strategies it or the wastewater treatment facility has considered or will consider to address identified capacity needs with strategies to be considered in accordance with a specified hierarchy. The acceptability of specific infrastructure solutions will be determined through the technical review conducted during the permitting process. This is appropriate because the requirements for approval of a NJPDES permit entail a determination that the Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B, and Ground Water Quality Standards (GWQS), N.J.A.C. 7:9C, will be satisfied. The proposed rules will allow such a determination to be made when there is an actual need to build new or expanded infrastructure and under the conditions regarding water quality science

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and technology prevailing when that need arises. The Department anticipates that this will be a more efficient means to identify the nature, capacity, discharge location, and effluent quality that is appropriate for wastewater management. Moreover, this proposed shift in approach will allow the wastewater management planning agencies to focus their resources and efforts on developing the WMP.

This simplified regulatory approach will place a greater burden on developers of property in designated sewer service areas to ensure that there is an adequate wastewater treatment alternative available for development on a particular property. Even if a property is located in a sewer service area, sewer service may not be available to that property if existing wastewater treatment facilities cannot handle additional demand, or if the demand cannot be accommodated without a new facility. If adequate treatment capacity is not available, the Department will ensure that water quality is protected by not issuing a new Treatment Works Approval under N.J.A.C. 7:14A to connect a new project to a wastewater treatment facility.

As proposed at N.J.A.C. 7:15-4.5(b)1 through 4, the Department will continue to require that existing and future wastewater needs of each sewer service area be calculated and compared to the permitted flow of the DTW. Under the proposed rule, for each assigned sewer service area, the WMP agency, or other applicant, as appropriate, shall determine if there is a potential capacity deficiency when comparing permitted capacity with existing and projected flows.

Assigned sewer service areas are defined as the eligible sewer service area from which sewage flows are conveyed to a specific DTW, or areas from which sewage is reasonably expected to be generated and conveyed to the DTW. In addition, a wastewater capacity analysis includes

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analysis of existing and projected flows from an industrial treatment works if it accepts and treats sewage from areas outside of its facility.

In unassigned sewer service areas, the area is identified as eligible for sewer service, but a specific DTW or industrial treatment works that will accept the wastewater flows from that area has not been identified. This would be the case where the area meets the criteria for inclusion as eligible for sewer service, but there are no plans in the foreseeable future to develop the area in a way that would require connection to wastewater treatment facilities. For such areas, the estimated wastewater to be generated would constitute a potential capacity deficiency.

The Department is proposing a new definition for “wastewater treatment facility” to differentiate the types of facilities that are considered for the purposes of these rules from the more inclusive technical terms such as “wastewater facilities” and “treatment works,” that are used in the current rules, and which are also used in the Department’s NJPDES permitting rules, N.J.A.C. 7:14A. The terms currently used in this chapter and in the NJPDES rules include types of treatment works, such as pumping stations and trunk lines, which are not the focus of these rules and are no longer required to be mapped and identified in a WMP.

The process for estimating flows is largely the same as in the existing rules. First, the existing flows from the sewer service areas are calculated. The current rules define existing flow based on the monthly average over the most recent 12 months, or the peak month if there is significant seasonal variability. The Department has determined that the peak 12-month rolling average over the most recent five years is more representative of the range of conditions that may be experienced at a given wastewater treatment facility and, therefore, a better measure of capacity demand for planning purposes. The proposed rule at N.J.A.C. 7:15-4.5(b)1 reflects this

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determination. To accommodate unique circumstances, such as where there is significant variability of flows due to seasonal populations or the effects of wet weather in combined sewer systems, the proposed rule provides for consideration of alternate methodologies to calculate existing flow.

Second, future flows are calculated from future development in the assigned and unassigned sewer service areas. The method for estimating these future flows is similar to the estimation method in the existing rules. Proposed N.J.A.C. 7:15-4.5(b)1ii(1) provides that for urbanized municipalities, the future flows are estimated based on the projected population increase within a 20-year planning horizon, and any additional information about additional wastewater flows that could be generated from redevelopment. For non-urbanized municipalities, the future development potential is based on zoning.

In urbanized municipalities, proposed N.J.A.C. 7:15-4.5(b)1ii(1) provides that the projected population increase is developed using the municipal master plan or other reliable planning source, and multiplying this value by 75 gallons per day (gpd). Acceptable sources would include Federally authorized metropolitan planning organizations, such as the Delaware Valley Regional Planning Commission or the New Jersey Transportation Authority, or academic institutions. Seventy-five gpd is the current standard for estimating wastewater generated on a per capita basis for planning purposes, and is carried forward from the current rule at N.J.A.C. 7:15-5.18(f) and 5.25(d)1ii.

The Department is proposing to define “urbanized municipalities” as municipalities where 90 percent of the municipality’s land area appears as Urban Lands on the most recent Land Use/Land Cover GIS database. This is a change from the current definition of this term in

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two ways. First, it incorporates updates to the Land Use/Land Cover GIS database. Second, it removes the word “developable” from the current definition. Currently, the rules broadly define urbanized municipalities as municipalities where 90 percent of the municipality’s’ developable land area appears as Urban Lands. The inclusion of “developable” in this definition allows municipalities with high percentages of undevelopable lands uses, such as wetlands and public open space, to fall within the definition of an “urbanized municipality,” even though these areas are not urban. Where an area is not urbanized, build-out in accordance with zoning is the best reflection of the potential to develop and generate sewage flows. Where the area is urbanized, other factors become important, like redevelopment and repurposing. Accordingly, in these areas focus on undeveloped land does not provide as good an estimate of development potential and the potential of the area to generate sewage in the future.

In contrast, in areas where more than a small amount of land is subject to constraints on development potential, it is appropriate to recognize that there is the potential for these areas to generate flow while providing a mechanism for lands that are significantly restricted to be excluded from calculations in the build-out analysis of non-urbanized municipalities. Therefore, the Department is proposing to modify the method for calculating future flows from non-urbanized municipalities at N.J.A.C. 7:15-4.5(b)1ii(2) by allowing a WMP agency to request to exclude areas that are undevelopable, or with limited development potential, from the lands for which a build-out analysis must be performed. Where development potential is limited because of regulatory constraints, such as confirmed wetlands, or because of permanent preservation, conducting a build-out analysis for such lands is not necessary from a planning perspective, because little or no future wastewater flow will be generated. In addition, no build-out is

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required for lands under the control of the Federal government, as in military installations because it is difficult to reliably predict future land uses. The Department will determine if a request to exclude certain lands is appropriate, based on the existence of a valid, significant constraint to development.

Under the proposed rules, the applicant is required to determine if there is an unmet wastewater capacity need when existing flow and projected future flows at DTWs and industrial treatment facilities that accept wastewater from outside the facility is compared to the capacity at the wastewater treatment facility pursuant to proposed N.J.A.C. 7:15-4.5(b)3. All of the projected flow from any unassigned sewer service area is considered a potential capacity deficiency.

If a potential capacity deficiency is identified, the WMP agency will be required to identify proposed strategies for addressing it pursuant to N.J.A.C. 7:15-4.5(b)4 in broad general terms. The strategies will take into account the size of the potential capacity deficiency and the urgency of the need to address it. For example, the WMP could explain how a small capacity deficiency may reasonably be addressed without the need for new treatment infrastructure. This may be possible because of the conservative nature of flow estimation, wherein projected flows are routinely more than realized, which has the effect of exaggerating the magnitude of the projected deficiency, or because planned programs, such as plans for water conservation or infiltration and inflow reduction, will result in less than expected wastewater generation. For larger deficiencies, the WMP could identify any known plans to expand or build new centralized sewage treatment infrastructure. Or, if known plans would not address the deficiency, the capacity analysis would be the means to alert a region that new infrastructure or other

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alternatives must be considered. No immediate action may need to be taken to fill a deficiency if the development growth trajectory for the sewer service area is flat. On the other hand, if the development growth trajectory of a community is steep, it is appropriate for the local government, planning agency, and sewage treatment plants to take a more active role in addressing the deficiency.

To ensure that wastewater capacity planning is conducted early enough to avoid unnecessary stress on the treatment facilities and to allow sufficient time for permitting, financing, design, and construction, when the existing flow of a facility reaches 80 percent or more of permitted flow, proposed N.J.A.C. 7:15-4.5(b)5 requires the WMP agency to coordinate with the Department and the entity responsible for the wastewater treatment facility to determine if the projected growth will result in a capacity deficiency, and to determine effective strategies to address that need. The Department intends, as stated in proposed N.J.A.C. 7:15-2.4(a)8 and 9, to monitor and post online existing flows at facilities, compare it to permitted flow on an annual basis, and provide assistance to the WMP agency as it develops strategies to address anticipated needs.

There is an additional level of response required if the average flow for a wastewater treatment facility over 12 consecutive months reaches or exceeds 100 percent of its permitted flow, as indicated at proposed N.J.A.C. 7:15-4.5(b)6. When this point is reached, the rules direct the facility to conduct a capacity analysis and submit a capacity analysis report to the Department in accordance with the Department's Capacity Assurance Program (CAP) at N.J.A.C. 7:14A-22.16.

Under the Department's existing CAP rules, the Department requires that a sewerage

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authority conduct portions of wastewater capacity planning to ensure that treatment works treating domestic sewage and sewer conveyance systems will avoid both hydraulic overloads that could result in violations of discharge limits in NJPDES permits and unpermitted discharges.

N.J.A.C. 7:14A-22.16(a) requires that when the average flow over three consecutive months to a treatment plant reaches 80 percent of the permitted flow, sewerage authorities and participating municipalities are required to submit a capacity assurance program to the Department that identifies measures to reduce flows and maximize treatment capacity at the plant.

The Department reviewed its CAP rules to determine their effectiveness and if aspects of planning conducted under those rules would be more appropriate under the WQMP rules. Based upon that review, the Department is proposing to amend the CAP rules in a concurrent proposal published elsewhere in this issue of the New Jersey Register. As one of the amendments to the CAP rules, the Department is proposing to replace the 80 percent trigger for planning contained in those rules, with a regulatory threshold that is triggered when the average flow over 12 consecutive months reaches or exceeds 100 percent of the permitted flow of a treatment plant. As explained in greater detail in the CAP proposal, even if a wastewater treatment facility is operating at 100 percent of its permitted flow, the plant can operate without violating effluent limits in its permit. This is because treatment plants are often designed to handle flows of up to two and one half times their average permitted flows. Moving the threshold for developing and implementing a CAP from 80 to 100 percent will still allow adequate time for the permittee to be proactive and develop and implement a CAP before violations occur.

Under the proposed CAP amendments, when the 100 percent threshold is met, the permittee of the treatment plant, in cooperation with participating municipalities and sewerage

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authorities, must conduct a capacity analysis and submit a capacity analysis report to the Department. The capacity analysis report must be submitted within 180 days of the last day of the final month of the 12-consecutive-month period during which the average flow reached or exceeded 100 percent of the permitted flow, and it must assess the treatment works (treatment plant and conveyance system); evaluate alternatives that would maximize conveyance and treatment of existing flows, reduce existing flows, and/or increase the capacity of the treatment works; identify the alternative(s) that will be implemented; establish an implementation schedule; and identify the financing mechanism(s) for the selected alternative(s). The capacity analysis requirements are listed at proposed new N.J.A.C. 7:14A-22.16(c).

Proposed N.J.A.C. 7:15-4.5(b)5, summarized above, is triggered when the existing flow of a facility reaches 80 percent or more of permitted flow. The existing flow that is compared to permitted flow is the highest consecutive 12-month rolling average over the most recent five-year period. This approach is premised on a longer-term look at the circumstances of the treatment plant and the effects of development in the sewer service area. In contrast, the CAP analysis focuses on evaluating the capacity of the existing treatment plant and conveyance system, and the near-term implementation of measures to ensure that there are no NJPDES permit violations or unpermitted discharges. Thus, the CAP analysis is triggered when reported flow at the treatment plant averaged over 12 consecutive months reaches 100 percent of permitted flow.

The changes proposed in the wastewater treatment capacity analysis at N.J.A.C. 7:15-4.5 and in the CAP program at N.J.A.C. 7:14A-22.16 are complementary approaches that will work together to prevent degradation of water quality. These changes ensure that necessary

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wastewater treatment planning for an area begins early enough in the process and involves the WMP agency, in addition to the permittee.

If new or expanded infrastructure is anticipated to be needed within five years, the proposed rule at N.J.A.C. 7:15-4.5(b)7 requires the WMP agency to begin coordinating with the Department and the wastewater treatment facility to evaluate the technical feasibility of new or expanded infrastructure, and facilitate the development of wastewater management strategies well in advance of permitting, financing, design, and construction where the treatment works is proposed to discharge to surface water. The proposed rule identifies approaches that may be considered and arranges the approaches into a hierarchy at N.J.A.C. 7:15-4.5(b)8. The specified hierarchy ranks potential approaches, requiring that approaches most likely to satisfy the objective of avoiding increases in pollutant loads be considered and implemented before considering an approach lower in the hierarchy. This hierarchy is similar to the hierarchy in the existing rules at N.J.A.C. 7:15-5.25(d)3i through iv, and is consistent with the antidegradation requirements of the SWQS, at N.J.A.C. 7:9B-1.5(d). In order to achieve the objective of avoiding any increase in pollutant loading entering the receiving water, the rule requires that expansions maintain the current pollutant load through improved treatment while continuing to comply with any applicable wasteload allocations. For new facilities and for expansions of existing facilities where it is demonstrated that it is not possible to avoid an increase in loading, the rules require that the new or expanded facility achieve no measurable change in water quality in the receiving water. Compliance with the no measurable change standard must be shown through either a study approved by the Department or through an adopted TMDL. Only if the discharge is to a Category Two water, as classified by the SWQS, and it is shown that it is not

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possible to achieve no measurable change, may the applicant seek to obtain authorization for a discharge which will lower water quality in accordance with the process established for such a lowering in the SWQS.

The Department is proposing some modifications to the existing hierarchy. Consistent with the Department's proposal to allow expansion of the sewer service area even if capacity at the wastewater treatment facility is not assured, as discussed above, the Department is not proposing to continue existing N.J.A.C. 7:15-5.25(d)3v, which requires the reduction of the sewer service area in the WMP when all demonstrations in the hierarchy cannot be made. In addition, the Department proposes to eliminate the requirement, at existing N.J.A.C. 7:15-5.25(d)3i, that an applicant for new or expanded infrastructure also consider and implement, where feasible, methods that reclaim wastewater for beneficial reuse (RWBR). RWBR protects and conserves freshwater and treated potable water by using lesser quality water for non-potable uses, such as irrigation. Inclusion of an analysis of RWBR as a first step in the hierarchy had been for the purpose of further encouraging use of RWBR. However, because RWBR cannot be relied upon to permanently address a capacity deficiency, it is not a means to address the need to treat additional wastewater flow. The hierarchy is proposed to include only those measures that are options to address additional wastewater management needs. The Department continues to support RWBR, and has included guidance concerning RWBR in the CPP.

Maintaining current pollutant loads to satisfy the antidegradation policies at N.J.A.C. 7:9B-1.5(d) does not only apply to those parameters for which effective effluent limitations were established using a wasteload allocation (that is, water quality based effluent limitations (WQBELs)). It also applies to those parameters that have effective technology based effluent

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limitations imposed in the existing permit (for example, those based on secondary treatment effluent standards at N.J.A.C. 7:14A-12.2). Furthermore, improvements to the quality of treatment at the treatment works may not always be necessary when maintaining the current and effective pollutant load imposed through a permit. For example, a facility that is seeking a re-rating of their design flow may be able to maintain current permitted pollutant loads under an increased flow because they are discharging well below their permitted limits. For these reasons, in proposed N.J.A.C. 7:15-4.5(b)8i, the Department is proposing modifications to existing N.J.A.C. 7:15-5.25(d)3ii to more accurately reflect the conditions under which facilities shall maintain the current pollutant load. The Department is also continuing, at proposed N.J.A.C. 7:15-4.5(b)8i and ii, references to TMDLs because the TMDL is a comprehensive study that identifies the wasteload allocation limit that must be achieved in order to protect water quality.

Nitrate Dilution Analysis (N.J.A.C. 7:15-4.5(c) and related definitions N.J.A.C. 7:15-1.5)

To protect ground water quality, the proposed new rules at N.J.A.C. 7:15-4.5(c) continue to require the WMP agency to conduct a nitrate dilution analysis to determine the appropriate density of development that can be accommodated in areas proposed to be served by ISSDS less than or equal to 2,000 gallons per day (gpd) based on the attainment of two milligrams per liter (mg/L) nitrate in the ground water on a HUC 11 basis. This is based on the Department's ground water antidegradation policy at N.J.A.C. 7:9C-1.8(b). As indicated at proposed N.J.A.C. 7:15-1.5, a HUC 11 is an area within which water drains to a particular receiving surface water body, also known as a watershed. However, instead of requiring as the only option available to a municipality that it adjust its zoning ordinances in order to assure that the development density

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outside of the sewer service area will achieve the two mg/L nitrate ground water criteria, the new rules at proposed N.J.A.C. 7:15-4.5(c)1v provide that the local government shall work with the Department to evaluate options and appropriate strategies to address any issue with nitrate dilution capacity that has been identified. These options include zoning adjustments, land preservation, or requiring ISSDS to achieve a higher level of treatment.

The current rules' reliance on downzoning as the response when there is insufficient nitrate dilution capacity at existing N.J.A.C. 7:15-5.25(e) has been problematic. Rezoning is a time-consuming and often controversial process, for a variety of reasons, including its potential effects on the speculative value of the land relative to development, which in turn affects the ability of agricultural producers to leverage their land value to secure loans for production.

Moreover, relying on municipal zoning scenarios can be misleading. In many instances, the total number of lots theoretically possible in a given area may exceed the actual number of dwellings that will be realized in that area which would be influenced by the design goals for the development, environmental constraints, as well as limitations based on parcel configuration, road layout, and municipal restrictions such as setbacks. Unless actual, site-specific assessments are performed, there is a level of uncertainty between planning estimates and the actual, site-specific options that are determined to be possible, which may affect what ultimately can be built on a given parcel or area. This level of analysis is not possible for hypothetical development. Further, in implementing the 2008 rules, WMP agencies struggled with issues such as what to do when the number of existing subdivided but not yet developed lots exceeded the number of allowable additional equivalent dwelling units (EDU) estimated using the nitrate dilution model.

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Rezoning to achieve the ground water quality objective as a prerequisite for WMP approval does not take into account the reasonable assumption that the theoretical development potential of every parcel will not be realized. With the passage of time, there is the real possibility that some portion of the undeveloped parcels will be removed from the pool of developable land that could contribute pollutant loads from wastewater disposal through an ISSDS because, for example, the land has been acquired for open space or for the implementation of green infrastructure approaches for managing stormwater.

In implementing the existing rules, the Department has found that the resistance to implementing zoning changes has resulted in significant delays in the development and completing of WMPs. In the proposed rules, the Department will still require the comprehensive build-out analysis based on current zoning to identify potential issues in meeting the nitrate target. However, municipalities will no longer be required to change their zoning for areas or parcels that may not be developed for years, decades, or even at all, in order to submit and complete a WMP or to update a WMP. Instead, the nitrate-loading capacities of undeveloped non-sewer service areas will be identified, and the Department will work with counties and municipalities to explore options to address the nitrate issue to protect groundwater.

The Department is retaining at proposed N.J.A.C. 7:15-4.5(c) the method for determining the appropriate septic density that was established in the existing rules at N.J.A.C. 7:15-5.25(e). In the first step, the applicant must use one of two available models identified in the rule for determining appropriate septic density: A Recharge-Based Nitrate-Dilution Model for New Jersey V6.2; or A Recharge-Based HUC 11-Scale Nitrate-Carrying-Capacity Planning Exercise for New Jersey, MS Excel Workbook, version 3.0. These models calculate the number of acres

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needed to dilute nitrate loading from a collection of single-family residential units in order to achieve the target concentration for nitrate in ground water for that given area of proposed development. Both models estimate nitrate impacts of subsurface sewage disposal systems on ground water.

In the second step, the applicant determines the number of undeveloped and underdeveloped acres outside of sewer service areas in the HUC 11 and divides that number of acres by the average number of acres required to dilute the nitrate from a single residential unit as determined in the first step. The result will be the number of additional allowable ISSDSs or equivalent dwelling units that may be constructed in the HUC 11 and still meet the two mg/L nitrate target within the watershed. The third step, at N.J.A.C. 7:15-4.5(c)1iii, requires the applicant to compare the number of units calculated in the second step to the number that can be realized under the existing zoning of all undeveloped and underdeveloped areas in the HUC 11. In the fourth step, there is a determination of whether the number of additional ISSDSs or equivalent dwelling units calculated under the third step exceed the allowable number determined in the second step. If it does, the fifth step at N.J.A.C. 7:15-4.5(c)1v, specifies that the local government unit shall work with the Department to evaluate options to address the identified nitrate dilution capacity issue.

Since adoption of the 2008 rules, the nitrate dilution model, A Recharge-Based Nitrate-Dilution Model for New Jersey V6.2, was subject to a peer review by the Department's Science Advisory Board (SAB). See "Response to Charge Questions on the Nitrate Dilution Model, Summary Report of the NJDEP Science Advisory Board," March 14, 2011, at <http://www.state.nj.us/dep/sab/nutrient-report.htm>. The Department charged the SAB with the

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task to evaluate the assumptions and applicability of this model, which is the underlying model incorporated in the Nitrate Dilution models referenced at N.J.A.C. 7:15-4.5(c)1i(1) and (2). The SAB found that use of the model for regional planning purposes was appropriate, but that it was not reliable on a small scale. Since the SAB reviewed and approved the assumptions underlying the basic model, the Department has determined that it is appropriate to continue to use the Nitrate Dilution Models referenced in this proposed rule because they are used for regional planning purposes.

As the sixth step to the nitrate dilution analysis, the Department requires a demonstration that areas to be served by ISSDSs are subject to a mandatory maintenance program, such as an ordinance to ensure that all ISSDSs are inspected regularly. This requirement is found in the existing rules at N.J.A.C. 7:15-5.25(e)3 and has been modified to no longer require that periodic pump outs be specified as part of any ordinance and is now proposed to be codified at N.J.A.C. 7:15-4.5(c)1vi.

At proposed N.J.A.C. 7:15-4.5(b)vii, the Department is providing that an applicant for a new or expanded DTW with a discharge to ground water must demonstrate compliance with the Ground Water Quality Standards through the permitting process.

For non-sewer service areas in the Pinelands Area, as well as in the Highlands preservation area and in Highlands conforming municipalities, proposed N.J.A.C. 7:15-4.5(c)2 and 3 direct that the nitrate dilution analysis be conducted in accordance with the standards and procedures established in the Pinelands Comprehensive Management Plan, the Highlands Water Protection and Planning Act Rules, and the Highlands Regional Master Plan. See discussion of Coordination with the Pinelands Commission and Highlands Council, below.

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Nonpoint Source Pollution Requirements

The Department will no longer require a demonstration that the environmental standards for water supply, nonpoint source pollution control with regard to stormwater control, riparian zone protection, and steep slope protection have been met prior to the adoption of a WMP or a site specific amendment. Under the existing rules, demonstration of these environmental standards was evidenced through confirmation that sufficient existing water supply is available to provide for the development, the adoption of municipal ordinances controlling stormwater, and preventing new disturbances in riparian zones and on steep slopes.

The Department continues to recognize the importance of nonpoint source pollution control and water supply planning. However, for several reasons the Department has determined that it is appropriate to decouple the strategies for nonpoint source management and water supply from the WMP process.

Many of the nonpoint source protections in the current rules are duplicative of regulatory requirements in other Department programs. For example, the Department's water supply program currently ensures planning and permitting of water supply infrastructure and new or expanded sources of water. This analysis relies on technical data that takes into account the appropriate Statewide and regional capacity issues with respect to water supply. Therefore, it is not necessary to require an additional analysis in the development of a WMP. The stormwater standard in the existing rules at N.J.A.C. 7:15-5.25(g)1 cross-references the Department's Stormwater Management rules, N.J.A.C. 7:8, and specifies that compliance with the planning standards is demonstrated through compliance with the Stormwater Management rules at

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N.J.A.C. 7:8. Similarly, the 2008 rules require a demonstration that riparian zones are protected from avoidable disturbance. However, the Department already protects riparian zones and other near stream areas through the special water resource protection area in the Stormwater Management rules at N.J.A.C. 7:8-5.5(h) and riparian zone protections provided by the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13 (see *Environmentally sensitive areas and local planning objectives* summary below with reference to the proposed consolidation of special water resource protection area requirements into the riparian zone protections under the Flood Hazard Area Control Act Rules). Compliance with these standards is enforced through the Department's permitting programs.

Protection of steep slopes is required in the Highlands preservation area through the applicable rules at N.J.A.C. 7:38-3.8, and under the Coastal Zone Management Rules at N.J.A.C. 7:7-9.32. It is also an objective in the Highlands planning area as set forth in the Highlands Regional Master Plan (RMP). In other areas, some municipalities have opted to incorporate steep slope protection in land development ordinances. In remaining areas, the Department encourages and will work with municipalities to incorporate appropriate protections as part of its nonpoint source pollution control strategies. See the Nonpoint Source Management Program Summary in the CPP discussed below.

The existing rules' reliance on the adoption of local municipal ordinances to enforce nonpoint source control requirements delays the final adoption of the WMP. By eliminating the requirement for local ordinances in order to complete a WMP as well as the consequences for not

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having an up to date WMP, the Department is removing an impediment to timely WMP adoption.

Further, the strategies to address nonpoint sources are dependent upon the type of source, with solutions location dependent. The Department is in the process of updating its Nonpoint Source Management Program Plan (NPS Program Plan), which is required by USEPA and articulates the Department's current regulatory and non-regulatory strategies for nonpoint source control and its objectives for the next five years to continue to address this important issue. This plan provides a good overview of the extent of the Department's programs controlling nonpoint source pollution. A link to the updated plan will be posted on the Department's website under the CPP at <http://www.nj.gov/dep/wrm/>.

Because the Department has set forth its overall strategy for control of regulated stormwater and nonpoint sources in its NPS Program Plan, it is not necessary for each WMP to restate this suite of strategies, as they apply Statewide. Relying on the NPS Program Plan to articulate the set of strategies to control regulated stormwater and nonpoint source pollution is an additional means to create efficiencies in WQM planning. The Department will work closely with counties and municipalities to implement the broad range of available nonpoint source pollution reduction and prevention strategies. These include development of watershed restoration plans, prioritization of available funding to implement nonpoint source reduction and prevention measures, stewardship building, and environmental education intended to enhance local initiatives to reduce and prevent nonpoint source pollution, which would include adoption of ordinances related to riparian zone and steep slope protection. The Department will post

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nonpoint source related model ordinances at the Department's website for the CPP at

<http://www.nj.gov/dep/wrm/>.

Consistency Determinations (*N.J.A.C. 7:15-3.1 and 3.2*)

The Department is simplifying and revising the consistency determination process to provide uniformity with other changes in this proposal. The WQPA requires that “[a]ll projects and activities affecting water quality in any planning area shall be developed and conducted in a manner consistent with the adopted areawide plan. The commissioner shall not make any grant for construction of a publicly owned treatment works to any agency not identified as the necessary agency to construct said facilities pursuant to any adopted areawide plan. The commissioner shall not grant any permit which is in conflict with an adopted areawide plan,” N.J.S.A. 58:11A-10.

The 2008 rules continued the established formal consistency review process at N.J.A.C. 7:15-3.1 and 3.2. Because consistency with the areawide plan depended upon compliance with sewer service area designations, assignments to specific wastewater treatment facilities, identification of adequate wastewater and water supply capacity, and nonpoint source pollution standard assessment, these consistency determinations were detailed and cumbersome. The streamlined content of a WMP as proposed under these rules will result in more efficient and focused consistency determinations.

As proposed at N.J.A.C. 7:15-3.2(b) through (d), WQM plan consistency will be evaluated when a project or activity seeks a permit from the Department. At the time of permit application, the Department will determine if the project or activity requiring centralized sewer

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service is located in a sewer service area. If so, there is a rebuttable presumption that the project or activity is consistent with the areawide plan. If a WQM plan has additional requirements, or a wasteload allocation in an adopted TMDL has been established, these must also be addressed in order for the proposal to be consistent. Instead of requiring a demonstration that a project meets technical standards related to water quality protection from specific projects or activities in the planning stage, this demonstration of technical merit will occur during the permitting stage, when actual proposals and current conditions can be part of the decision making. If the project or activity is not in the sewer service area, a modification to the areawide plan, through either an amendment or revision, will be required to effectuate inclusion in a sewer service area before the permit could be processed further, or the applicant would need to modify the project so that it does not utilize centralized wastewater treatment services and thus does not need to be within an adopted sewer service area. It will be easy for applicants and the Department to determine if a site is within a sewer service area utilizing the digital mapping coverage that the Department maintains on its website at <http://www.state.nj.us/dep/gis>. These maps can be accessed by relevant permit programs within the Department, as well as by any member of the public. Where a new DTW is not identified in an areawide WQM plan or an expansion to an existing DTW needs to be addressed in a WMP, a WQM plan amendment may be required.

The planning process will focus on specific environmental infrastructure determinations, identifying approved sewer service area, the existing infrastructure capacity, the sewage generating potential of the approved sewer service area, and the potential capacity deficiencies for wastewater treatment infrastructure that may need to be addressed over time. As provided in proposed N.J.A.C. 7:15-3.2(e), members of the public will be able to comment on the

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consistency of a specific project as part of the public review and comment process, when one is provided. For activities that are covered by a general permit or permit-by-rule, there may not be a specific public comment period. However, the types of activities that qualify for the abbreviated permitting process have been identified and are subject to public comment when the relevant general permit is issued draft or rules providing for the permit-by-rule were proposed and adopted.

At proposed N.J.A.C. 7:15-3.2(f), the Department identifies projects that it deems to be consistent with an adopted sewer service area without review. Many of these projects or activities are deemed consistent in the current rules at N.J.A.C. 7:15-4.2(a) and 4.3(c) and these provisions are being carried forward in this rule proposal. These include at proposed N.J.A.C. 7:15-3.2(f)1, 2, and 4, removal or remedial actions performed or required by the Department or by Federal agency under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or CERCLA, 42 U.S.C. §§ 9601 et seq., interim construction, expansion, or connection with DTW or industrial treatment works that are required by law to be abandoned or incorporated into other treatment works at a definite time, and emergency activities that are allowed by emergency permits issued pursuant to N.J.A.C. 7:14A-6.14. Additionally, at proposed N.J.A.C. 7:15-3.2(f)5 and 8, activities that do not require a treatment works approval under N.J.A.C. 7:14A-22.4 or a permanent holding tank that complies with N.J.A.C. 7:22.13(c) continue to be considered consistent. Projects that do not generate sanitary sewage or process sanitary or industrial wastewater directly or indirectly do not need a determination of consistency at proposed N.J.A.C. 7:15-3.2(f)7 and 9 because they do not handle wastewater generated by sources where location within a sewer service area is relevant, except that any applicable wasteload allocation

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identified in an adopted TMDL must still be addressed. These types of projects or activities include industrial treatment works that do not handle process wastewater or sanitary sewage, for example stormwater controls, or discharges to ground water of non-contact cooling water or discharges to ground water of filter backwash water from potable water treatment plants.

The Department is proposing at N.J.A.C. 7:15-3.2(f)3 that all expansions or improvements to treatment works to reduce or eliminate combined sewer overflows (CSOs) as authorized under a NJPDES permit be deemed consistent with the adopted areawide plan. The National Combined Sewer Overflow Policy requires CSO permittees to evaluate a range of control alternatives up to and including measures to eliminate CSOs entirely and to capture 100 percent of wet weather flows. Part II.C.4, 59 Fed. Reg. at 18692. The purpose of preparing a Long Term Control Plan (LTCP), now required under the current NJPDES CSO permits, is to ensure that water quality standards are met and to evaluate a reasonable range of alternative control strategies to further reduce or eliminate all CSO discharges. National Policy, 59 Fed Reg. at 18692. Expansions of domestic treatment works to accept wastewater currently untreated and discharged through CSOs is consistent with this policy and permit requirements. This measure is also expected to improve the overall water quality of the receiving water body by reducing or eliminating untreated discharges of domestic wastewater. Expansions to accommodate these flows would be in addition to any flows expected to be generated from development within the approved sewer service area. In addition, the public will have several opportunities to provide input during the development of the LTCP, including any concerns regarding the evaluation or selection of expansion as an alternative.

Proposed N.J.A.C. 7:15-3.2(f)6 is modifying existing N.J.A.C. 7:15-4.3(c)2 to expand the

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term “sludge” to be consistent with the more broadly defined NJPDES terms “residual” and “residual use or disposal practice,” which includes, but is not limited, to marketable residual product, sludge, and sewage sludge. This modification is consistent with the use of the term residual in the WQPA. This condition is also being modified to include residual use and disposal practices as defined at N.J.A.C. 7:14A-1.2 that have received a NJPDES permit issued by the Department consistent with the Statewide Sludge Management Plan (SSMP). The SSMP is a component of the Statewide Solid Waste Plan and is mandated under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and satisfies the residual management planning mandate of the Water Quality Planning Act. Since activities related to components that handle residual and residual use and disposal practices are addressed through a separate planning process, it is not necessary for them to go through the WQMP planning process.

The Department is proposing to include a new provision at proposed N.J.A.C. 7:15-3.2(f)10, which would allow for most General Permit Authorizations (GPAs) issued by the NJPDES Program under an approved General Permit to be considered to be consistent without review of the sewer service area maps. These types of discharges are often short-term, non-residential, do not generally involve off-site generation or disposal, and are classified as minor permits by the USEPA. Types of general permits issued by the Department include general petroleum product clean up permits, ground water remediation permits, hydrostatic testing, non-contact cooling water, swimming pool discharges (non-residential), potable water treatment plant filter backwash, lined surface impoundments, sanitary subsurface, dental amalgam, basin discharges at sanitary landfills, and other similar types of operations or facilities. In general, these types of approvals involve discharges that are both generated and disposed of on-site. The

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only general permit that the Department is not including within this exception is the consolidated school general permit (Category ASC) for a new wastewater discharge from a new or expanded school. Category ASC general permits authorize the discharge of treated domestic wastewater from school treatment plants to surface waters of the State. Because a new or expanded discharge from a school could be related to an expansion of the sewer service area beyond what is identified within the existing areawide WQM plan and this activity generates and discharges domestic wastewater, these permit applications must be reviewed to determine if the school site is remaining within the identified sewer service area.

Delineation Requirements (N.J.A.C. 7:15-4.4, -4.6 and -4.7 and related definitions at N.J.A.C. 7:15-1.5)

Whether an area may be considered for inclusion in sewer service area at proposed N.J.A.C. 7:15-4.4(d) is based on the presence of environmentally sensitive areas (ESA), and local considerations. The procedure for delineating areas that may be served by sewers remains substantially the same as that set forth in the current rules at N.J.A.C. 7:15-5.24, with certain modifications to reflect the Department's experience in implementing the current rules, as well as the Department's determination to allow greater flexibility in the delineation process, where appropriate. The Pinelands Area and Highlands Region are addressed separately at proposed N.J.A.C. 7:15-4.4(b) and (c), respectively.

As described in greater detail below, flexibility intended to funnel growth to areas slated to handle that growth while ensuring that environmentally sensitive features are appropriately protected is reflected in several new provisions. If the area proposed to be included in sewer

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service area is identified for growth in the State Plan Policy Map as in Planning Area 1, within an area identified for growth in an endorsed plan, or considered infill development, the Department is adding flexibility to the delineation process so that area, that would otherwise be precluded from sewer service area due to the presence of endangered or threatened wildlife species, may be included in the sewer service area, but only if the area is not critical to the survival of a local population of endangered or threatened wildlife species. Further, if the area is within endangered or threatened wildlife species habitat, or is within a Natural Heritage Priority Site, the Department is proposing a new Habitat Impact Assessment (HIA) process at N.J.A.C. 7:15-4.7. The HIA process provides a mechanism for the review of a proposed project or activity for inclusion in the sewer service area because it avoids the habitat, will cause only insignificant or discountable effects to the wildlife habitat or natural resource elements, or, with respect to endangered and threatened wildlife species habitat, the project or activity includes conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat, and will mitigate for any adverse modification of habitat so that there is no net loss of habitat value for the local population of endangered or threatened wildlife species documented on-site, or their suitable habitat.

The Department is proposing to provide special consideration for demonstrating minimization and mitigation for agriculturally dependent endangered and threatened wildlife species. Finally, the Department is also adding flexibility to the delineation process if the area proposed to be included in the sewer service area is in a CAFRA growth area, and is proposed to address a public health problem or is infill. A detailed description follows.

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Environmentally sensitive areas and local planning objectives

As indicated above, proposed N.J.A.C. 7:15-4.4(d) establishes the process for determining if an area is eligible for sewer service. As in the existing rules, the delineation of eligible sewer service areas is based primarily on the absence of environmentally sensitive areas (ESAs). Development requiring sewer service is generally not compatible with the protection or conservation of the ESA (for example, endangered and threatened wildlife species habitat). In addition, development in or near ESAs is already limited through various agency regulatory programs, such as wetlands and riparian zone protections making placement of infrastructure in those areas inappropriate from a practical standpoint. The limitation on the extension of sewer service in these areas is consistent with the Department's mandate to protect the ecological integrity and natural resources of the New Jersey, including water, endangered and threatened wildlife species, wetlands, and unique and rare assemblages of plants. In *In re Matter of Adoption of N.J.A.C. 7:15-5.24(b) and N.J.A.C. 7:15-5.25(e)*, 420 N.J. Super. 552 (App. Div.) cert. denied 208 N.J. 597 (2011), the Appellate Division upheld the Department's approach to delineating sewer service areas. The court found that the Department "struck the proper balance between, on the one hand, a property owner's interest in developing land and, on the other hand, the State's interest in preserving protected species habitat, preserving water quality, protecting the environment and conserving public sewage resources." *Id.* at 579. Application of this approach resulted in 180,000 acres of land being excluded from sewer service area statewide, based on the presence of ESAs or local planning considerations.

ESAs that warrant exclusion from sewer service area are identified at N.J.A.C. 7:15-4.4(e). They were and continue to be identified as endangered and threatened wildlife species

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habitat, Natural Heritage Priority Sites, wetlands and the 300-foot riparian zone associated with Category One streams and their tributaries. When ESAs, individually or in combination, comprise a contiguous area of 25 acres or more, they are to be excluded from the sewer service area, except in specific instances set forth in the rule. The 25-acre threshold is also carried forward from the current rules.

The existing rules describe similar areas for protection as environmentally sensitive area at N.J.A.C. 7:15-5.24. While the description of wetlands at existing N.J.A.C. 7:15-5.24(b)4 remains the same, changes are proposed to the description of areas mapped as endangered or threatened wildlife species habitat, the protected areas adjacent to Category One waters and Natural Heritage Priority Sites currently described at N.J.A.C. 7:15-5.24(b)1 through 3 and in related definitions.

At N.J.A.C. 7:15-4.4(e)1, the Department is highlighting that only sites Ranked 3, 4, or 5 on the Landscape Maps are considered “environmentally sensitive areas” under the rule.

The current rule at N.J.A.C. 7:15-5.24(b)3 references the 300-foot riparian buffer along Category One waters and their tributaries based upon the “special water resource protection area” established under the Stormwater Management (SWM) rules at N.J.A.C. 7:8. The Department is proposing to update that reference to the riparian zone established under the Flood Hazard Area Control Act (FHACA) Rules which, pursuant to N.J.A.C. 7:13-4.1, is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC 14 watershed. Both the SWM rules and the FHACA Rules require a 300-foot riparian zone for Category One waters, but the SWM rules rely on paper maps prepared by the Natural Resource Conservation Service which, in the updated form, do not contain the “blue line” stream

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component referenced in the SWM rules as a reference point. This creates some difficulty in delineating Category One buffers using GIS. Other differences exist between the SWRPA and the related riparian zone established in the FHACA Rules. Recognizing the implementation issues that can arise when the two buffers apply to the same activity or project, the Department has proposed to delete provisions related to the special water resource protection area from the SWM rules and to amend standards in the FHACA Rules in order to create a 300-foot buffer with uniform standards that will apply to a uniform set of surface waters (see 47 N.J.R. 1041(a); June 1, 2015). The proposed definition of “riparian zone” has also been updated to reflect the changes described above.

The Department is proposing to modify the description of Natural Heritage Priority Sites protected as environmentally sensitive area in the definition of this term at N.J.A.C. 7:15-1.5 by adding to the definition reference to “natural resource elements,” and is additionally proposing a definition of that term for clarity. Natural resource elements are the basis for Natural Heritage Priority Sites, and are the habitat for the endangered plant species, plant species of concern and ecological communities of concern, and include areas required to maintain the natural processes necessary for the continued viability of such plant species or ecological communities, such as ground water flow and water quality. For example, in the Toms Branch Natural Heritage Priority Site the natural resource element is the habitat for two occurrences of the Federally threatened, State endangered plant species, swamp pink, and approximately 550 acres because water quality and hydrological impacts from surrounding development can greatly affect the plant’s viability. Additionally, the Department is proposing to add a definition for “Natural Heritage Database” as this database is the means to provide continuously updated information on

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the location and status of endangered and threatened wildlife species, endangered plant species, plant species of concern, and ecological communities of concern in New Jersey. The

Department maintains a manual and computerized file at

<http://www.nj.gov/dep/parksandforests/natural/heritage/index.html>.

Under the existing rules at N.J.A.C. 7:15-5.24(b)2, areas mapped as Natural Heritage Priority Sites are ESAs, but lands within the boundaries of these sites are included in sewer service area if they are mapped as “urban lands” by the Department’s Land Use/Land Cover geographical information systems database. This inclusion was based on the assumption that some areas in the Land Use/Land Cover database were already developed, and that their inclusion in the sewer service area would not impact Natural Heritage Priority Site habitats. However, upon further review of the mapping of the urban land coverage, the Department has determined that, because the urban land coverage does not distinguish between types of altered urban habitat, the exclusion of these areas from sewer service may be important for the viability of the natural resource elements within the Natural Heritage Priority Site. For example, a Natural Heritage Priority Site protecting the natural resource element swamp pink may include areas mapped as urban land. These mapped urban lands, however, may represent limited development, such as a low density rural residential lot with ancillary structures. If such mapped urban land was later converted to a higher density residential, commercial, or industrial use utilizing connection to a treatment plant, this could change water quality and hydrology in the area leading to an adverse impact on the plant species. The Department is therefore proposing to no longer exclude “urban lands” from areas mapped as Natural Heritage Priority Sites. This change does not mean that “Urban Lands” within Natural Heritage Priority Sites will never be

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included in a sewer service area. Instead, it means that, before any such area is included, the Department will review the area through a Habitat Suitability Determination or Habitat Impact Assessment as provided by proposed N.J.A.C. 7:15-4.6 or 4.7, discussed below, in order to make a determination that the project or activity will avoid or not adversely impact a natural resource element.

At proposed N.J.A.C. 7:15-4.4(h)1 through 3, the Department recognizes the role of local government in the planning process. This section provides that local considerations, such as adopted zoning ordinances, municipal or county master plans, and local land use objectives, including preservation plans, shall be considered in sewer service delineation. For example, even though an area may qualify for sewer service under these rules because no ESAs are present, a municipality's master plan may identify the area as appropriate for development on septic systems. Or a county may have a farmland preservation program that envisions certain tracts as remaining in agricultural production for the foreseeable future. In such situations, inclusion of such areas in a sewer service area would not be in line with the long term intended land use. Based on experience, the Department has found that the municipal master plan is the most relevant planning document for identifying local considerations in water quality management planning. Local considerations are currently considered in the planning process pursuant to N.J.A.C. 7:15-5.24(a), which authorizes the WMP agency to exclude additional areas from sewer service based on local planning objectives, including wastewater capacity or environmental concerns. The WMP agency provides, and the Department reviews, the basis for the proposed inclusion of exclusion of areas in the sewer service area.

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State Plan considerations and infill development

The continuing planning process, in part, seeks to promote consistency among Federal, State, regional, and local land use plans by aligning these plans. This intention is expressed in the State WQPA, which directs the Department to establish a continuing planning process that integrates Federal, State, regional, and local land use plans in the preparation of areawide WQM plans at N.J.S.A. 58:11A-5. In developing this proposal, the Department carefully re-examined whether it could better incorporate the New Jersey State Development and Redevelopment Plan (State Plan) developed in accordance with the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., into the water quality planning process.

The State Plan was developed to provide a balance between growth (development and redevelopment) and conservation (environmental protection and preservation). The State Plan Policy Map reflects planning policies geographically. It serves as the underlying land use planning and management framework that informs funding, infrastructure improvements, and preservation for programs throughout New Jersey. This occurs through the actions and policies of various programs within State government, including the Department.

The State Plan Policy Map is primarily organized into “planning areas” that share common conditions with regard to development and environmental features. Areas for growth and redevelopment include “Metropolitan Planning Areas” (Planning Area 1), “Suburban Planning Areas” (Planning Area 2), and “Designated Centers” in any planning area. There are additional planning areas appropriate for limited growth and conservation. For additional information on the State Plan, see <http://www.state.nj.us/state/planning/spc-state-plan.html>.

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Planning Area 1 is intended to provide for much of the State's future redevelopment; revitalize cities and towns; promote growth in compact forms; stabilize older suburbs; redesign areas of sprawl; and protect the character of existing stable communities. Planning Area 2 is intended to provide for much of the State's future development; promote growth in Centers and other compact forms; protect the character of existing stable communities; protect natural resources; redesign areas of sprawl; reverse sprawl; and revitalize cities and towns. Designated Centers are compact forms of development that, compared to sprawl development, consume less land, deplete fewer natural resources, and are more efficient in the delivery of public services.

The existing rules at N.J.A.C. 7:15-5.24(h) allow new sewer service area within environmentally sensitive areas that accommodate center-based development under the New Jersey State Planning Act provided it is an element of an endorsed plan, the Department finds the area is not critical to the population of endangered or threatened species, the loss of which would decrease the likelihood of survival or recovery of the species in the State, and an adequate wastewater management alternative has not been identified. Center-based development is a preferred development pattern under the State Plan. The process by which official "centers" are designated is commonly known as "plan endorsement." Though well-intentioned, the process has proven to be costly, complicated, and time-consuming. Most municipalities that started the process never completed it and, as a result, many areas appropriate for development and redevelopment have not been officially recognized. The integration of water quality planning, particularly sewerage infrastructure planning, and Statewide planning advances the purposes of both statutes and should be continued.

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The State Planning Act does not limit areas of the State preferred for development under the State Plan to center-based development or “centers.” Accordingly, taking into account the complications that have become apparent in the plan endorsement process, the proposed new rules at N.J.A.C. 7:15-4.4(i) expand areas eligible for new sewer service within environmentally sensitive areas to Planning Area 1, and continues to allow inclusion of environmentally sensitive areas in sewer service area where necessary to address “infill development” or to remove undulations in the sewer service area. However, the inclusion of Natural Heritage Priority Sites or areas that are critical to the survival of a local population of endangered or threatened wildlife species in the sewer service area will be prohibited.

Planning Area 1 was originally delineated based upon existing development patterns and the presence of existing infrastructure to support it. Statewide there are approximately 840,000 acres in Planning Area 1. Of that area, an estimated 68,000 acres is outside of sewer service area. Of that 68,000 acres, excluding open space and riparian zone areas, an estimated 4,500 acres are mapped as endangered or threatened wildlife species habitat.

At N.J.A.C. 7:15-4.4(i)1ii, the Department is proposing to allow, for planning purposes only, an ESA area to be included within sewer service areas located in a Planning Area 1 as defined in the State Plan Policy Map, provided that such area is not critical to the survival of a local population of endangered or threatened wildlife species. The Department has concluded that the mapping of areas as presumptive habitat for endangered or threatened wildlife species on a Planning Area 1 site should not exclude a site specific review to determine eligibility for sewer service area. The review includes the determination specified at proposed N.J.A.C. 7:15-4.4(i)2.

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Due to the overlap in many of the characteristics shared by Planning Areas 1 and 2, as summarized above, the Department also evaluated whether it would be appropriate to allow sewer service in ESAs if they are in Planning Area 2 areas. However, the Department determined that such an allowance would not be appropriate. In contrast to the information regarding existing development and existing infrastructure relied upon in the original delineation of Planning Area 1 areas, when Planning Area 2 was originally delineated in the mid-1980s by the then Office of State Planning (now the Office for Planning Advocacy), staff relied heavily on the existing sewer service area delineations of the time. At the time, sewer service areas included vast areas of “planned” sewer service with little to no infrastructure in place to support the development and the delineations were made absent most of the considerations required under the 2008 rule. Further, while some goals overlap, Planning Area 2 does have different planning goals than Planning Area 1, including protecting natural resources and reversing observed patterns of sprawl development. Accordingly, the Department has determined to retain the limitations set forth in the current rule regarding sewer service area delineation with respect to endangered and threatened wildlife species habitat in Planning Area 2.

At proposed N.J.A.C. 7:15-4.4(i)1i, the Department is proposing to allow the extension of sewer service in an ESA if it is an area located within an endorsed plan identified for growth and approved by the State Planning Commission. The Department’s current rules at N.J.A.C. 7:15-5.24(h) conditionally allow ESAs to be included in sewer service areas if the ESA is included to accommodate center-based development and is an element of an endorsed plan approved by the State Planning Commission, provided the Department also determines that the endorsed plan adequately addresses the protection of ESAs located outside of the designated sewer service area

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and there is adequate wastewater capacity. At proposed N.J.A.C. 7:15-4.4(i)1, the Department is broadening this exception to recognize that it is not just center-based development that is appropriate for growth. As noted above, in general, the State Plan identifies areas for growth as Planning Area 1, Planning Area 2, and “Designated Centers” in any planning area. If these areas identified for growth are also located within an endorsed plan, local zoning has been adjusted to accommodate that growth. The Department has determined that it is appropriate to consider these identified and endorsed growth areas as appropriate for sewer service, provided the area is not a Natural Heritage Priority Site or critical to the survival of a local population of endangered or threatened wildlife species.

Through proposed N.J.A.C. 7:15-4.4(i), the Department takes a hard look at new sewer service areas and will not approve additions that do not meet the environmental requirements of this rule. Further, even if a parcel is added to the sewer service area under this provision for planning purposes, it will be subject to the requirements of the Department permitting programs. For example, if the parcel has wetlands, it will be subject to all requirements and restrictions applicable under the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A. These proposed provisions are intended to accommodate growth in appropriate areas while protecting important natural resource wherever they occur. The proposed new rules encourages growth and infrastructure in areas where it is appropriate. 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. Furthermore, the rules proposed will help ensure that the economic efficiency of public infrastructure investment is maximized and will provide for the wise use of limited wastewater capacity to maximize availability in areas where development is appropriate.

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These are all measures that foster smart growth and therefore are consistent with and further the goals of the State Plan.

By providing opportunities for smart growth in growth appropriate areas such as Planning Area 1, there will be reduced pressure for growth in less appropriate areas. Even in areas determined to be appropriate for growth, however, the proposed rules provide habitat protection by prohibiting expansion of sewer service into areas that are critical to the survival of a local population of endangered or threatened wildlife species, as discussed below. In addition, mere inclusion in a sewer service area for planning purposes does not guarantee that applicable Department permits will be obtained for a particular parcel or project area. The technical permitting requirements, including land use permits, will still need to be met for a project or activity to proceed.

The Department recognizes that the State Planning Commission is considering adopting a revised State Plan that would transition away from the State Plan Policy Map system into a criteria-based system for identifying areas best suited for growth, limited growth, and preservation/conservation. This transition would take place after the revised State Plan is adopted and after rules are promulgated to institute this new system. Should changes be made to the State Plan Policy Map, the Department will coordinate implementation efforts as determined to be necessary at that time.

The Department is additionally adding definitions for the terms State Plan and State Plan Policy Map due to the extensive use of these terms throughout the chapter as described above.

At proposed N.J.A.C. 7:15-4.4(i)1iii, the Department is proposing to allow sewer service in an ESA if it is included to allow either infill or to remove undulations in the sewer service

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area, provided the ESA is not a Natural Heritage Priority Site and is not critical to the survival of a local population of endangered or threatened wildlife species. This provision is carried forward from the existing rules at N.J.A.C. 7:15-5.24(g). The Department has modified its definition of “infill” as discussed in changes to Subchapter 1 below.

As indicated above, even if an area is infill, within an area identified for growth in an endorsed plan, or in Planning Area 1, the Department will not allow inclusion of the area within sewer service area under proposed N.J.A.C. 7:15-4.4(i) if the environmentally sensitive area proposed to be included in the sewer service area is critical to the survival of a local population of endangered or threatened wildlife species or is within a Natural Heritage Priority Site. This is a change in standard from the current rules, which, at N.J.A.C. 7:15-5.24(g)2 and (h)1, require a finding that the environmentally sensitive areas are “not critical to a population of endangered and threatened species, the loss of which would decrease the likelihood of the survival or recovery of the species in the State,” before the area would be eligible for sewer service. The Department has found the existing standard to be impractical to apply in many cases. For many species, impacts to a Statewide wildlife population are difficult to assess, and negative impacts to even a local population of an endangered or threatened wildlife species who, by definition require population expansion, are likely to appreciably reduce the likelihood of statewide survival or recovery of the species. Conservation biologists recognize that populations existing at the periphery of their range or populations that are persisting in challenging, human-impacted habitats may contain inherited or acquired adaptive traits that may contribute to persistence at larger scales in the face of continued disturbance or habitat change. For example, impacts to a nesting habitat of a local population of State-listed yellow-crowned night-herons that have

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adapted to nesting in heavily disturbed environments may interfere with the spread of this adaptive behavior to other local populations and thus adversely impact the recovery of the species in the State.

Assessing impacts to the relevant, local wildlife population, as proposed at N.J.A.C. 7:15-4.4(i)2, is a scale at which assessment of impacts is manageable for purposes of evaluating the exceptions at N.J.A.C. 7:15-4.4(i), and will provide for the protection of critical wildlife habitats, while not precluding development in areas identified for growth. This revised standard serves the same purpose as the approach in the current rules. It should be noted that the proposed standard for allowing sewer service in endangered and threatened wildlife species habitat differs based on whether the area is identified for growth, as in N.J.A.C. 7:15-4.4(i). If the area is not identified at N.J.A.C. 7:15-4.4(i), the sewer service area review is conducted pursuant to proposed N.J.A.C. 7:15-4.4(k).

In determining whether an area proposed for inclusion in a sewer service area is critical to the survival of a local population of endangered or threatened wildlife species, a more detailed assessment of the habitat and/or of species sighting or use may be required. Areas determined to be critical to the survival of a local population serve very specific life history needs in a specific habitat location. These areas are commonly habitat types or landscape features that have taken significant periods of time to become established or for other reasons are essentially irreplaceable. An area that provides actual reproductive habitat for an endangered and threatened species, such as a breeding pond or a nest site, or an area that provides habitat during a critical stage in the life cycle of an endangered or threatened wildlife species, such as den sites or hibernacula, would be considered to be critical to the survival of that population. This is not

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intended to be an exhaustive list, but is intended to be illustrative of what criteria will be applied by the Department. The evaluation varies by species or habitat and the field conditions. These areas are of such critical importance to the survival of a local population of endangered or threatened wildlife species that the Department will not consider these areas for inclusion as sewer service area.

The special consideration for Planning Area 1, areas identified for growth in endorsed plans, and infill areas is not appropriate when the ESA is based on inclusion within a Natural Heritage Priority Site. Natural Heritage Priority Sites are critically important areas of biodiversity, and, in order to ensure these areas are preserved and protected, it is necessary to fully evaluate if a project or activity avoids or does not adversely impact natural resource elements. For example, the Toms Branch Natural Heritage Priority Site falls within Planning Area 1, but in order to determine whether including the site in a sewer service area would result in an impact to the natural resource element in question, the swamp pink, the potential for water quality and hydrological changes must be thoroughly evaluated. The listing of swamp pink as a threatened species in 1988 under the Federal Endangered Species Act was based on a determination by the U.S. Fish and Wildlife Service (USFWS) that loss and alteration of the species' habitat had resulted in a decline in the distribution of this species throughout its range in the United States. While the range of this obligate wetlands species extends from Georgia to New Jersey, the vast majority of remaining populations occur in 11 New Jersey counties. Further, the majority of extant populations in New Jersey are privately owned and are experiencing decline as a consequence of development of adjacent upland habitat within the subwatershed of these populations. According to the USFWS, disturbances including, but not

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limited to, surface and ground water hydrology, erosion and sedimentation, discharge of stormwater, human activity and deer browse, alone or in combination within 0.5 mile and/or within the HUC 14, may be injurious to the viability of populations. Nine of the 31 Natural Heritage Priority Sites that intersect with Planning Area 1 sites support or once supported swamp pink populations. The Department has determined that, pursuant to N.J.A.C. 7:15-4.4(l), the review to determine whether a sewer service area designation may impact a Natural Heritage Priority Site should occur through a Habitat Suitability Determination at N.J.A.C. 7:15-4.6 or a Habitat Impact Assessment at N.J.A.C. 7:15-4.7.

Opportunities to rebut Department environmental data and Habitat Suitability

Determinations

Proposed N.J.A.C. 7:15-4.4(j) allows an applicant for an amendment to rebut the presumption that the environmental data identified at proposed N.J.A.C. 7:15-4.4(e), upon which an area was excluded from SSA, is correct based on the results of a Habitat Suitability Determination, a Letter of Interpretation that demonstrates that an area is not wetlands, or any other information that demonstrates that the Department's GIS coverage is not accurate at a particular location. This provision is carried forward from the existing rules at N.J.A.C. 7:15-5.24(e).

The Department is proposing an additional basis for rebuttal at proposed N.J.A.C. 7:15-4.4(j)1, which provides that an applicant may rebut the presumption that an area is endangered or threatened wildlife species habitat without conducting a full Habitat Suitability Determination by demonstrating that the most current version of the Landscape Maps no longer depicts a site or

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project area as an endangered or threatened wildlife species habitat. As specified in the rule, endangered and threatened wildlife species habitats, for the purposes of establishing sewer service areas, are determined on the basis of the Department's Landscape Project mapping. The Landscape Maps define suitable habitat based on modeling that intersects confirmed endangered and threatened wildlife species occurrences with the habitat requirements and known behavior/life history requirements of the particular species. The Landscape Maps identify areas that provide presumptively suitable habitat for a particular species based on these requirements. Use of the Landscape Project methodology to identify areas of documented and suitable habitat has been affirmed by the Appellate Division, See *ZRB, LLC v. DEP*, 403 N.J. Super. 531 (App. Div. 2008); *In re Adopted Amendments to N.J.A.C. 7:7A-2.4*, 365 N.J. Super. 255 (App. Div. 2003), and its use in the water quality planning process has also been upheld. See *In re Adoption of N.J.A.C. 7:15-5.24(b) and N.J.A.C. 7:15-5.24(e)*, 420 N.J. Super. 552, 568-571 (App. Div. 2011).

Since the 2008 rules, there has been one major update of the Landscape Maps. Additionally, further updates to the Landscape Project mapping are planned and likely during the term of these new rules. Should any such revision alter the characterization of on-site habitats, these proposed rules will allow for their consideration without the need for a Habitat Suitability Determination.

The Department is continuing the procedure, currently codified at N.J.A.C. 7:15-5.26, for conducting a Habitat Suitability Determination (HSD) at proposed N.J.A.C. 7:15-4.6 with modifications described below. The HSD process currently allows an applicant to rebut the presumption that an area identified as within a habitat area of rank 3, 4, or 5 on the Landscape

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Maps, is correct. The Department is proposing to expand this process at proposed N.J.A.C. 7:15-4.4(j)2 to allow applicants to additionally rebut the presumption that the habitat is suitable for the natural resource elements in the National Heritage Priority Site. In many instances, the Department expects to be able to make a determination on habitat suitability based upon a desk-top analysis of aerial photographs and other data. For example, habitat may have become isolated or disturbed since the map was drawn, and, therefore, a review of current conditions may reveal that the parcel is no longer suitable habitat. In such a circumstance, it is not necessary to conduct a fully detailed HSD. As a further example, suitable habitat for the Pine Barrens Tree Frog must include both breeding ponds and adjacent, forested dispersal habitat. Based on the manner in which the Landscape Maps is drawn, the map may include forested areas associated with a pond, but the pond may be too far from the specific forested area under consideration, or specific forest areas may be fragmented from the pond by a significant linear feature such as a major highway. In such a circumstance, a desk-top review of the parcel can reveal that, even though a parcel is identified on the Landscape Map as suitable habitat for endangered or threatened wildlife species, the parcel(s), or specific portions thereof, are no longer functioning as such habitat. In that circumstance, all elements of a complete HSD are not necessary in every instance to make a determination on habitat suitability. The Department has added flexibility to the HSD process at N.J.A.C. 7:15-4.6(c) to codify the Department's discretion to focus submittals on critical information. If an applicant believes that information exists that demonstrates that a site should no longer be considered suitable habitat without the need for all information normally required for a full Habitat Suitability Determination, the applicant is encouraged to request a pre-application conference to discuss this information with the

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Department. The basis for the request and the rationale for the agency's action under this provision will be part of the administrative record.

The Department is proposing to require all applications for HSDs to be submitted electronically at N.J.A.C. 7:15-4.6(c), and that maps submitted as part of the application be in a digital format. Following existing N.J.A.C. 7:15-5.26(b), proposed N.J.A.C. 7:15-4.6(c) identifies the detailed information that must be included in an HSD application. Similar to existing N.J.A.C. 7:15-5.26(c) and (d), proposed N.J.A.C. 7:15-4.6(d) identifies the factors the Department will consider in its HSD determination, and N.J.A.C. 7:15-4.6(e) describes how the Department will notify an application of its decision. At N.J.A.C. 7:15-4.6(f), the Department is highlighting that an HSD issued under these rules is based upon the best information available to the Department at the time of issuance and is subject to revision should the Department's understanding of ESAs on the parcel or the details of the project change.

Habitat Impact Assessments

At N.J.A.C. 7:15-4.4(k) and (l), the Department is proposing to allow sewer service in areas deemed environmentally sensitive based on the occurrence of mapped threatened or endangered wildlife species habitats or Natural Heritage Priority Sites where, in the context of an application for a site specific amendment, the Department is able to determine, through a Habitat Impact Assessment (HIA) submitted in accordance with N.J.A.C. 7:15-4.7, that the proposed project or activity avoids endangered and threatened wildlife species habitat or natural resource elements, or will result in insignificant or discountable effects on the maintenance of local breeding, resting or feeding of the endangered or threatened wildlife species or on the natural

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resource elements within a Natural Heritage Priority Site. If neither of these two standards can be met, the HIA may be used to demonstrate that the potential impacts to endangered or threatened wildlife species habitats are minimized to the maximum extent practicable and mitigated through the use of project redesign or modification, implementation of timing restrictions, best practices, or other proposed conservation measures in a manner that provides for no net loss of habitat value to the endangered wildlife species. Note that there may be situations where, due to the nature of the specific habitat features proposed to be impacted, mitigation is not possible. In addition, these proposed rules do not allow mitigation or conservation measures to compensate for impacts to natural resource elements because such measures cannot replicate exact floristic composition and soil characteristics required to ensure survivability, and may also lead to a loss of genetic diversity. In such cases, the area will be denied inclusion in the sewer service area.

Proposed N.J.A.C. 7:15-4.4(k) recognizes that there are situations in which development in environmentally sensitive areas connected to sewer treatment will have little or no impact on the endangered or threatened wildlife species habitat which led to the area being classified as environmentally sensitive. Indeed, in certain circumstances, development using septic systems can be incompatible with the protection of endangered and threatened wildlife species, and clustered development using sewer service may have less impact or may avoid adverse impacts entirely. For example, a particular species that requires large contiguous habitats and/or is particularly sensitive to human disturbance may be adversely affected by development on septic systems because such development tends to be dispersed with each structure required to include land sufficient for dilution purposes. In contrast, a clustered development utilizing a sewage

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treatment plant could result in the preservation of large contiguous undeveloped habitat area more conducive to local population survival. In such an instance, proposed N.J.A.C. 7:15-4.4(k) would allow sewer service to be established in a portion of endangered and threatened wildlife species habitat as identified by the Landscape Project, provided identified suitable habitat is avoided to the maximum extent practicable and conservation measures are undertaken to ensure that there is no net loss of habitat value. These requirements will ensure the viability of the remaining habitat to support endangered and threatened wildlife species.

In order for an environmentally sensitive area to be included within sewer service area pursuant to N.J.A.C. 7:15-4.4(k)2 or 4.4(l) (for endangered and threatened wildlife species, and Natural Heritage Priority Sites, respectively) the Department must be able to determine, in accordance with N.J.A.C. 7:15-4.7(e)1i, that the project or activity avoids the habitat, or the natural resource elements, or that pursuant to N.J.A.C. 7:15-4.4(e)1ii, the proposed loss or modification of habitat would result in insignificant or discountable effects on the maintenance of local breeding, resting, or feeding of the endangered or threatened wildlife species or the natural resource elements within the Natural Heritage Priority Site.

To demonstrate that a project or activity avoids endangered or threatened wildlife species habitat or the natural resource elements, the applicant must demonstrate that the wildlife species or natural resource element in question will not be adversely impacted by the project or activity because the proposed activity is located away from the habitat in question. For example, a lot and block and lot may have open agricultural land surrounded by forest with the forested area being barred owl habitat, but the field is not. In that case, a proposal to provide sewer service area for a project whose footprint is entirely within the open agricultural land would avoid the

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habitat and an application for a sewer service area amendment could be considered. Or a Natural Heritage Priority Site may be designated based upon natural resource elements that occupy habitat consisting of rocky upland bluffs. Such species are unlikely to be affected by potential changes to ground water that may result from installation of sewer systems. Avoidance would consist of demonstrating that the proposed activity will not encroach directly on the bluff occupied by the natural resource element, and that a suitable buffer can be applied or actions can be taken to prevent secondary habitat impacts such as introduction of invasive species, or runoff.

The Department may be able to determine that the project or activity would result in insignificant or discountable effects. For example, an area could be good habitat for foraging for a barred owl, but proposed impacts might be found not to significantly alter or remove such foraging habitat to the extent that its loss would impact local breeding, resting, or feeding of the barred owl. Assessment of impacts includes consideration of the scale or amount of habitat disturbed, the extent to which impacted habitats provide functions and values for the species in question, consideration of specific functions or values provided, and an assessment of net alteration of existing conditions considering the surrounding landscape. Accordingly, very small scale impacts to highly valuable or specialized habitat types may well be found to be adverse, while it is possible that larger scale impacts to habitats featuring less critical functions and values may have a lesser overall impact. Impact assessments under this rule will be carried out consistent with those performed under other applicable regulations governing land use or development, although any findings will reflect the level of detail provided for review. Applicants must still satisfy permitting requirements of the applicable program.

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As indicated above, for sewer service areas to include ESA based upon the Department's Landscape Maps where complete avoidance of endangered and threatened wildlife habitat is not feasible, or where the project of activity will result in more than insignificant or discountable effects, the proposed new rules require that minimization and mitigation be provided that results in "no net loss of habitat value." A definition of "no net loss of habitat value" is proposed at N.J.A.C. 7:15-1.5 and means that habitat within a region must remain, or be created within a reasonable time frame, capable of supporting the same or greater population of the endangered or threatened wildlife species as it is currently capable of supporting. A reasonable time frame is one that would ensure that after mitigation actions have been implemented (which must precede the adverse impacts), the habitat in the region would be capable of supporting the same population of endangered or threatened wildlife species as it was capable of supporting prior to the adverse impacts. This must occur within two to three generation periods for the particular endangered or threatened wildlife species affected and before the impacts of the adverse modification could result in irreparable harm to the local population. In most cases, this would mean that regional habitat carrying capacity should return to existing capacity within three to ten years depending on the species impacted. Thus, mitigation must compensate for at least 100 percent of the loss or decrease in habitat value anticipated to result from development in the habitat area. Not every habitat disturbance can be mitigated. For example, the destruction of mature forest or an ancestral den for timber rattlesnake cannot be mitigated. However, some existing habitats can be protected through mitigation requirements associated with other projects in the region. For example, mitigation can result in the acquisition and conservation or

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management of regional habitats of significant value to endangered or threatened wildlife species, and it is appropriate to allow this option to be explored.

The Department is defining conservation measures broadly at N.J.A.C. 7:15-1.5 as including techniques to acquire, preserve, create, enhance, restore, or manage habitat for endangered or threatened wildlife species. Conservation measures also includes conservation restrictions, which are defined, consistent with N.J.S.A. 13:8B-2(b), as an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition in any deed.

In general, the Department will require that permanent conservation restrictions be filed to ensure no net loss of habitat value, by itself or in combination with other conservation measures, on or off-site. The conservation measures may include habitat management plans that require active habitat enhancement over a period of time. In *Pinelands Preservation Alliance v. Jaylin Holdings, LLC*, 436 N.J. Super. 510 (App. Div. 2014), the Appellate Division upheld the Department's application of on and off-site conservation measures, included as conditions to a CAFRA and FWPA permit, authorizing construction of a retail store, water tower, garden center, parking lot, and associated construction disturbance. The property at issue is located in the Pinelands and is habitat for the pine snake, a State threatened species. In issuing the requisite land use permit, the Department found that, although the project would cause the direct loss of pine snake habitat on the construction site, and could result in a number of secondary impacts, such impacts would cause "no net loss" because of the applicant's proposed habitat enhancement activities both on and immediately adjacent to the development, and the applicant's preservation and enhancement of additional mitigation parcels, which would improve the pine snake habitat in

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the surrounding area. In that case, the conservation measures included the permanent preservation of on-site forested/vegetated open space to serve as a corridor linking the on-site habitat with the thousands of acres of adjoining habitat, and habitat enhancement activities within this corridor, including construction of artificial hibernacula and stump/debris piles, selective tree thinning, blocked access, creation of upland forest clearings for nesting, and scarifying the ground to benefit existing pine snake habitat. The conservation measures also included the preservation of off-site property. At N.J.A.C. 7:15-4.4(k), the Department is proposing to incorporate and codify the concept that minimization and mitigation through conservation measures may provide for “no net loss of habitat value.” As proposed, the conservation measures must be new activities that benefit the endangered and threatened wildlife species, as near as feasible to the location of the project or activity, and that these measures be memorialized in a conservation restriction or other recorded and enforceable document.

At N.J.A.C. 7:15-4.4(k)4, the proposed rules provide specific standards for minimization and mitigation when the species of concern is an agriculturally dependent species. Agriculturally dependent species are dependent on agricultural practices. Historically, “agriculturally dependent” endangered and threatened wildlife species were able to rely on habitats occurring both as a result of natural disturbances, as well as those occurring as a result of anthropogenic activities. Increasingly, these habitats occur primarily as a result of continued farming activities. As a result, cessation of human agricultural operations, as has occurred in parts of the State, can both directly eliminate habitat and destroy the suitability of habitat areas that remain as a result of habitat fragmentation and the failure of the remaining area to provide the minimum core area necessary for local population survival. The Department has added a definition of agriculturally

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dependent species at N.J.A.C. 7:15-1.5 that recognizes the importance of continued agricultural practices to the continued ability of a habitat to support these species. Based on current understanding of habitat requirements of wildlife species currently listed as endangered or threatened, the Department considers the following species agriculturally dependent when their presence at a particular site is dependent upon specific ongoing agricultural practices: Cattle Egret (*Bubulcus ibis*), American Kestrel (*Falco sparverius*), Upland Sandpiper (*Bartramia longicauda*), Henslow's Sparrow (*Ammodramus henslowii*), Vesper Sparrow (*Poocetes gramineus*), Grasshopper Sparrow (*Ammodramus savannarum*), Savannah Sparrow (*Passerculus sandwichensis*) Horned Lark (*Eremophila alpestris*), Bobolink (*Dolichonyx oryzivorus*), and Checkered White (*Pontia protodice*).

It has been demonstrated that a cessation of agricultural practices beneficial to specific wildlife in one location can be successfully compensated for by the initiation or adaptation of similar practices nearby. Moreover, experience supports the successful mitigation of habitat loss for agriculturally dependent species through the coordination and implementation of habitat compatible farming practices. Successful mitigation activities have included the establishment and maintenance of suitable habitats both through habitat creation/enhancement (the planting of appropriate herbaceous vegetation), as well as by management practices that are performed in coordination with a specific species of concern, habitat, or life cycle needs (such as delayed mowing regimes or crop rotation). Implementation of such management practices can have nearly immediate effects, and even habitat creation or enhancement activities can be accomplished quickly (within one to two years). In these cases, occupation of mitigated habitats by the affected/target species is often rapid, if not immediate. Given the above, and recognizing

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that crops and agricultural practices may change with corresponding adverse impacts to agriculturally dependent species, the Department has determined that it is appropriate to allow a greater degree of flexibility for mitigation proposals concerning “agriculturally dependent species.”

At proposed N.J.A.C. 7:15-4.4(k)4, the Department is specifying that it will accept a variety of conservation measures if the endangered or threatened wildlife species is an agriculturally dependent species. These measures may be in the form of an easement that is held in perpetuity, or for a particular term, such as 10 or 30 years. This approach recognizes that changes in farming practices in response to market and other forces over time could result in the diminution or complete loss of habitat values for these species. The approach is modeled on the Agricultural Conservation Easement Program (ACEP), the Healthy Forests Reserve Program (HFRP), the Conservation Reserve Program, and other similar programs implemented by the United States Department of Agriculture (USDA) that are aimed at conserving agricultural and ecological values of farmland. The USDA operates the ACEP, which provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. The program operates two types of agreements: Agricultural Land Easements and Wetland Reserve Easements, the most relevant of which in the context of preserving habitat values is Wetland Reserve Easements. Under Wetland Reserve Easements, Natural Resources Conservation Service (NRCS) provides assistance directly to private landowners and Indian tribes to restore, protect, and enhance wetlands. Through these easement options, NRCS may enroll eligible land through permanent easements, 30-year easements, term easements, or 30-year contracts. <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/acep/>.

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The USDA also operates the Healthy Forests Reserve Program (HFRP), which aids the recovery of endangered and threatened species, improves plant and animal biodiversity and enhances carbon sequestration by providing landowners with 10-year restoration agreements and 30-year or permanent easements for specific conservation actions.

<http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/easements/forests/?cid=stelprdb1242716>. The Conservation Reserve Program administered jointly by the Farm Service Agency and the NRCS is a land conservation program that provides rental payments in exchange for agreements to remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality, including vegetation that provides habitat for grassland birds. Contracts for land enrolled in CRP are 10 to 15 years in length. The long-term goal of the program is to re-establish valuable land cover to help improve water quality, prevent soil erosion, and reduce loss of wildlife habitat.

<http://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-program/index>.

Conservation measures may include plans to initiate or continue activities that would otherwise not occur or not be expected to occur or continue. Conservation measures, which must be approved by the Department, include creation, enhancement, restoration, management, maintenance, or acquisition of habitat by a responsible third party, such as a local or county government, or non-profit organization with a conservation purpose. The project must be as close as feasible to the project or activity impacting habitat for agriculturally dependent wildlife species. The conservation measures must be adequately funded and otherwise supported, and the conservation measures must be memorialized in an enforceable document. If the measure

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includes the acquisition of property, or activities on property, documentation must also include a recorded conservation restriction.

Proposed N.J.A.C. 7:15-4.4(l) provides that the Department may only allow sewer service within a Natural Heritage Priority Site where the project or activity avoids or does not adversely impact the natural resource elements within the Natural Heritage Priority Site. Mitigation measures, such as plant propagation or physical relocation, do not ensure the continued viability of rare plants or ecological communities that make up the natural resource elements within Natural Heritage Priority Sites. Accordingly, requiring mitigation to compensate for impacts in these areas is not a realistic option. However, extension of sewer service into a Natural Heritage Priority Site may be permissible if it would avoid or not have an adverse impact to the natural resource elements at issue. In many instances, the Department expects to be able to make a determination regarding the avoidance or lack of adverse impact to a natural resource element based upon a desk-top analysis of aerial photographs and other data. For this reason, early in the process the applicant may present information that the Department agrees is relevant and demonstrates avoidance or a lack of adverse impact to a natural resource element without the need for the applicant to prepare or submit a full Habitat Suitability Determination under N.J.A.C. 7:15-4.6 or Habitat Impact Assessment under N.J.A.C. 7:15-4.7. For example, the natural resource element may have been disturbed since the Natural Heritage Priority Site was drawn and, therefore, a review of current conditions on an aerial photograph may reveal that the area in question is no longer suitable habitat. In other cases, however, it may be necessary for the Department to review the complete Habitat Suitability Determination or Habitat Impact Assessment application materials, as specified in N.J.A.C. 7:15-4.6 or 4.7, in

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order to make its determination that the project or activity will avoid or not adversely impact a natural resource element within a Natural Heritage Priority Site.

The HIA process, at proposed N.J.A.C. 7:15-4.7, allows a more thorough analysis of the potential impacts of a proposed project or activity to be considered in determining whether or not to allow suitable endangered or threatened wildlife species habitat or a portion of a Natural Heritage Priority Site to be included within the sewer service area. An application must include information needed for a HSD, as well as information that is specific to the species or natural resource elements of concern. Based on the information provided, the Department will determine, in accordance with proposed N.J.A.C. 7:15-4.7(e), if the project or activity will or will not have an adverse impact on the habitat of the endangered or threatened wildlife species, or the natural resource elements within the Natural Heritage Priority Site. As indicated at proposed N.J.A.C. 7:15-4.7(e)1, the Department may find that there is no adverse impact to these resources if the project avoids them, if the project will have insignificant or discountable effects, or because the project will include conservation measures for wildlife species so that there is no net loss of habitat value.

Additional explanation is provided at N.J.A.C. 7:15-4.7(e)1ii with regard to the factors the Department will consider in making its findings of habitat impact. The factors include the landscape context of the habitat as well as the location of essential ecological features. Habitat patches do not exist in isolation, but are nested in larger surrounding landscape. Landscape context refers to this larger regional setting of the habitat, that is, its setting within the larger landscape where it is located. This concept is foundational to landscape ecology and recognizes that the value and function of habitat depends on its setting. For example, an area of deciduous

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forest habitat located within a generally agricultural area may have different habitat value and function than a similarly sized patch of deciduous forest located within a generally forested region. Such differences in value and function can significantly affect the capacity of a particular site to support particular species.

The reference to occurrence and location of essential ecological features recognizes that to support a viable population of a particular endangered or threatened species, a site must include all of the components of habitat necessary through the species life-cycle occupation of the site. For example, for a population of timber rattlesnakes, the specific vegetation and geological features necessary to support denning (hibernation), gestation, and birthing need to be located in close enough proximity to one another to not require energetically prohibitive travel between these features and the area must feature suitable foraging habitat to provide necessary energy.

If the project is located within an endorsed plan, Planning Area 1, or accommodates infill development, the Department may find, pursuant to N.J.A.C. 7:15-4.7(e)3, that the project or activity will or will not adversely impact habitat critical to the survival of a local population of the endangered or threatened species. Otherwise, pursuant to N.J.A.C. 7:15-4.7(e)3, the Department will find that there is an adverse impact that precludes the area from being considered for inclusion in sewer service.

Under both the Habitat Suitability Determination and the Habitat Impact Assessment at N.J.A.C. 7:15-4.6(b) and 4.7(c), an applicant may simultaneously apply for other applicable Department permits. The Department encourages this approach to maximize efficiency and consistency in making regulatory determinations for a particular project or activity.

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While the WQMP rules seek to protect environmentally sensitive areas from development pressures that can come with development densities likely in areas served by centralized sewage systems, the WQMP rules provide this protection in the planning context, with other Department rules providing additional protections for particular environmentally important features. Because of the different focus, an applicant for a proposed project or activity must recognize that, as much as the Department has endeavored to harmonize the standards of this rule proposal with other regulations, a finding of compliance with regard to the specific standards required for an environmentally sensitive area to be included within a designated sewer service area does not constitute a finding on the merit of a future permit application. Just like inclusion within a sewer service area is no guarantee that sewer service can ultimately be obtained, an applicant that is successful in obtaining an amendment under the WQMP rules relative to sewer service area must still obtain any and all other necessary environmental permits required from the Department for the proposed project or activity.

The Department is not mandating an applicant under these proposed rules to demonstrate detailed compliance with, for example, the endangered or threatened species requirements of a Department permit, an applicant may voluntarily apply for any or all other required permits. In fact, doing so would allow the Department to make a more definitive finding with regard to the project under WQMP review. However, the Department recognizes the spectrum of relative project development and the flexibility of the planning process in the level of detail available for review. This proposed process accommodates this approach, but recognizes any inherent limitations of information supplied.

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Similar to the HSD, the Department is highlighting at N.J.A.C. 7:15-4.7(f) that a HIA is based upon the best information available to the Department at the time of issuance and is subject to revision based on new information.

The Department also notes that the USFWS may also have independent jurisdiction under Federal law, namely the Endangered Species Act of 1973, and applicants should seek guidance.

CAFRA

In addition to generally excluding environmentally sensitive areas from SSA, with the exceptions discussed above, the proposed rules continue to limit sewer service in certain areas within the State's coastal area. Particularly, at proposed N.J.A.C. 7:15-4.4(f), the Department excludes from eligibility for sewer service area Coastal Fringe Planning Areas, Coastal Rural Planning Areas, and Coastal Environmentally Sensitive Planning Areas, with limited exception. In the 2008 rules, the only means to include areas within these Coastal Planning Areas within the sewer service area was to have the Coastal Planning Area designation changed. This process is administratively challenging and was found to be unnecessarily burdensome in some cases. Therefore, the proposed rules allow inclusion of portions of the identified Coastal Planning Areas in sewer service area where necessary to address an imminent public health and safety issue, to accommodate infill development, as well as to allow for smoothing to achieve a manageable sewer service area delineation without the need to first modify the Coastal Planning Area designation. This approach is similar to that afforded to ESAs other than Natural Heritage Priority Sites under proposed N.J.A.C. 7:15-4.4(i). While this proposed provision creates an administratively efficient means to include such areas in the sewer service area, it does not

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impact requirements otherwise applicable to development in these coastal areas; any proposed project or activity in such areas would still need to qualify for a CAFRA or other coastal permit, if applicable.

At N.J.A.C. 7:15-4.4(h), the Department continues to identify ESAs in which 201 Facilities Plan grant limitations prohibit the extension of sewer service as inappropriate for sewer service. The extension of sewer service to these areas is permissible by obtaining the approval of a mapping revision or waiver from USEPA.

Modifications to areawide plans (*N.J.A.C. 7:15-3.3, 3.4, and 3.5*)

At proposed N.J.A.C. 7:15-3.3, the Department describes the methods to modify an areawide plan. Similar to the existing rules, areawide plans can be modified through revisions or amendments.

There are two types of amendments: regional amendments and site specific amendments. Site specific amendments are divided into two categories which require different levels of public notification and process (see N.J.A.C. 7:15-3.5(f)3): those comprising less than 100 acres or generating less than 20,000 gallons per day of wastewater and those 100 acres or more or generating 20,000 or more gallons per day of wastewater. This threshold seeks to align the administrative process with the potential impact of the amendment, ensuring that there is an appropriate opportunity for fact finding and consideration of broader interests, such as the interests from the community, when considering the merits of larger site specific amendments.

As indicated at proposed N.J.A.C. 7:15-3.3(b), the Department will only use the site specific process to modify the sewer service area when there is an actual identified project or

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activity. In order to ensure coordination of land use planning at the State, county, and municipal levels, the proposed rules at N.J.A.C. 7:15-3.5(g)3 require that an applicant for a site specific amendment submit proof that a request was made to the municipality and county whether or not the proposed land use is consistent with the municipal master plan and zoning ordinances and the county master plan.

For site specific amendments adding 100 acres or more to the sewer service area or 20,000 gpd or more of wastewater, N.J.A.C. 7:15-3.5(j)2 provides that the capacity analysis required at N.J.A.C. 7:15-4.5(b) must be updated to reflect the change associated with the project or activity. In addition, for site specific amendments adding 100 or more acres to the sewer service area or that would add 20,000 gpd or more of wastewater, N.J.A.C. 7:15-3.5(f)3 requires the applicant to demonstrate that all property owners who will experience a change in their wastewater service area designation have been made aware of the requested change in sewer service area status. Affected property owners should have an opportunity to provide information that may be relevant to a decision to include or exclude new areas from sewer service. For example, a new Letter of Interpretation issued under the Freshwater Wetlands Protection Act may revise the wetlands boundary relative to delineations available through GIS mapping coverages, which would be relevant to decision making regarding sewer service area delineation.

With regard to the capacity analysis, a site specific amendment adding less than 100 acres to the sewer service area or less than 20,000 gpd of wastewater is only required to identify the wastewater needs for the specific project. Prior to 2008, this threshold had been employed as the trigger for the requirement to prepare a full WMP to allow a proposed amendment to proceed. Smaller site specific amendments are typically a single project proposed by the property owner

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or someone with equitable interest in the property, so additional notification is not necessary.

For small, single projects, there is notification and opportunity to comment at the local level, and when Department permits are required. Further, it is not necessary to update the overall capacity analysis for smaller projects, as they are not likely to make a substantive difference in the outcome and the overall tally of actual flow compared to permitted flow that will not be adequately addressed when the Department performs the annual comparison of actual flow compared to permitted flow at each wastewater treatment facility.

Coordination with Pinelands Commission (*N.J.A.C. 7:15-2.9(a)1, 3.4(a)2, 3.5(h), 4.4(b), 4.5(c)2, and related definitions at N.J.A.C. 7:15-1.5*)

Section 502 of the National Parks and Recreation Act of 1978 established the Pinelands National Reserve and directed the creation of a New Jersey planning entity to develop a comprehensive management plan for the Pinelands National Reserve. In response, the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., (PPA) established the Pinelands Commission, an independent political subdivision of the State of New Jersey. In accordance with the PPA, N.J.S.A. 13:18A-8 and 9, the Pinelands Commission developed the Comprehensive Management Plan (CMP), N.J.A.C. 7:50, which includes both planning and regulatory tools for managing development and land use in the Pinelands Area. The CMP is intended “to promote orderly development of the Pinelands so as to preserve and protect the significant and unique natural, ecological, agricultural, archaeological, historical, scenic, cultural[,] and recreational resources of the Pinelands.” *N.J.A.C. 7:50-1.3.*

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The CMP creates nine different land use areas, or “pinelands management areas,” based on an assessment of environmental resources and pressures. N.J.A.C. 7:50-5.11 to 5.19. For example, “the Preservation Area District . . . represents the most critical ecological region,” and it “must be protected from development and land use that would adversely affect its long-term ecological integrity.” N.J.A.C. 7:50-5.13(a). Each pinelands management area has distinct permitted uses and densities based on the type of land use appropriate for the area and whether the area is appropriate for growth or identified as environmentally sensitive. N.J.A.C. 7:50-5.21 to 5.37. In this way, the CMP regulates the amount of development and the types of development that can be constructed consistent with the protection of the natural resource of the Pinelands Area.

Under the PPA and CMP, in order to direct development away from the ecologically sensitive core of the Pinelands and to encourage development within the management areas appropriate for growth, the development of centralized wastewater treatment and collection facilities are only permitted by the Pinelands CMP in those areas identified as appropriate for growth. These are Regional Growth Areas, Pinelands Towns and Villages, and substantially developed portions of Military and Federal Installation Areas. N.J.A.C. 7:50-5.28(b), 5.27(b), and 5.29(b)2.

The specific management area designations within the Pinelands Area are depicted on the Land Capability Map, which, in accordance with N.J.A.C. 7:50-5.3, is a part of the Pinelands CMP. Management areas may be redesignated through the CMP amendment procedures or ordinance certification procedures, which are designed to maximize public participation. N.J.A.C. 7:50-3 and 7.

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The WQPA at N.J.S.A. 58:11A-2(b) and 7 directs the Department to coordinate and integrate water quality management plans with related Federal, State, regional, and local comprehensive land use, functional, and other relevant planning activities, programs, and policies. The PPA also contemplates a coordinated effort between local, State, and Federal programs to promote the goals and policies of the CMP. N.J.S.A. 13:18A-2; N.J.S.A. 13:18A-8(e). Under the current rules at N.J.A.C. 7:15-3.7, the Department coordinates actions with the Pinelands Commission and such coordination is focused on ensuring that the Pinelands Commission has the opportunity to comment on WMPs, amendments, and revisions within the Pinelands Commission's jurisdiction. On April 13, 2012, the Department and the Pinelands Commission entered into a Memorandum of Understanding (MOU) regarding the Department's water quality planning process in the Pinelands. The MOU provided for better communication between the Department and the Pinelands Commission, and, among other items, memorialized the Department's recognition of the Pinelands Commission past and ongoing planning role. In accordance with the MOU and P.L. 2011, c. 203, as amended and supplemented by P.L. 2013, c. 188, Future Wastewater Service Area (FWSA) maps were adopted by the Department for Atlantic County on November 6, 2013 (see 45 N.J.R. 2499(a)), Burlington County on May 7, 2013 (see 45 N.J.R. 1415(a)), Camden County on June 18, 2013 (see 45 N.J.R. 1856(a)), Cape May County on November 6, 2013 (see 45 N.J.R. 2488(a)), the non-consolidated portion of Gloucester County on September 4, 2013 (see 45 N.J.R. 2268(b)), the consolidated portion of Gloucester County on December 8, 2008 (see 41 N.J.R. 671(a)), and Ocean County on February 7, 2013 (see 45 N.J.R. 474(b)). In addition, the Department has proposed additional changes to the FWSA maps. 46 N.J.R. 1720(a). These maps identify areas that the Department recognizes

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as appropriate for wastewater infrastructure as contemplated by the MOU, including substantially developed areas of Military and Federal Installation Areas.

The Department has reviewed and considered the original CMP, adopted in 1980, including the Commission's management area delineation procedures and the goals, objectives, and permitted uses in each the management areas as well as the current CMP and the Department views the Pinelands CMP and the WQMP rules as intending to accomplish the same basic objectives with regard to protection of natural resources and environmentally sensitive areas and the identification of appropriate areas for development. The Department recognizes the land use and development requirements of the Pinelands CMP, its focus on the protection of water quality (see N.J.A.C. 7:50-6.81) and of environmentally sensitive areas and habitats for endangered or threatened wildlife and plant species (N.J.A.C. 7:50-6.33 and 6.27) and wetlands (N.J.A.C. 7:50-6.1) located both within and outside of the designated growth areas of the Pinelands Area, the extensive public participation process incorporated in the adoption and amendments to the CMP, and the Department's continuing role in permitting activities, including NJPDES and TWA. As such, the Department has determined that it is appropriate to modify its water quality planning process to avoid unnecessary duplication and to better incorporate Pineland Commission planning. At proposed N.J.A.C. 7:15-2.9(a)1, the Department acknowledges that it supports implementation of the CMP, and that it will coordinate and integrate water quality planning with the Pinelands Commission.

Proposed N.J.A.C. 7:15-3.4(a)2 addresses management area redesignations approved by the Pinelands Commission through a CMP amendment. After the Commission approves a management area change, upon application by the Pinelands Commission, modifications to

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wastewater service area maps will be made through the Department's revision process and must include confirmation that public notice of the proposed redesignation provided that the management area change, if approved, could alter the sewer service area of the areawide plan. This provision ensures that any change involving management areas in which wastewater treatment or collection facilities are permitted must first be processed by the Pinelands Commission. If approved by the Pinelands Commission, and incorporated as a modification to the Land Capability Map in the CMP, the Department will process such change to the sewer service area map as a revision.

It is appropriate to process these actions as revisions, rather than as amendments under the WQPA rules, because the Department views the management area designations and goals as established and evaluated by the Pinelands Commission as achieving the same goals as the Department by protecting environmentally sensitive areas and directing growth to appropriate areas. Moreover, the Pineland's Commission and impacted municipalities have considered the water quality impacts, the planning goals of the region, and the impacts of such a change during those government agencies' review processes. If the public is notified that a management area change could also result in a change to the WQM plan, it is not necessary to duplicate the public participation procedures of a WQM plan amendment. The Pinelands Commission's CMP amendment process and ordinance certification process provide for ample public participation. The Department intends to develop a memorandum of agreement with the Pinelands Commission to better define how best to coordinate this planning process and to ensure it receives all necessary documentation from the Pinelands Commission, including appropriate copies of relevant approvals or certifications and the GIS coverage depicting these changes.

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At proposed N.J.A.C. 7:15-3.5(h), the Department additionally will seek comments from the Pinelands Commission on proposed amendments in the Pinelands National Reserve. The Pinelands Commission's jurisdiction extends only to the Pinelands Area within the Pinelands National Reserve. However, it conducts planning for the entire Pinelands National Reserve. Additionally, the Department and the Commission are required to consult with regard to development within the coastal area for those projects subject to the Coastal Areas Facility Review Act (CAFRA), N.J.S.A. 13:9-1, that are within the Pinelands National Reserve. N.J.S.A. 13:18A-23; N.J.A.C. 7:7-9.42. Thus, it is appropriate that the Commission be made aware of proposed amendments and have an opportunity to comment on modifications to ensure necessary coordination.

Proposed N.J.A.C. 7:15-4.4(b) establishes the criteria for delineating sewer service areas in the Pinelands Area. At proposed N.J.A.C. 7:15-4.4(b)1, the Department, consistent with the CMP, is designating Regional Growth Areas, Pinelands Towns, and Pinelands Villages as eligible for sewer service area. These areas have all been identified as area appropriate for growth under the CMP, and publicly vetted. At proposed N.J.A.C. 7:15-4.4(b)2, the Department is identifying other areas approved by the Pinelands Commission as appropriate for the development of centralized wastewater treatment and collection facilities as eligible for sewer service, as long as the Department concurs. Such changes shall be processed as an amendment pursuant to N.J.A.C. 7:15-3.5.

Proposed N.J.A.C. 7:15-4.5(c)2 provides that the nitrate dilution analysis in the Pinelands Area be based on the density and water quality standards established in the CMP and reflected in

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the development categories, which, on balance, attain the water quality objectives in the Pinelands.

The Department is additionally adding definitions for the terms Pinelands Area, Pinelands Commission, Pinelands Comprehensive Management Plan, Pinelands Management Area, and Pinelands National Reserve, as these terms are used throughout the chapter.

Coordination with Highlands Council (*N.J.A.C. 7:15 -2.9(a)2, 3.2(h), 3.4(a)3, 3.5(h), 3.5(i), 4.4(c), 4.5(c)3, and related definitions at N.J.A.C. 7:15-1.5 and N.J.A.C. 7:38-1.1(k)*)

The Department has determined that it is appropriate to better recognize and integrate in these rules the significant land use and environmental planning conducted by the Highlands Water Protection and Planning Council (Highlands Council), an independent agency within the Department, which was created pursuant to the Highlands Water Protection and Planning Act (Highlands Act), *N.J.S.A. 13:20-1 et seq.* Under the Highlands Act, the Highlands Council is delegated responsibility for land use planning in the Highlands Region, approximately 859,000 acres in 88 municipalities located in parts of Morris, Sussex, Passaic, Bergen, Warren, Hunterdon, and Somerset Counties, *N.J.S.A. 13:20-7.a.* The Highlands Act creates two areas within the Region: a preservation area, in which further development is strictly regulated, and a planning area, in which development consistent with the Act's goals is encouraged. *N.J.S.A. 13:20-7.b and c and 10.b and c.* The Highlands Act also delegates responsibility to the Department to establish a Highlands permitting review program for all major Highlands development in the preservation area. *N.J.S.A. 13:20-31 to 35.* The Department's Highlands

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Water Protection and Planning Act rules (Highlands rules), N.J.A.C. 7:38, establish that permit review program.

Under the Highlands Act, the Highlands Council was directed to prepare a “regional master plan” (RMP) for the Highlands Region. N.J.S.A. 13:20-6 and 8. The RMP determines sustainable development in the Highlands ecosystem, and a framework for developing policies in areas in which local governments conform to the RMP. N.J.S.A. 13:20-11. As part of the RMP, the Highlands Council was directed to prepare a land use capability map, and to identify areas appropriate for development, redevelopment and economic growth. N.J.S.A. 13:20-11.a6. The Council adopted the RMP in 2008.

In the RMP, there are three primary land use capability overlay zones, the Protection Zone, (where development is limited), Conservation Zone (where development potential may be limited based on available infrastructure), and Existing Community Zone (where additional growth may be appropriate), and four sub-zones, Wildlife Management Sub-zone, Conservation Zone – Environmentally Constrained Sub-zone, Existing Community Zone – Environmentally Constrained Sub-zone, and the Lake Community Sub-zone. The RMP provides for a map adjustment process to make changes to the Land Use Capability Zone map. (RMP Chapter 4: Goals, Policies, and Objectives, Part 6, Subpart B).

As explained in the discussion on coordination with the Pinelands Commission above, the WQPA directs the Department to coordinate and integrate areawide plans with other regional comprehensive plans. The Highlands Act also contemplates a coordinated effort between local, State, and Federal programs. N.J.S.A. 13:20-11.b4. In recognition of the land use and development requirements of the RMP, its focus on the protection of environmentally sensitive

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areas and habitats for endangered or threatened species located both within and outside of the designated growth areas of the Highlands, and the extensive public participation process incorporated in the adoption of the RMP and amendments, including map adjustments, to it in Highlands conforming municipalities, the Department has determined that it is appropriate to modify its water quality planning process to avoid unnecessary duplication and to better incorporate planning actions undertaken by the Highlands Council. (See N.J.A.C. 7:15-3.5(h).)

The Department has reviewed and considered the RMP, including the Council's Land Use Capability map, the Land Use Capability Zone Technical Report, and the goals, policies, and objectives of the land use zones (RMP Chapter 4: Goals, Policies and Objectives, Part 6), and the Department views the RMP and the WQMP rules as intending to accomplish the same basic objectives with regard to protection of natural resources and environmentally sensitive areas and the identification of appropriate areas for development. The Department recognizes the land use and development requirements of the RMP and its focus on the protection of water quality (RMP Chapter 4: Goals, Policies and Objectives, Part 2), and of environmentally sensitive areas and habitats for endangered or threatened wildlife and plant species (RMP Chapter 4: Goals, Policies and Objectives, Part 1), located both within and outside of the designated growth areas of the Highlands Region, the extensive public participation process incorporated in the adoption and amendments to the RMP, and the Department's continuing role in permitting activities, including NJPDES and TWA. As such, the Department has determined that it is appropriate to modify its water quality planning process to avoid unnecessary duplication and to better incorporate Highlands Council planning.

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Under the current rules at N.J.A.C. 7:15-3.10, the Department coordinates actions on water quality planning with the Highlands Council, by requiring the Department to seek comments from the Highlands Council on proposed WQM amendments and revisions in the Highlands Region. The Department will continue to ensure that the Highlands Council has sufficient opportunity to review modifications to WQM plans within its jurisdiction. In addition to proposed N.J.A.C. 7:15-2.9(a)2, which generally recognizes the Department's intent to coordinate its actions with the Highlands Council, the Department is proposing at N.J.A.C. 7:15-3.5(h) that the applicant shall simultaneously submit applications for an amendment in the Highlands Region to the Highlands Council when it submits its application to the Department. This will ensure that the Highlands Council will have an opportunity to make recommendations prior to Department review of the application. Notably, in the Highlands Region, the Highlands Council conducts its own consistency determination for projects or activities. The project or activity is evaluated by the Highlands Council against the RMP, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., specifically N.J.S.A. 58:1A-13 and 15.1, and other requirements, as appropriate. Where an area may result in further deficit of a subwatershed, the Highlands Council may recommend that a Water Use and Conservation Management plan be implemented to ensure safety of water supply conditions. The Department will coordinate with the Highlands Council on water supply issues occurring within the Highlands Region. With respect to projects and activities in the Highlands preservation area, proposed N.J.A.C. 7:15-3.2(g) establishes that the Department will continue to conduct consistency determinations 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. This requirement is found in the current rules at N.J.A.C. 7:15-3.2(d), and has been continued in the

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proposed new rules until such time as the Department considers rule amendments to the Highlands rules.

At proposed N.J.A.C. 7:15-3.5(i), the Department is carrying forward the requirement in the current rules at N.J.A.C. 7:15-3.4(j) that site specific amendments requiring a HPAA in the Highlands preservation areas must follow the application filing and related procedures in the Highlands rules and such amendments will be processed in accordance with the Department procedures and criteria in this chapter.

Proposed N.J.A.C. 7:15-3.4(a)3 addresses the incorporation of map adjustments (RMP Chapter 4: Goals, Policies and Objectives, Part 6 Future Land Use, Subpart B and Chapter 6: Implementation, Part 1 Regional Master Plan Conformance, Consistency and Coordination, Subpart C) to any land use capability zone, Highlands center, or Highlands redevelopment areas approved by the Highlands Council under the RMP where wastewater treatment or collection facilities are permitted (RMP Chapter 4: Goals, Policies and Objectives, Part 6 Future Land Use, Subparts A and D). The Department will process these changes as revisions, if they are made in a Highlands conforming municipality, if the public notice of this proposed map adjustment also provided that the map adjustment, if approved, could modify the sewer service area of the areawide plan. It is appropriate to process these actions as revisions because both the Highlands Council and the municipality have considered the water quality impacts, the planning goals of the region, and the impacts of such a change during those bodies' review processes. Further, if the public is made aware that a map adjustment would also result in a change to the WQM plan, it is not necessary for the Department, through the amendment process, to duplicate the already extensive public participation process that preceded the map adjustment in the RMP. The

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Department intends to develop a memorandum of agreement with the Highlands Council to better define how best to coordinate this process.

Proposed N.J.A.C. 7:15-4.4(c) identifies the areas that are eligible for sewer service in the Highlands Region. Consistent with the Highlands Act and Highlands rules, N.J.A.C. 7:15-4.4(c)1 limits sewer service area eligibility in the Highlands preservation area to areas that are grandfathered under the Highlands Act, or subject to certain exemptions and waivers identified in the Highlands rules. For municipalities in the planning area that have not conformed to the RMP, N.J.A.C. 7:15-4.4(c)3 provides that the Department will determine sewer service eligibility in accordance with the procedures established for the rest of the State at N.J.A.C. 7:15-4.4(d) and (e).

Proposed N.J.A.C. 7:15-4.4(c)2 establishes the criteria for delineating sewer service area in the Highlands planning area for Highlands conforming municipalities. For these areas, the land use capability zones identified in the RMP as the Existing Community Zone and Lake Community Sub-zone as well as areas designated in the RMP as a Highlands Redevelopment Area or Highlands Centers are eligible for sewer service. (RMP Chapter 4: Goals, Policies and Objectives, Part 6 Future Land Use, Subparts A and D.)

The Department is defining “Highlands conforming municipality” at N.J.A.C. 7:15-1.5 as a municipality in the Highlands planning area that has had its RMP conformance petition approved by the Highlands Council and has adopted a planning area conformance petition ordinance and land use ordinance amendments consistent with that approval. Because the RMP is intended to balance needs for protection of environmentally sensitive areas with the needs to accommodate development that is compatible with protecting water quality, the Department has

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determined that it is appropriate to rely on the Highland Council's analyses for determining where sewer service areas should be in municipalities that have amended their zoning to be consistent with the RMP. The Department is carrying forward from the existing rules definitions for the terms Highlands Council, Highlands planning area, Highlands preservation area, and Highlands Region and adding a definition for the Highlands Regional Master Plan, as described above, as these terms are used throughout the chapter.

The Department is additionally adding definitions for the terms "Highlands center" and "Highlands redevelopment area."

A Highlands center is an area where development and redevelopment is planned and encouraged and is deemed consistent with the Highlands Regional Master Plan. Highlands centers are intended to support balance in the Highlands Region by providing for sustainable economic growth while protecting critical natural and cultural resources. The designation of a Highlands center requires a planning process that is specific to a geographic area. A Highlands center designation is incorporated into a municipality's Petition for Plan Conformance.

A Highlands redevelopment area is an area that includes brownfields, grayfields, and/or other previously developed areas within the Highlands Region and is designated as such by the Highlands Council. The Highlands Council has developed procedures implementing provisions of the Highlands Act regarding the designation of Highlands redevelopment areas in the Preservation Area. Such designations are necessary for any project that requires a Highlands Preservation Area Approval under N.J.A.C. 7:38 (the NJDEP Preservation Area Rules) with a waiver of provisions regarding a brownfield or a site with existing impervious cover of 70 percent or more. In the Planning Area, redevelopment is encouraged if the site meets the

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resource protection standards with respect to the site's Land Use Compatibility Zone plus specific criteria for water availability, wastewater capacity, and transportation infrastructure. The Highlands Council has procedures established and requirements for receiving Council designation of Highlands redevelopment areas.

The Department has reviewed the goals and process established by the Highlands Council for the designation of both Highlands centers and Highlands redevelopment areas. The Department believes that the goals and processes established by the Highlands Council appropriately addresses avoiding, to the extent feasible, critical environmental features and include sufficient public participation.

Proposed N.J.A.C. 7:15-4.5(c)3 provides that in the Highlands preservation area and in Highlands conforming municipalities, the nitrate dilution analysis is to be based on the requirements of the Highlands rules, or the RMP, respectively, as it is more appropriate that these more specific standards apply.

As part of this proposal, the Department is also deleting the second and third sentences at N.J.A.C. 7:38-1.1(k) of the Highlands rules. The Department recognizes the Highlands Council's expertise and leadership with local and regional planning issues for this area of the State as well as the Council's understanding of the physical characteristics of the region and exceptional resources contained therein. The Department has determined that it is appropriate to seek input from the Highlands Council, although the final decision on any WQM plan amendment or revision rests with the Department. As part of this new process, the Highlands Council will need to first adopt changes to the RMP to provide a justification to revise sewer service area maps in conforming municipalities in the planning area and to amend sewer service

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area maps in the preservation area or in non-conforming municipalities in the planning area provided that the public notice of the land use capability zone change also advised that the change would result in a modification of the sewer service area in the areawide WQM plan. Thus, a separate RMP consistency review under the Highlands rules would be duplicative. Since the Highlands RMP was adopted in 2008, the Department is not retaining the existing requirement that a recommendation be sought from the Highlands Council on an application seeking approval prior to completion of the RMP.

Statewide Water Quality Management Plan (SWQMP)

The Department is eliminating references to the SWQMP in the rules. The SWQMP was initially adopted on December 5, 1985. The purpose of the SWQMP was to integrate the water quality planning programs established under the Clean Water Act (including wastewater facilities planning under section 201, basin planning under section 303(e), and areawide planning under section 208, and the components of the CPP) into one plan. The Department has determined that it is no longer necessary to specifically reference the SWQMP in these rules. Instead, the Department will refer to the CPP, which is posted on the Department's website at <http://www.nj.gov/dep/wrm/>. The website includes a description of the Department's CPP as well as statewide strategies and tools to assist in developing and implementing areawide plans and WMPs. The CPP will identify measures that have been developed or programs that are in place to address water quality issues, such as the Department's Nonpoint Source Program, Stormwater BMP manual, and other strategies or technical measures developed by the Department or USEPA to control water pollution, as well as information, such as Category One

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waters, impaired waters and waters that have an applicable TMDL, and tools such as model ordinances designed to address water quality issues related to the disturbance of steep slopes and riparian zones and for septic management. The Department will update the strategies identified on its website periodically as appropriate.

Other amendments

Because the approach to implementing water quality management planning is substantially changed from the current rules, the Department is proposing to repeal the existing rules and replace them with new rules. The proposed new rules consist of six subchapters. Subchapter 1 contains general provisions regarding the scope, purpose, and policy goals of the new rules, as well as provisions specifying the validity of previous amendments and revisions, construction of the rules, definitions of terms used in the rules, program form and contact information, and specifications as to the format to be used for areawide plan modification data and mapping. Subchapter 2 describes the relationship between various components of the CPP, the respective roles of the Department, the designated planning agencies, wastewater management planning agencies, counties, municipalities and entities responsible for wastewater treatment, as well as coordination and integration with regional plans. Subchapter 3 contains the administrative procedures for adopting revisions and amendments to areawide WQM plans. Subchapter 4 includes the requirements for Wastewater Management Plans, including required elements, procedures for delineation of sewer service areas, and evaluation criteria. Subchapter 5 contains the procedures for developing and adopting the Methods Document, 303(d) List, and TMDLs. Subchapter 6 contains the procedures for award of Watershed Management Grants.

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Subchapter 1. General Provision and Planning Requirements

This subchapter identifies the general purpose and scope, policies and construction and severability of the rules. It includes sections on the validity of previously adopted and pending amendments to areawide plans, definitions that are applicable to the entire chapter, water quality management plan data and mapping format requirements, and program contact information and forms, as well as the Department's website address.

The purpose, scope, and policy goals of the WQMP rules are set forth at N.J.A.C. 7:15-1.1 and 1.2. The scope of this chapter is broad. The WQMP rules establish the Department's water quality management planning policies and procedures for example to restore, enhance, and maintain the chemical, physical, and biological integrity of the waters of the State, including 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; and to conserve the natural resources of the State, promote environmental protection, and prevent the pollution of the environment of the State.

N.J.A.C. 7:15-1.3 addresses the continued validity of previously adopted or submitted areawide plans. Under the proposed rules, all amendments and revisions to areawide WQM plans adopted prior to the effective date of these rules shall remain in effect, except as modified by these rules. Over the years, areawide plans have identified several designations for wastewater management. These include "Septic Areas," "Discharge to Ground Water of 2,000 GPD or Less," and "General Service Area for Wastewater Facilities with Planning Flows of Less than 20,000 GPD." Many of these designations have been superseded by the sewer service area

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maps completed in accordance with the 2008 rules; however, some remain as the result of the Permit Extension Act of 2008, as amended, N.J.S.A. 40:55D-136.1.

Under the proposed rules, it is only necessary to distinguish between areas eligible for sewer service using centralized sewerage facilities, which are those that are permitted under NJPDES as discharges to surface water or ground water, and those relying on ISSDS below the NJPDES permit threshold (2,000 gpd). Therefore, proposed N.J.A.C. 7:15-1.3(b) provides that any designation in an otherwise valid areawide WQM plan will be modified as follows. Those designations that involve service by a specifically identified wastewater treatment facility that would require a NJPDES permit will be designated sewer service area. Areas intended to be served by discharges to ground water of 2,000 gpd or less, or non-discharge zones, as well as areas that continue to be currently designated as generalized service area for discharge to ground water less than 20,000 gpd, will be redesignated non-sewer service area. As indicated above, the less than 20,000 gpd discharge to ground water general service area designation was not continued in the existing rules. Accordingly, areas only continue to have this designation if the WMP or sewer service area mapping has not been updated for a significant number of years and the appropriateness of the area for continued sewer service designation was not reviewed in accordance with the 2008 rules. Therefore, it is not appropriate to continue these areas as eligible for sewer service, unless and until the appropriate analysis is completed.

P.L. 2011 c. 203 was amended and supplemented by P.L. 2013 c. 188, which included extension of the expiration of the laws to the earlier of January 17, 2016, or the adoption of regulations intended to obviate the need for the provisions of P.L. 2011 c. 203.

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If the law expires prior to the adoption of these proposed new rules, any pending application for an amendment or revision will be processed in accordance with the effective regulations in place, that is, the current codified rules. In that case, the Department will not require the re-submittal of the application, although additional information may be required in order to process the application. The Department will contact each affected applicant regarding the status of the review and whether any additional information is required to process the application. The Department's review will also include a determination of whether the applicable wastewater management plan is in compliance with existing N.J.A.C. 7:15-5.23. If the wastewater management plan is not in compliance with existing N.J.A.C. 7:15-5.23, processing the application could be delayed until the wastewater management plan is brought into compliance.

Any application for an amendment or revision pending upon the effective date of these new rules will be processed in accordance with the new rules, although additional information may be required in order to process the application. The Department will contact each affected applicant regarding the status of the review and whether any additional information is required to process the application.

N.J.A.C. 7:15-1.3(c) provides that any pending revision or amendment that was proposed pursuant to P.L. 2011 c. 203 as amended and supplemented by P.L. 2013 c. 188, but is not adopted prior to the effective date of these rules, will be subject to the requirements of the proposed rules, except for the electronic submittal requirements at proposed N.J.A.C. 7:15-1.7(a) and (b). This is because the provisions of that law expire on January 17, 2016.

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N.J.A.C. 7:15-1.4 explains that these rules are to be liberally construed to effectuate the statutes under which they are adopted, and that if a section of the rules is invalidated by a court, the remainder is still valid.

N.J.A.C. 7:15-1.5 includes the definitions used in this chapter. Many of these definitions have been carried forward from the existing rules, with no changes, or with minor changes that do not affect the meaning. These include: “applicant,” “areawide plan,” “best management practices,” “BPU-regulated sewer or water utilities,” “Category One waters,” “Clean Water Act,” “Commissioner,” “composite zoning,” “conservation restriction,” “continuing planning process,” “county utilities authority,” “Department,” “designated area,” “designated planning agency,” “designated use,” “district,” “disturbance,” “domestic treatment works,” “effluent limitation,” “endangered wildlife species,” “equivalent dwelling unit,” “governmental entity,” “HUC 11,” “HUC 14,” “industrial treatment works,” “Integrated Water Quality Monitoring and Assessment Report,” “joint meeting,” “Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife,” “load allocations,” “municipal authority,” “municipal government,” “NJPDES,” “NJPDES discharge permit,” “nonpoint source,” “Passaic Valley Sewerage Commissioners,” “permitted flow,” “planning flow,” “point source,” “process wastewater,” “public advisory committee,” “purveyor,” “sewage,” “sewerage agency,” “sewerage authority,” “State,” “stormwater,” “stormwater runoff,” “subwatershed,” “suitable habitat,” “surface water quality standards,” “threatened wildlife species,” “total maximum daily load,” “treatment works,” “treatment works approval,” “201 Facilities Plans,” “undeveloped and underdeveloped areas,” “USEPA,” “wasteload allocation,” “wastewater,” “wastewater management plan area,” “wastewater management planning agency,” “water quality based effluent limitations,”

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“watershed,” “watershed management activity,” “watershed management area,” “watershed management area plan,” “watershed management group,” “watershed management strategy,” and “wetlands.”

The Department is also adding new definitions, most of which are described elsewhere in the Summary. Definitions of terms not described elsewhere in this proposal, or not previously defined in the existing rules, and definitions substantively amended from the definitions appearing in the existing rules, are as follows.

The Department is adding a definition of “Act” or “WQPA” to refer to the Water Quality Planning Act for ease of reference as this term and acronym are used throughout the proposed rules.

The Department is replacing the current definition of the term “infill area” with a definition of the term “infill development” with the new definition reflecting revisions in the Department’s approach to water quality planning, as discussed above. The term is used in the delineation process, and, if an area is considered “infill,” it may qualify for inclusion in the sewer service area under proposed N.J.A.C. 7:15-4.4(f)2 and (i)1iii, if certain conditions are met. Infill development refers to undeveloped and underdeveloped areas in an otherwise built-up area already connected to centralized wastewater treatment infrastructure. To qualify as infill, an area will need to be substantially surrounded by, and contiguous to, developed areas in existence as of the effective date of the proposed rules. Including an effective date for existing development is intended to avoid incremental application of this concept, which is important to limit cumulative impacts. The proposed development may not need to be surrounded by development on all sides to qualify as infill. For example, if the area is located adjacent to a lake, but surrounded by

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developed properties with sewer service, that area may be considered infill under this rule. For purposes of the rule, infill will generate less than 8,000 gpd of wastewater. A project that generates wastewater flows of less than 8,000 gpd does not require a TWA from the Department pursuant to N.J.A.C. 7:14A-22.3(a)2. The Department has determined that this is an appropriate regulatory threshold for providing the type of relief intended for infill development while ensuring larger development and cumulative impacts remain subject to wastewater management planning review.

The Department is adding definitions for “eligible for sewer service area,” “non-sewer service area,” “assigned sewer service area,” and “unassigned sewer service area” and modifying the definition of “sewer service area.” These definitions, together with the definitions carried forward from the existing rules of “permitted flow,” “planning flow,” and “undeveloped and underdeveloped areas” are used to clarify mapping requirements at proposed N.J.A.C. 7:15-4.3(c)3 and the wastewater treatment capacity analysis requirements at proposed N.J.A.C. 7:15-4.5(b) and (c)1, discussed above.

Eligible for sewer service area are areas that have been found to be appropriate for connection to a domestic treatment works or industrial treatment works in accordance with proposed N.J.A.C. 7:15-4.4. For the purpose of conducting the wastewater capacity analysis, eligible sewer service area is divided into assigned and unassigned areas. Assigned areas are those that currently are connected and convey flows to a specific wastewater treatment facility and those areas within which development is reasonably expected to connect to that facility. Where the specific wastewater treatment facility lacks capacity to accept all of the wastewater that is or would be generated within the assigned sewer service area, the difference constitutes a

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capacity deficiency. Unassigned sewer service areas are not associated with a specific wastewater treatment facility, so, for the purposes of the wastewater capacity analysis, all wastewater that would be generated within an unassigned sewer service area constitute a capacity deficiency. The future needs of an unassigned sewer service area may be met through subsequent assignment to an existing wastewater treatment facility or by obtaining a NJPDES permit for a discharge to surface water, or a discharge to ground water.

The Department is proposing a new definition for “advanced wastewater pretreatment device” consistent with the definition of this term in the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A. This term is used in the new definition of “individual subsurface sewage disposal systems.” The use of technologies that have received NSF International Standard 40 or 245 certification have the ability to meet the design, installation, operation, and maintenance requirements necessary to protect water quality in accordance with N.J.A.C. 7:9A.

The Department is proposing a new definition for “Discharge Monitoring Report” or “DMR.” The proposed definition is consistent with the definition of this term in the NJPDES rules, N.J.A.C. 7:14A. The term “DMRs” is used at proposed N.J.A.C. 7:15-2.4(a)8 and 4.5(b)1 to identify reports that include wastewater flow data reported by NJPDES permittees that are used. At proposed N.J.A.C. 7:15-2.4(a)8, the term is used to identify the information that the Department will provide to WMP agencies to assist them in calculating existing permitted wastewater flows, while at proposed N.J.A.C. 7:15-4.5(b), the term is used to identify the same information; however, under this provision the WMP applicants use this permitted flow data to analyze whether there will be a sewage treatment plant capacity shortfall.

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The Department is carrying forward the definition of “environmentally sensitive areas.” However, the definition is modified to specify that the most current available mapping information is to be used when determining environmentally sensitive areas. This is so that over time, as the mapping is updated to reflect changes to environmentally sensitive areas due to new and changing conditions or new information, the areas identified as environmentally sensitive in analyses conducted under this chapter are updated accordingly. In addition, the Department is eliminating the reference to the Statewide Water Quality Management Plan.

The Department is proposing a new definition for “franchise area.” Although this term is used in the existing rules, it was not defined. Franchise area is used in the proposed new definition of “wastewater-related jurisdictions” and at N.J.A.C. 7:15-4.3(c)3iv to describe an area where the Board of Public Utilities has granted the exclusive right to control and provide wastewater treatment facilities to an identified private entity for a specified period of time. Because of this right, the franchise owner needs to be involved in any wastewater management planning affecting the franchise area. The Department intends that when wastewater management planning for existing and future sewer service areas occurs, the franchise area owners are consulted and any contractual obligations with these entities are considered and identified on WMP Wastewater Service Area Maps.

The Department is defining “individual subsurface sewage disposal systems” (ISSDS) and “sanitary sewage” consistent with the definitions of these terms in the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A.

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The Department is proposing a new definition for “OWRMC,” which means the Office of Water Resource Management Coordination or its successor in the Department. This is the current name of the program responsible for implementing most aspects of the WQMP rules.

The Department is proposing a new definition for “septage” consistent with the definition of this term in the NJPDES rules, N.J.A.C. 7:14A. This term is used in the definition of “wastewater” and at proposed N.J.A.C. 7:15-4.5(b)1ii(1) as another source of wastewater that must be considered and calculated when analyzing projected wastewater treatment capacities.

The Department is proposing to add a new definition for “303(d) List of Water Quality Limited Waters” or “303(d) List.” The existing rules at N.J.A.C. 7:15-6.2(a) refer to lists of water quality limited segments. The name change is appropriate to reflect the shift to assessment units rather than stream segments in carrying out the analysis to develop the list. The change is in name only and refers to the same Federal requirement at section 303(d) of the CWA, 33 USC § 1315(d).

The Department is proposing to modify the definition of “wastewater management plan” or “WMP” to reflect the reduction in the number of analyses required to complete a WMP identified under the proposed new rules, as explained in more detail above under the significant changes section of the Summary.

The Department is proposing a new definition for “wastewater-related jurisdictions” so that this one term refers to all recognized forms of wastewater conveyance and treatment providers such as sewerage authorities, municipal authorities, joint meetings, county utilities authorities, and PVSC and franchise areas from which contractually obligated wastewater flows could arise, thereby improving the flow in the rule text.

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The Department is proposing to modify the definition of “wastewater service area” consistent with the updated definitions of “sewer service area” and “non-sewer service area” that now make up the categories of wastewater service that will be identified in WMPs. This term provides the name of the primary maps generated under Subchapter 4 and is used throughout the chapter.

The Department is proposing a new definition for “wastewater treatment facility.” A new definition is proposed to help clarify the difference between the existing definition of “wastewater facilities” that is not being continued and “treatment works,” which both include many types of treatment works such as pumping stations, trunk lines, and sewage collection systems, which are not intended to be part of this new definition because these types of facilities will no longer be required to be identified in WMPs. The proposed definition includes all domestic and industrial treatment works requiring a NJPDES discharge permit and discharging greater than 2,000 gpd of wastewater, and includes, for example, land application systems and subsurface sewage disposal systems. This term is used at proposed N.J.A.C. 7:15-2.4(a)9 to describe the types of facilities that the Department will annually inventory and post information about on its website and at proposed N.J.A.C. 7:15-3.2(b) to describe the types of facilities that will be reviewed for consistency with the WQM plans during a Department permit review. Additionally, the term is also used extensively in Subchapter 4 to describe the types of facilities that are required to be identified on wastewater facilities tables and maps, and be included as part of wastewater treatment needs calculations and potential capacity deficiency analysis.

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Proposed N.J.A.C. 7:15-1.6 continues to set forth general information on obtaining program forms and Department contact information, including the address of the Department's website.

N.J.A.C. 7:15-1.7 describes plan submission and mapping requirements. Many of the data submission requirements can be found at existing N.J.A.C. 7:15-5.20. In the existing rules, the Department required that submissions be in hard copy, as well as in digital form. The Department is now transitioning to all digital submissions. Proposed N.J.A.C. 7:15-1.7(a) identifies how an applicant may obtain information regarding the Department's software capabilities, and subsection (b) describes Department mapping requirements.

Subchapter 2. Plans, Planning Entities, and Planning Responsibilities

This subchapter describes the CPP, areawide plans, and WMPs, and the respective roles and responsibilities of the Department, designated planning agencies, counties, municipalities, and other entities in the water quality management planning process.

N.J.A.C. 7:15-2.1 describes the CPP. In accordance with the requirements of Sections 201, 208, and 303 of the CWA (33 U.S.C. §§,1201, 1288, and 1313), the WQPA, and the WPCA, the Department has established a water quality CPP, which integrates and unifies water quality management planning processes, assesses water quality, establishes water quality goals and standards, and develops a Statewide implementation strategy to achieve the water quality standards. The CPP includes regulatory and non-regulatory strategies for the management of water quality and wastewater. These strategies include water quality and wastewater management related provisions in rules adopted by the Department, such as the Surface Water

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Quality Standards, N.J.A.C. 7:9B, Ground Water Quality Standards, N.J.A.C. 7:9C, Stormwater rules, N.J.A.C. 7:8, the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C.

7:14A, Priority Systems developed by the Department under N.J.A.C. 7:22, Sludge Quality Assurance Regulations, N.J.A.C. 7:14C; and the Statewide Sludge Management Plan

(<http://www.nj.gov/dep/dshw/recycling/swmp/index.html>) and District Sludge Management

Plans that are promulgated or approved by the Department pursuant to N.J.S.A. 13:1E-1 et seq.

In addition, the CPP includes the 303(d) Lists of Water Quality Limited Waters, TMDLs, as well as the technical measures and requirements, technical guidance, and funding programs that address point and nonpoint source water pollution control, protection of water resources, protection of environmentally sensitive areas, and other water quality related issues. The Department currently describes the CPP in detail in the current rules at N.J.A.C. 7:15-2.1.

Through this rulemaking, the Department intends to make the CPP a more accessible planning tool, by posting elements on the web at <http://www.nj.gov/dep/wrm/> to be used not only as a listing of current Department programs and rules pertaining to water quality, but as a resource for planning entities and members of the public on current policies and technical guidance on water quality issues.

Proposed N.J.A.C. 7:15-2.3 describes areawide water quality management plans and identifies which areawide plans are developed and maintained by the Department and which are developed and maintained by Designated Planning Agencies (DPAs). The proposed section includes a table describing the 12 different WQM planning areas in the State, which is not included in the existing rules, to assist those potentially interested in pursuing a site specific amendment in determining the appropriate entity to contact for further information.

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Proposed N.J.A.C. 7:15-2.4 describes the role of the Department in water quality planning. This description is currently codified at N.J.A.C. 7:15-2.3. The Department has been delegated authority from the Governor to adopt amendments to areawide plans. In accordance with the WQPA, the Department establishes a framework and procedures for amending adopted areawide WQM plans. These include developing and updating a wastewater management plan for each WMP area (a county or a municipality) on a periodic basis to address identified wastewater management issues and a means to correct, revise, or amend areawide WQM plans as needed to allow for interim, site specific changes. The Department acts as a resource for DPAs and WMP agencies to facilitate their role in accomplishing the water quality objectives by providing data, information, and tools. In addition, the Department is responsible to ensure that planning is carried out in a manner that provides meaningful opportunities for public comment and input in developing the elements of the planning process. The Department must also ensure that all Department permits and approvals are consistent with adopted areawide WQM plans, in accordance with the WQPA at N.J.S.A. 58:11A-10.

As part of the revised approach to water quality planning reflected in these rules, the Department will provide more data and information to the WMP planning agencies to assist them in conducting the necessary analyses. Because the Department maintains this information in its NJPDES permitting program, the Department is committing to providing it to the WMP agencies in order to simplify the planning process at N.J.A.C. 7:15-2.4(a)8. In addition, the Department is committing at N.J.A.C. 7:15-2.4(a)2, 9, 10, and 12 to post the CPP on its website; annually update and post on its website the inventory of wastewater treatment facilities, their existing and permitted flows, and the wastewater management needs associated with each facility; to maintain

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an up-to-date wastewater service area map for the entire State; and to post all adopted revisions and amendments on its website. The Department is also highlighting at proposed N.J.A.C. 7:15-2.4(a)5 that it will consider other pertinent planning documents, such as local land use plans, when reviewing proposed amendments and revisions.

Proposed N.J.A.C. 7:15-2.5 details the role of the DPAs, which is currently codified at N.J.A.C. 7:15-2.4. The DPA concept was established at N.J.S.A. 58:11A-4. For their assigned WQM planning area, the DPA is responsible for proposing and/or reviewing proposed amendments to the areawide WQM plan using an inclusive process that has been approved by the Department.

Proposed N.J.A.C. 7:15-2.6 describes the role of wastewater management planning (WMP) agencies. WMP agencies are responsible for developing the WMP as the means to update the areawide plans with respect to wastewater management. Of the elements to be addressed in an areawide WQM plan, those related to wastewater management particularly require re-examination on a regular basis. It is important to periodically re-examine the overall status of aligning wastewater management needs with strategies to address them to provide sufficient time to plan for and execute options to address any potential capacity deficiencies. In the 2008 rules, the default WMP agency was set as the County. While the Department believes that WMP responsibility at the county level provides the best balance between the need to consider an area large enough to provide a holistic view of the issues and the need to examine an area small enough to be able to gather and process the amount of information that needs to be considered, it recognizes that a county may opt not to assume WMP responsibilities. In this case, municipalities may choose to assume this responsibility for their jurisdiction. If neither

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level of local government assumes WMP responsibility for an area, the Department reserves the option to prepare the principal elements of a WMP for the area in order to accomplish a seamless wastewater management baseline characterization for the State. See N.J.A.C. 7:15-4.2(d).

Proposed N.J.A.C. 7:15-2.7 describes the roles of county boards of chosen freeholders, sewerage authorities, and municipal authorities and municipalities. The role of these entities is currently described at N.J.A.C. 7:15-5.5 to 5.8. The Department is incorporating many of those provisions into the proposed new section, with revisions that reflect the Department's revised approach to planning under this program. Thus, unless an alternative assignment for wastewater management planning is established, the county boards of chosen freeholders have wastewater management planning responsibility. In addition, the entities that perform sewerage related functions and municipalities are designated in this section as having the responsibility to provide information to the WMP agency upon request. For example, to compile a WMP, the existing inventory of wastewater management facilities must be identified, existing and future wastewater flows identified, and wastewater capacity analyzed. The Department maintains a database with some of this information, such as existing wastewater flows and permitted capacity of a domestic treatment works, and, as noted in the discussion of N.J.A.C. 7:15-2.4 above, will compile and provide this information regarding wastewater infrastructure to the WMP agency. However, sewage authorities and municipal authorities are the best source of information regarding the treatment facilities they are responsible for, particularly the spatial extent of the area actually connected to the facility, 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

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readily available to the responsible entity. Therefore, at N.J.A.C. 7:15-2.7(b), the Department is identifying the sewerage authorities and municipal authorities that perform sewerage related functions as the responsible entities for providing NJPDES permit numbers of any domestic treatment works owned or operated by the entity, identifying contractual obligations regarding sewer service and associated capacity allocation within the district and sewer service area, describing the relationship between the municipalities within each sewer service area, and specifying whether a municipality is an agency member or contract customer community. The WMP agency needs this information, as it is a component in the WMP. Accordingly, the relevant wastewater entities are responsible for providing that information upon request. Proposed N.J.A.C. 7:15-2.7(c) makes clear that each sewerage agency is responsible for providing all necessary information to each WMP agency within the sewerage agency's district or sewer service area.

In addition, municipalities are the best source for information on their master plan, zoning, or local land use objectives, all of which are needed to complete the sewer service area designations and capacity analyses required in the WMP. At N.J.A.C. 7:15-2.7(d), therefore, upon the request of the WMP agency, it is the responsibility of municipalities to provide this information to the WMP agency. Also, where applicable, the municipality is responsible for providing a septic management plan 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. The Department requires municipalities to provide the same (and more) information to the WMP agency in the existing rules at N.J.A.C. 7:15-5.8.

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N.J.A.C. 7:15-2.8 establishes the procedures for transferring responsibility for preparation of the WMP from the county to the municipalities. As noted above, where the responsible entity, county, or municipality does not fulfill its responsibility in accordance with the schedule established in these rules, the Department may choose to develop the elements of a WMP so as to accomplish a seamless baseline of sewer service area mapping and wastewater management needs, available infrastructure capacity and deficiencies.

N.J.A.C. 7:15-2.9 codifies the Department's intention to support implementation of comprehensive regional plans and the coordination and integration of water quality planning actions undertaken or overseen under this chapter with the Pinelands Comprehensive Management Plan; the Highlands Regional Master Plan; the Delaware River Basin Commission Comprehensive Plan, as authorized by the Delaware River Basin Compact, Pub. L. 87-328, 75 Stat. 688 (1961); the Meadowlands Master Plan for the Hackensack Meadowlands District established pursuant to Hackensack Meadowlands Agency Consolidation Act, N.J.S.A. 5:10A-1 et seq.; and the State Plan Policy Map. The Water Quality Planning Act at N.J.S.A. 58:11A-2.b and 7 directs the Department to coordinate and integrate water quality management plans with related Federal, State, regional, and local comprehensive land use, functional, and other relevant planning activities, programs, and policies. Each of the entities identified have responsibilities that are relevant to water quality management planning. The Department will support implementation of water and water-related requirements within comprehensive regional plans and will coordinate planning actions undertaken or overseen under this chapter with the regional planning agencies responsible for development and implementation of the regional plans. The Department will seek comments from relevant regional planning agencies at appropriate stages

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of the Department's water quality management planning process. In addition, the Department will ensure that the Highlands Council and the Pinelands Commission will have adequate opportunity and responsibility with respect to changes to the sewer service area within their respective jurisdictions. The Department will develop memoranda of agreement with the Pinelands Commission and the Highlands Council to better define how best to coordinate the planning process with these agencies.

Subchapter 3. Plan Assessment, Modification, and Adoption Procedures

This subchapter sets forth the means by which consistency of proposed projects or activities relative to adopted areawide WQM plans is assessed and the procedures for amending areawide WQM plans to incorporate a revision, a site specific amendment, or a WMP.

The Department has described its consistency assessment process, set forth at N.J.A.C. 7:15-3.2, and the different types of amendments and revisions, set forth at N.J.A.C. 7:15-3.3, earlier in this Summary.

N.J.A.C. 7:15-3.4 describes the types of changes to an areawide WQM plan that can be made as a revision and the revision process. Certain actions are minor and/or administrative in nature such that the Department has determined that it is appropriate to proceed with the change to the recorded content of an areawide WQM plan by simply providing public notification of the change. These changes are referred to as revisions and would be allowed in very limited circumstances, as described at N.J.A.C. 7:15-3.4(a)1-5. They include actions to correct or clarify erroneous or unclear information, the transfer or assignment of WMP responsibility, and revisions to schedules for the submission of WMPs. In addition, revisions include, as discussed

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earlier in the Summary, actions taken by the Pinelands Commission and the Highlands Council through their respective public processes that result in changes to the land areas that are within management areas in which wastewater treatment or collection facilities are a permitted use.

Proposed N.J.A.C. 7:15-3.4(b) through (i) describe the Department's process for reviewing and acting on a revision application. Within WQM planning areas where there is a DPA, the DPA is authorized to adopt, after review and approval by the Department, its own procedures for review of proposed revisions and amendments to the WQM plan. N.J.A.C. 7:15-3.4(d) requires that a proposal for a revision in an area under the purview of a DPA must follow the DPA's procedures. If the Department initiates the revision, the Department will consult with the DPA prior to taking action.

Whether the application for a revision is initially made to the DPA or to the Department in areas where the Department is acting as DPA, proposed N.J.A.C. 7:15-3.4(b) specifies application requirements designed to ensure that the applicant identifies the type of the revision and why it is warranted with sufficient documentation to allow the Department and DPA to determine if the proposed change qualifies as a revision.

As described at N.J.A.C. 7:15-3.4(f) and (g), if, after reviewing the application, the Department determines that a project or activity qualifies as a revision, the Department will seek input from the same entities and individuals listed at proposed N.J.A.C. 7:15-3.5(f) that are notified of and offered an opportunity for input on amendments prior to making a decision. Any information supplied by these entities and individuals will be factored into the Department's final decision on the revision application. Direct notice will be provided regarding the Department's decision on a revision application. If the Department determines that the revision

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should be adopted, the revision will be effective upon the Department's approval/adoption of the revision with public notice of revisions to the areawide plans to be posted on the Department's website as they are adopted.

N.J.A.C. 7:15-3.5 sets forth the process for amending areawide WQM plans. Similar to the existing rules, amendments may be processed by DPAs, consistent with the procedures described at subsections (b) and (d), if the Department has approved the DPA's amendment process. As explained at N.J.A.C. 7:15-3.5(c) and (d), these processes must be consistent with Department processes and must be approved by the Department. Those amendment procedures in effect on the effective date of these rules remain in full force and effect. Where a DPA does not have its own process, the Department procedures at subsection (g) govern, and as with revisions, the Department will notify the DPA prior to taking action. Amendments approved by a DPA are valid only upon the subsequent adoption by the Department, in accordance with the criteria and procedures for adopting amendments set forth in this rule. This ensures consistency in the application of the standards established in this chapter.

Consistent with existing N.J.A.C. 7:15-3.4(c), proposed N.J.A.C. 7:15-3.5(e) specifies that only the Department may process amendments to areawide plans for projects that are either proposed, constructed, operated, or conducted by the State or Federal government, or regulated under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

At proposed N.J.A.C. 7:15-3.5(f), the Department lists the entities an applicant for an amendment must consult with. The procedure for all amendments includes requirements for coordination, consultation, and public notification and solicitation of comments early in the process. An entity that is proposing an amendment to an areawide WQM plan is required to

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confer with governmental and quasi-governmental agencies that have a relevant jurisdictional interest in the area for which the amendment is proposed. Depending on the location of the amendment, this could include DPAs, WMP agencies, county planning boards, municipal government, agencies with sewerage related responsibilities, water purveyors, and regional planning entities, such as the Pinelands Commission, the Highlands Council, Delaware River Basin Commission, and the Meadowlands Regional Commission. It is important to confer with such entities early in the process because these entities may possess factual information or knowledge of regional or local planning requirements or objectives that may result in a need to revise the proposed amendment or inform the review decision process. For example, WMPs require the cooperation and collaboration of the identified entities when modifying sewer service areas or updating wastewater or nitrate dilution capacity analyses, as some of the base information needed to carry out these analyses resides with the identified entities. For larger site specific amendments, the applicant for the amendment must additionally provide direct notice during the preparation of the proposed amendment to and seek input from any property owner whose property would be impacted if the amendment is approved as the amendment would result in a change to the wastewater service area designation.

The Department's general application requirements and administrative procedures for amending areawide WQM plans, including the use of the New Jersey Register to provide notice of proposed and adopted amendments, are set forth at proposed N.J.A.C. 7:15-3.5(g). These procedures are largely carried forward from the current rules at N.J.A.C. 7:15-3.4. The process has been streamlined by making greater use of electronic media for application documentation and for communicating with affected entities about proposed actions. For example, in place of

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newspaper advertisements as the means for secondary notification, the Department will provide notice of proposed amendments to WQM plans electronically to interested parties who have asked to obtain electronic notifications. This will ensure that those interested not only receive notice, but that they receive it in a timely fashion. Persons or entities who wish to obtain electronic notifications may contact OWRMC pursuant to N.J.A.C. 7:15-1.6 to be placed on the list to receive all amendment notices electronically. Proposed N.J.A.C. 7:15-3.5(h), (i), and (j) are discussed earlier in the Summary.

Provisions for appeal of a Department decision on a WQM plan amendment or revision are set forth at proposed N.J.A.C. 7:15-3.6, which provides that Department decisions on revisions or amendments are considered final agency actions subject to review in Superior Court, Appellate Division.

Subchapter 4. Wastewater Management Plans

Wastewater Management Plans (WMPs) are the means by which the evolving elements of a water quality management plan can be consistently developed Statewide and updated on a regular basis. A WMP provides a basis for directing problem solving and decision making with respect to wastewater management for a particular area or region. In the current rules, WMP requirements are set forth in Subchapter 5. The Department will continue to require the preparation and submission of WMPs; however, as discussed above, the Department is proposing to streamline these requirements.

As proposed, WMPs will consist primarily of mapping that distinguishes between sewer service area and non-sewer service area mapping, a wastewater treatment capacity analysis, a

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nitrate dilution analysis, and potential strategies to address any potential capacity deficiencies in available wastewater management capacity.

N.J.A.C. 7:15-4.2 establishes the WMP development and submittal schedule. The proposed rule provides an additional year from the effective date of these rules for WMP agencies to complete a WMP. In the event a WMP agency does not complete this baseline level of information on wastewater management within that year, the Department retains the authority to develop and process the WMP components. The Department anticipates that there will be few instances where the Department will need to exercise this authority. Since enactment of the 2011 legislation, municipalities and counties have worked cooperatively with the Department to complete sewer service area mapping and capacity analyses.

Following this initial completion period, the proposed new rule continues to require periodic reevaluations of the WMP, but the time frame has been extended from six years to 10 years at N.J.A.C. 7:15-4.2(c), which is consistent with the time frame for updating municipal master plans under the Municipal Land Use Law at N.J.S.A. 40:55D-89. WMP agencies can request alternative schedules, which will be processed as revisions, and a WMP agency may submit a WMP on a more frequent or earlier basis.

At N.J.A.C. 7:15-4.2(f), independent components of a WMP, including sewer service area mapping and wastewater capacity or nitrate dilution analyses, may be adopted independently of other WMP components. However, the minimum scale for these individual analyses must be for an entire municipality. As discussed previously, the Department believes the county is the appropriate scale for wastewater management planning, but will accept alternate assignment to a municipality, if the county does not accept WMP responsibility and a

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municipality chooses to accept it. WMP planning below the municipal scale does not afford the opportunity to consider the broader implications of wastewater management planning and is more appropriate for adjustments that would be better handled as site specific amendments.

N.J.A.C. 7:15-4.3 establishes the structure and describes the components of the WMP. The WMP will include a brief summary of the actions proposed, including a description of the number of acres added and/or subtracted from the current, approved sewer service area. The WMP includes a minimum of three maps with a narrative description: Map 1, depicting the political and selected jurisdiction and natural boundaries of the WMP area; Map 2, depicting selected environmentally sensitive features; and Map 3, depicting the sewer service and non-sewer service areas. As appropriate, the WMP should also include a Map 4, which depicts current composite or municipal zoning, if that is used as the basis for the build-out analysis under N.J.A.C. 7:15-4.5(b)1ii(2), and Map 5, which depicts factors considered in delineating sewer service areas not otherwise depicted in Maps 1 through 4. In addition, the WMP must include wastewater treatment plant tables, the wastewater capacity and nitrate dilution analyses, the calculation of potential capacity deficiencies identified through these analyses, and the strategies to address the potential capacity deficiencies.

The wastewater treatment facility tables are described at N.J.A.C. 7:15-4.3(b). These tables are comprised of information about each existing and proposed wastewater treatment facility in the WMP area, including existing wastewater flow, permitted capacity of the plant, and the estimated wastewater expected to be generated within the assigned sewer service area for each treatment facility, including the future flows associated with build-out or the 20-year planning horizon for urbanized municipalities. The Department maintains all but the projected

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population or development and associated flow data as part of its NJPDES permitting program, and the Department will provide the information it maintains to the WMP agency, consistent with N.J.A.C. 7:15-2.4(a)8. The WMP agency may generate future flow information using population projections from government or academic resources, such as the U.S. Census, local governmental sources, or studies done by academic institutions as discussed previously.

The required format and content of the maps is set forth at proposed N.J.A.C. 7:15-4.3(c). Map 1 depicts political, jurisdictional, and natural boundaries and features in the WMP area. These features would include Pinelands Management Area boundaries as defined at N.J.A.C. 7:50-5.12 and land use capability zones established under the Highlands Regional Master Plan pursuant to N.J.S.A. 13:20-8. Map 2 is a composite map of selected environmental features based upon the most current Department GIS coverage that corresponds to environmentally sensitive areas that the Department has identified as inappropriate for sewer service at N.J.A.C. 7:15-4.4(f). The Department is not requiring as many environmental features to be depicted on Map 2 as it required under the existing mapping requirements at N.J.A.C. 7:15-5.17. For example, the Department will no longer require flood prone areas, public open space and recreation areas, and river areas designated under the New Jersey Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq., and riparian zones not associated with Category One waters to be depicted because it does not require that these areas be excluded from sewer service under the rule. The WMP agency may opt to include additional environmental features that are relevant in accordance with the additional considerations it chooses to reflect in sewer service area delineation, but would do so on Map 5. The Department is also requiring a disclaimer on Map 2 at N.J.A.C. 7:15-4.3(c)2ix to ensure that the public is aware that development in areas mapped as

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environmentally sensitive may be subject to special restrictions under Federal or State statutes and rules, and that their depiction on Map 2 shall not be construed to define the legal and geographic jurisdiction of such laws. In practice, this disclaimer has been on sewer service area maps. The Department is now specifying that the environmentally sensitive features map must contain this disclaimer.

Map 3 depicts the wastewater-related jurisdictions, facilities, sewer service areas, and non-sewer service areas. This includes a depiction of the sewerage authority and municipal utilities authority district boundaries, and franchise areas for sewer utilities regulated by the Board of Public Utilities and other contractual boundaries defining sewer service area responsibilities. Map 4 depicts zoning and Map 5 provides for the depiction of other relevant factors considered by the WMP agency.

The procedures for delineation of sewer service area are set forth at N.J.A.C. 7:15-4.4. As discussed in greater detail above, N.J.A.C. 7:15-4.4(b) and (c) set forth the delineation requirements for Pinelands Areas and in the Highlands Region.

N.J.A.C. 7:15-4.4(d) through (i) and 4.5 set forth the delineation requirements and the content of the wastewater capacity analysis. These sections are described in detail earlier in the Summary. These are minimum standards, and the WMP agency may incorporate more protective standards. N.J.A.C. 7:15-4.6 sets forth the requirements for a Habitat Suitability Determination. This section has been carried forward from the existing rules at N.J.A.C. 7:15-5.26.

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N.J.A.C. 7:15-4.7 is new. It establishes the process for conducting a Habitat Impact Assessment. Its provisions are described in detail above as part of the sewer service area delineation process.

Subchapter 5. 303(d) Water Quality Limited Waters Lists and Total Maximum Daily Loads

This subchapter establishes the process for the development, ranking, adoption, and modification of the List of Water Quality Limited Waters as required under Section 303(d) of the Federal Water Pollution Control Act. The List of Water Quality Limited Waters, 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. States must also list waters where thermal discharge controls are not sufficient to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife. 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. TMDL analyses must occur for each of these waterbodies unless subsequent investigation indicates that the waterbodies do not actually require water quality-based controls or alternative approaches are employed to achieve water quality standards.

New Jersey prepares an integrated assessment of water quality known as the Integrated Water Quality Monitoring and Assessment Report (Integrated Report), which includes the 303(d) list and a biennial water quality assessment required by Section 305(b) of the CWA, 33 U.S.C. § 1315(b), also known as the 305(b) report.

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Subchapter 5 sets forth the State's process for developing the List of Water Quality Limited Waters, creating the Integrated Water Quality Monitoring and Assessment Methods document (Methods Document), determining the priority and schedule for development of TMDLs for listed waters, and for developing TMDLs and implementation plans.

At N.J.A.C. 7:15-5.2(a), the Department is proposing to continue to incorporate the Federal requirements and guidance for listing water quality limited segments by reference, so that the procedures used by the Department for developing the List of Water Quality Limited Waters 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://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/guidance.cfm#program>. The Federal regulations at 40 CFR 130.7(b) set forth specific requirements for listing of water quality limited segments, which are periodically updated by the U.S. Environmental Protection Agency through issuance of guidance documents.

N.J.A.C. 7:15-5.2(b) describes the Department's methodology for assessing water quality and making the determination of how to characterize various waters, which is set forth in the Methods Document. The Methods Document is published and is available on the web at <http://www.state.nj.us/dep/wms/bwqsa/generalinfo.htm>. The Department expects to 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. The Department's procedure for obtaining public comment on any proposed revisions to the Methods Document is set forth at N.J.A.C. 7:15-5.2(c), and is the same as in the current rules.

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Under the CWA, the Department is required to prepare a List of Water Quality Limited Waters (303(d) List) every two years, as required by implementing Federal regulation at 40 CFR 130.7(d)1. The Department will develop the list in accordance with the Methods Document, and will include a schedule of those TMDLs intended to be developed during the subsequent two-year period. The procedures for proposing the 303(d) list, obtaining public comment, and finalizing the 303(d) List, following EPA approval of the 303(d) list, are set forth at N.J.A.C. 7:15-5.4. The procedures remain the same as in the current rules, except it is no longer characterized as an amendment to the SWQMP that, as discussed above, will no longer be part of the planning process. Further, the secondary notification requirement is proposed to be changed from being through publication in newspapers to being via electronic notification to those requesting receipt of electronic notification.

N.J.A.C. 7:15-5.3 describes the Department's process for developing TMDLs. In accordance with the Clean Water Act and implementing Federal regulations, a TMDL is a calculation of the maximum loading of a pollutant that a waterbody 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 as well as any reserved capacity. The process for developing TMDLs is carried forward from the current rule. It is based on Federal regulations at 40 CFR 130.7(c) and (e), and USEPA guidance documents. 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.

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Subchapter 6. Watershed Management Grants

This subchapter 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, 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 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 Act, at N.J.S.A. 58:29-5, specifies a variety of activities for which funds in the Watershed Management Fund may be used, including, as one of the options, loans and grants to watershed management groups. The procedures set forth in proposed N.J.A.C. 7:15-6 continue provisions currently codified at N.J.A.C. 7:15-9 and are those that will be utilized should Watershed Management Fund resources be made available for grant awards.

Public Outreach

The Department conducted extensive stakeholder outreach in developing this rulemaking. The Department sought input from many constituencies including government agencies and planners, the development community, the environmental community, academic groups, and

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sewerage and water utilities through a series of 12 stakeholder meetings held from February to July 2012. These stakeholder meetings focused on development of a program to address water quality and quantity issues across all water resources programs and media and included discussions regarding the WQMP rules and the future of the WQMP Program. During these meetings, stakeholders raised concerns regarding the need to allow site specific amendments without an up-to-date WMP, removing wastewater service area withdrawal provisions, and allowing adoption of individual data layer improvements to WMPs, which were all embodied in legislative direction at P.L. 2011, c. 203.

The Department continued to hold many informal meetings with representatives of the constituencies identified above to discuss a holistic approach to regional problem solving and a framework to overhaul the current WQMP rules, which would build in essential elements of the current rules with a new vision that will increase outcome efficiency by combining the current planning process with the existing permitting programs and updating the continuing planning process strategies and guidance articulated within the CPP, such as the broader issues of stormwater and nonpoint source pollution.

Two combined constituency meetings were held in February 2014 to present a general overview of the proposed approach to the water quality management planning process going forward. Questions and feedback received at these meetings were used to develop this rulemaking. Four sector-specific interest group follow-up meetings were held in late September and early October of 2014. At these meetings, the Department shared a crosswalk identifying how the Department believes it will implement the CWA and CPP through this rule proposal and other existing Department programs and rules, a WQMP rule crosswalk identifying major

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provisions of the current rule and how these provisions would change under these proposed rules, and a draft rule outline. Attendees asked questions and provided additional suggestions for Department consideration in this rulemaking. These documents and recordings of these meetings are available on the Department's website at <http://www.njdepcalendar.com/calendar/events/index.php?com=detail&eID=477>. These discussions informed this proposal and many of the amendments proposed herein reflect the suggestions and recommendations of stakeholders.

Social Impact

This proposal to repeal and replace the Water Quality Management Planning rules with new rules will streamline the water quality planning process and better integrate it with existing DEP permitting programs. The repeal and new rules will eliminate duplicative reviews and simplify the planning process, resulting in 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 help 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

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sustainable ecosystems; and to ensure that surface and ground water will be clean sources of water. 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 reassess planning of wastewater infrastructure so as to provide for the needs of local communities while considering the overall implications of wastewater infrastructure and related development on 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 approach will be continued with the proposed new rules, and made more efficient by eliminating redundancies and by relying more fully on analyses of technical wastewater management solutions through the relevant permitting process.

The proposed repeal and new WQMP rules maintain current areawide WQM plans and designated planning agencies (and their responsibilities), and the Continuing Planning Process, as embodied in the Federal Clean Water Act and WQPA. Activities under the new rules will continue to be coordinated and integrated with related Federal, State, regionals and local land use, functional, and other relevant planning programs and policies, including the Pinelands Comprehensive Management Plan, Highlands Regional Master Plan, Meadowlands 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. Further, the Department is committed to providing relevant information to planning agencies and developing and adopting WMPs in the event the appropriate planning agency fails to do so, thus streamlining the planning process. In addition,

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the Department is providing an opportunity for enhanced public notification when a proposed amendment is for a parcel greater than 100 acres or greater than 20,000 gpd of flow. In so doing, the Department is ensuring that members of the public have an opportunity to comment on amendments that have the potential to effectuate a substantive change in wastewater management solutions, which in turn have a greater potential for ancillary social impacts.

This positive social impact will be further enhanced by providing for closer collaboration with the Pinelands Commission and the Highlands Council, which in turn will help streamline planning and permitting efforts and reduce current redundancy. Accordingly, substantial planning responsibilities will be more effectively placed in the hands of those most familiar with regional goals, objectives, and concerns, as well as with those entities that most have the means to effectuate the provisions and objectives of their regional, county, and localized plans.

Growth and development are recognized as necessary components for maintaining a strong economy and are integral to keeping a vital majority of New Jersey citizens working. New Jersey experienced an economic downturn, along with the rest of the nation, as a result of the “Great Recession of 2007.” The Legislature passed P.L. 2011, c. 203 and P.L. 2013, c. 188 to help ensure that the positive water resource management objectives embodied in the 2008 rules would move forward in a way that was not counter to efforts to recover from the economic downturn. The proposed new rules include changes that simplify the WQM plan amendment process, for both WMPs and site specific amendments, eliminating redundancy, and relying on permitting programs for technical reviews for permitted activities. This approach provides a better balance to accomplish protection of environmental resources while avoiding unnecessary impediments to sound economic growth.

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Key to this objective is the reliance in the new rules on existing permitting programs to determine if a proposed project or activity is located within an area eligible for sewer service as part of the Department's review of a permit application and the technical merit of a proposed project or activity in conforming to the overall objectives of water quality management planning as part of the permitting process, and not as a separate process. The new rules eliminate the separate formal consistency determination review as part of the water quality planning process and the requirement for an assessment of nonpoint source pollution impacts of planned future development as part of the WMP. These aspects of the proposed new rules will provide multiple positive social impacts by streamlining the planning-to-permitting process and saving staff and other resources for both the Department and all affected parties by combining two related processes.

While several of the analyses currently required early in the planning process, based upon limited information and projections, will be deferred to the permitting process and will generally occur on a permit by permit basis, rather than on a regional basis, the proposed new rules, in conjunction with other Department programs that form the continuing planning process, will continue to ensure that local and regional planning considerations are taken into account. This will occur through the input of municipal and county agencies as well as input and coordination with regional agencies, such as the Pinelands Commission and Highlands Council, in the mapping of areas appropriate for sewer service. The rules contain mechanisms necessary to strike an appropriate balance between protection of environmentally sensitive areas and local/regional planning objectives with the most sensitive areas and ecological communities protected from inappropriate development. The Department's continuing planning process,

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including these rules, focuses on encouraging development in areas designated for growth, such as areas designated as Planning Area 1 in the State Planning process. Further, recently observed market trends support that the preference for housing has moved away from the sprawl pattern. These new market conditions are resulting in development and redevelopment in urban centers, “first ring” suburbs, and other areas with preferred access to public transportation. Studies from the National Association of Realtors report that the next generations of home buyers and renters are anticipated to seek to reside closer to jobs and amenities in mixed use, higher density communities with better access to public transportation. Redevelopment, rehabilitation, and infill development means that undeveloped areas are under reduced development pressure and may remain undeveloped longer or perhaps, in perpetuity through compensated land preservation techniques. This has a direct benefit to water quality and limits the potential for expansion of infrastructure into areas of the State planned for conservation/preservation.

The restructuring and reduction of the level of technical analyses required to prepare a WMP, as well as the reduction in paperwork and the increased reliance on electronic submissions, will provide considerable relief to resource-strapped local and regional planning agencies. The Department will accomplish the objectives of water quality management by relying on the permitting process for technical reviews, requiring real time responses to the need to address identified deficiencies in wastewater treatment and nitrate dilution capacity, and focusing planning resources on efforts to work with municipalities and counties to directly develop and implement non-regulatory responses to pollution sources. The current rules require rezoning as the only response to an identified gap between full development of an area and the area necessary to provide adequate nitrate dilution to protect ground water quality at complete

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build-out. The approach taken in the new rules will provide a key social benefit by providing greater flexibility to allow consideration and implementation of several options to address such identified future wastewater treatment and nitrate dilution capacity deficiencies.

By providing for a review of treatment capacity when a facility is at 80 percent of permitted flow, the rules allow facilities time to plan for improvements to their infrastructure without jeopardizing public health and the environment. In addition to ensuring protection of the public and environment, early planning will provide an opportunity for better analysis of available options to most efficiently address future infrastructure needs.

The proposed new rules require that areas with a wastewater service designation for discharge to ground water of 2,000 gallons per day or less have a septic management program. This requirement may have a perceived adverse social impact for homeowners who do not practice routine maintenance of their systems and may object to this additional measure. 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 risk as well as a potential major expense to the septic system owner. The requirement for regular inspection and maintenance will have an overall positive social impact by helping to prevent the failure of septic systems, with the corresponding social benefit of protection of public health and the environment.

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Economic Impact

The proposed repeal of the current rules and the proposal of new rules encourages growth and development where it is best suited: in areas where infrastructure and other investments in growth have been made and which are not environmentally constrained. This approach helps to achieve the restoration, enhancement, and maintenance of the chemical, physical, and biological integrity of the State's surface and ground waters, providing positive economic benefits by protecting public health, enhancing recreational opportunities, preserving ecological integrity for future generations, and avoiding costs of correcting environmental degradation.

Because wastewater management plans guide the location of sewage infrastructure to areas suited for development, 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 encourage proper planning for wastewater infrastructure, which supports sustainable economic growth and water resource protection, thereby providing economic benefits to all the residents of the State.

The proposed new rules continue the integration of water resource management and land use planning concepts. Significant economies, efficiencies, and savings will be realized by both public and private development projects if land use planning, at all levels of government, is aligned through integrated planning. The proposed new rules integrate wastewater management planning with the detailed planning that has been conducted in the Pinelands, Highlands, and Coastal Planning areas.

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The Department is proposing to retain the clear standards for approval of sewer service area outside of the Pinelands and portions of the Highlands. The procedure for sewer service area delineation in the remainder of the State continues the thoughtful balancing of environmental, economic, and social considerations reflected in those regional plans. The Department had initially estimated that implementation of the sewer service area delineation procedure may have resulted in removal of approximately 316,000 acres of environmentally 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. To date, 180,000 acres have been removed from sewer service area, although not all of this area was removed because of the presence of environmental features. 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 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.

The proposed new rules eliminate the requirement to withdraw sewer service area for failure to complete a WMP in accordance with the required schedule. This proposed change is

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responsive to enactment by the Legislature of P.L. 2011, c. 203, later supplemented by P.L. 2013, c. 188. In these enactments, the Legislature found that there may be unacceptable, adverse economic, environmental, and planning impacts from the non-discretionary and mandatory withdrawal of wastewater service areas and that sewer service areas should not be withdrawn except as part of a WMP process. Removing this penalty from the WQM planning process will assist local and regional planning agencies in economic recovery without losing the positive results of advance planning to address wastewater and water quality management issues.

The proposed new rules retains the designation of counties as the wastewater management planning agencies. This approach will foster regional consideration of water quality issues and will result in an overall cost savings in the preparation of WMPs due to shared services and economies of scale. Retaining this strategy fosters the close working relationship between the Department and each of the counties, and facilitates provision of assistance in effectuating the WQM plan and CPP strategies for water quality management.

There are costs associated with the preparation of wastewater management plans, which vary with the geographic scope of the plan and complexity of the wastewater management infrastructure relied upon in the plan. It was initially anticipated that a county WMP would cost \$200,000 and a municipal WMP could cost \$20,000. Significant progress in developing up-to-date wastewater management plans has been made using the technical and financial assistance provided by the Department to counties and municipalities. To date, approximately \$2,800,000 in grant funds has been expended for county WMPs, with an average per county of approximately \$202,000. Financial awards to municipalities where the county did not accept WMP responsibility was typically \$10,000. With this funding, sewer service area mapping was

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completed in all or parts of 15 counties and over a dozen municipalities where the county did not accept WMP responsibility. In some areas, work beyond the sewer service area mapping was also completed, such as wastewater capacity analyses and nitrate dilution analyses. Two county WMPs and 23 municipal and regional WMPs or WMP chapters, covering approximately 145 municipalities, have been adopted since the 2008 rules were adopted. Adopted WMPs provided additional analyses including environmentally based build-out analysis of wastewater and water demand, wastewater facility and water supply capacity analyses, nitrate carrying capacity analysis, municipal zoning evaluation relative to the nitrate carrying capacity, and various municipal environmentally based zoning ordinance evaluations. Under the proposed new rules, the extent of analyses required in a wastewater management plan or for a site specific amendment has been substantially reduced, thus the costs associated with preparation of same are similarly reduced. Thus, the cost to complete WMPs already in progress that are compliant with the proposed rules should be small. Further, if a county or municipality does not choose to complete the existing WMPs, or develop revised WMPs in 10 years, the Department may complete the required analyses. Finally, the economic benefits associated with sound land use and wastewater management planning outweigh the residual costs of WMP or site specific amendment preparation.

The Department is proposing to make the consistency determination process more efficient. While the need to ensure consistency with adopted WQMPs is required by law, that law does not dictate which program within State government must determine the application requirements and review procedures to administer that mandate. It is proposed that consistency with the applicable areawide WQMP be determined within the relevant water resources, land

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use, and/or funding program(s), as part of the application requirements and permitting procedures. There will be no separate application or additional fee for this determination, which will be limited to a determination as to whether a project or activity requiring centralized sewerage service is located within or outside of an approved sewer service area. This determination can be made by the applicant in advance of a permit application by referring to the digital coverage of approved sewer service area that the Department will maintain on its webpage. This should result in a cost savings to the regulated community and avoid substantial investment in plan development and permitting for inconsistent projects because the administrative burden associated with obtaining a permit has been reduced and the process streamlined, while still retaining the means to alert applicants as to existence of an intrinsic inconsistency with an adopted WQM plan.

The proposed new rules eliminate costly and time consuming analyses and requirements that are currently a part of WMP development. The proposed new rules maintain the requirement to complete a wastewater capacity analysis, which will promote economic efficiency by identifying areas where there is a gap between needs and available infrastructure so that orderly planning to fill the gap can be pursued. However, it will not be required to demonstrate feasibility, through a water quality study, of new or expanded wastewater infrastructure that would be needed to fill a gap between wastewater treatment needs and available infrastructure. Instead, the acceptability of specific infrastructure solutions will be determined through the technical review conducted during the permitting process. This is appropriate because the requirements for approval of a NJPDES permit entail a determination that SWQS and GWQS will be protected, and will allow such a determination to be made when there is an actual need to

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build new or expanded infrastructure and under the actual prevailing conditions regarding water quality science and technology. This will be a more efficient means to identify the nature, capacity and discharge location and effluent quality that is appropriate for wastewater management, and it eliminates a significant amount of workload for WMP agencies in developing the WMP. The analysis and fees required to obtain a permit will not increase as a result of this dual function.

By combining the determination of technical WQM plan consistency with the review and assessment of a permit application's technical merits, the technical criteria of the applicable environmental regulations will serve as the determination of consistency with the water quality and quantity considerations of a WQM plan, determined in real time, under current environmental conditions, considering current standards and technology and relying upon the expertise of programmatic review staff best equipped to make the determinations. This will provide substantial positive economic impacts by greatly streamlining multiple planning, permitting, and funding-source processes.

Areas that are not designated as sewer service area under the proposed new rules will be designated for discharge to ground water of 2,000 gallons per day or less. The proposed new rules continue the requirement to conduct a nitrate dilution analysis for such areas to determine the density that would be consistent with maintaining the nitrate target of two mg/L. However, under the proposed new rules it is not required to align zoning with the septic density determined to be consistent with the outcome of the nitrate dilution model. This will avoid the delay and cost of rezoning as well as the effect on the speculative value of the land relative to development, which in turn affects the ability of agricultural producers to leverage their land value to secure

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loans for production. The resistance to implementing zoning changes has resulted in significant delay in completing WMPs in accordance with the current rule. In practice it was found that forcing rezoning to achieve the ground water quality objective as a prerequisite for WMP approval does not provide for the reasonable assumption that the theoretical development potential of every parcel will not be realized. With the passage of time, there is the real possibility that undeveloped parcels will be removed from the pool of developable land that could contribute pollutant loads from wastewater disposal through an ISSDS because it has been, for example, acquired for open space or for the implementation of green infrastructure approaches for managing stormwater. While it is still essential that the gap identified in the nitrate dilution analysis be addressed, the strategy will be for the Department to work with counties and municipalities to explore various options to do so as part of the CPP. The costs associated with addressing the gap cannot realistically be determined because of the host of variables associated with the degree of the gap and the option(s) selected to close the gap that may be selected in any given area.

In these new rules, the Department is eliminating the requirement to adopt nonpoint source protection ordinances as part of a WMP. Eliminating the requirement to adopt ordinances to address nonpoint source pollution as a component of each WMP will eliminate requirements that are redundant with other regulatory requirements, eliminate the economic cost associated with ordinance adoption, and avoid the delay in WMP completion to accomplish this task. The Department continues to recognize the importance of nonpoint source pollution control; however, the Department has determined that it is appropriate to decouple the strategies for nonpoint source management from the WMP process. Nonpoint sources occur Statewide and the

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strategies to address them are common to the type of source and it is only in the specific design of a solution that they are locational dependent. For this reason, it is more efficient to articulate the Department's overall strategies for nonpoint source pollution control once and the Department will do so in its Nonpoint Source Program Plan. The Department will then work with counties and municipalities to effectuate strategies at the county or municipal level through the CPP.

The proposed new rules allow that components of a WMP can be prepared and submitted separately if a planning entity wishes to do so. For example, the sewer service area can be completed and proceed to approval before preparing the wastewater capacity or nitrate dilution analyses, which would be affected by any changes in the sewer service area that might ensue through the DPA and/or Department review and public comment process. This change has the potential to save time and effort in developing a WMP while at the same time helping to move forward the process of WMP development.

To further assist in the effort to reduce the cost of WMP preparation, the Department has assumed the responsibility to provide any data necessary for completion of remaining required analyses to the WMP agency and has reduced the number of hard copies of project documentation to be submitted to one.

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 is proposed to be retained. Where a municipality imposes a pump out requirement as part of their septic maintenance program, this may result in an increased cost to owners of these systems, including some homeowners, who have not been regularly maintaining their septic systems.

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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 10 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.

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

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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 the 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://www.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.

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

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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 primary objective of the proposed rules is to maintain the quality of waters that already meet or exceed water quality standards. The nonpoint source pollution controls that are articulated in the NPS Program Plan component of the CPP 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 2012 Integrated Water Quality Monitoring and Assessment Report concluded that 61 percent of HUC 14 subwatersheds and 29 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 is in excess of \$30 billion (2008 Clean Water Needs Survey estimates \$36.5 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

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The Water Quality Management Planning rules establish the procedures to amend WQM plans to reflect changing wastewater management needs and strategies to address them, adopt updated lists of water quality limited waters (303(d) list) and adopt total maximum daily loads (TMDLs), all of which are required by Federal and/or State law to fulfill water quality management obligations. Periodically assessing the status of the waters of the State in attaining surface water quality standards and supporting designated uses of the waters is essential to formulating strategies to respond to identified impairments. Impaired waters are required to be placed on the 303(d) list and TMDLs, or alternative approaches, established to restore water quality. Planning for wastewater management needs over a 20-year planning horizon is also an essential role of water quality management planning. The proposed new rules are expected to have a positive effect on the environment by providing a more efficient means to process these actions and thereby help to restore, enhance, and maintain the chemical, physical, and biological integrity of the State's surface and ground waters.

The proposed new rules will establish a more workable system for water resources planning and management in New Jersey, and for ensuring that projects and activities approved by the Department are consistent with the environmental protection requirements in areawide WQM plans. This will be accomplished by simplifying the consistency determination process to focus on conformance with the sewer service area delineations and relying on the technical review associated with processing permits and other approvals to be the means to ensure that the water quality is protected.

The proposed new rules retain environmental standards to be used to delineate centralized sewer service areas. This will have environmental benefits by establishing clear performance

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criteria for the determination of areas where reliance on centralized sewer service is appropriate.

The standards require sewer service area delineation to integrate regional planning efforts that have been conducted in the Pinelands Area and Highlands Region that aim to protect and conserve water quality and natural resources. The proposed procedure for delineating sewer service areas in other areas will eliminate from sewer service areas significant tracts of environmentally sensitive areas, including wetlands, riparian zones of Category One waters, Natural Heritage Priority Sites, and habitats of endangered and threatened 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 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 rules continue to require an estimation of the existing and future needs for wastewater infrastructure and the identification of known or anticipated options to address gaps between needs and available infrastructure. As part of this analysis, where an existing wastewater treatment facility has existing flows that are at 80 percent of the permitted flow, that there be a consideration of the magnitude of and time frame for realizing the remaining demand within the assigned sewer service area for the wastewater treatment facility and commits that the Department will work with the WMP agency and the affected wastewater treatment facility to

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ensure that planning for timely implementation of any needed infrastructure improvements occurs. This provision is complemented by a companion proposal to revise the Capacity Assurance Program under N.J.A.C. 7:14A-22.16. Under this companion proposal, when the average flow over 12 consecutive months equals or exceeds 100 percent of the permitted capacity of a treatment works, the sewerage facility will be required to assess its existing treatment works, evaluate alternatives to maximize conveyance or treatment of existing flows, reduce flows, or increase capacity, including strategies to reduce inflow, select alternative(s), and provide an implementation schedule. The capacity analysis report will be due within 180 days after the last month of the 12-month period. These provisions are complementary approaches that will work together so as to avoid degradation of water quality.

The proposed new rules defer the determination of technical acceptability to the permitting stage but retain the hierarchy for evaluating alternative management options, giving preference to those alternatives that avoid adverse impacts over alternatives that minimize and mitigate such impacts. The rules would minimize the addition of pollutants to waterways, and maximize conformance with implementation provisions of TMDLs adopted for impaired waters. These 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. This will help to maintain, restore, or enhance water quality, water quantity, and ecosystem health and accommodate growth while protecting water resources.

The proposed new rules also retain the requirement to calculate the nitrate loading capacity based on a planning standard of two mg/L for areas identified as appropriate for discharge to ground water of less than 2,000 gallons per day and to identify areas where zoning

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exceeds the loading capacity. The Department will work with municipalities and counties to address such gaps, but will not require rezoning to conform to the loading capacity as part of a WMP, recognizing that rezoning may not be the only or best solution to address the gap. While not requiring mandatory periodic pump-out of ISSDS, the proposed rules retain the requirement to establish a septic management plan to ensure proper operation and maintenance of such systems in areas designated for their use in order to protect water quality.

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. Continued emphasis on environmentally sound design practices promoted in the updated CPP will help to ensure that new development will not exacerbate these impairments. The updated CPP references the Department's NPS Program Plan and contains tools, such as model ordinances, that will help to address nonpoint sources of pollution. Adoption of specific NPS ordinances related to riparian zones and steep slopes will no longer be required as part of a WMP; instead, the Department intends to continue to implement the strategies in the NPS Program Plan and assist municipalities, counties as well as local groups, such as watershed associations and other nongovernmental organizations, to take action to address NPS. Actions are expected to include adoption of the model ordinances previously developed, as well as conducting stewardship activities, such as installation of green infrastructure like rain gardens.

The proposed new rules continue to include the procedures for developing the List of Water Quality Limited Waters and Total Maximum Daily Loads. The Water Quality Limited Waters List, or 303(d) list, and associated TMDLs, provide information that is essential to the

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development and implementation of regulatory and non-regulatory responses 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.

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 new rules 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 indicated in order 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 rule, strategies to restore, maintain, and enhance water quality, water quantity, and ecosystem health will be further developed.

Federal Standards Statement

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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 (33 U.S.C. §§ 1251 et seq.) 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:

- 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 303(e) of the Federal Clean Water Act requires each state to establish a continuing planning process (CPP) approved by USEPA. The CPP must incorporate all elements of applicable areawide WQM plans and basin plans pursuant to the Clean Water Act, and include adequate implementation to achieve Federal and state water quality standards, authority for

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intergovernmental cooperation, controls over disposition of residual waste from any water treatment processing, and priority ranking for construction of waste treatment works.

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. These rules would continue this practice.

The proposed new rules provides 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.

Section 303(d) of the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) requires each state to identify those waters within its boundaries for which effluent limitations are not stringent enough to implement any water quality standards applicable to such waters. In addition, the State shall:

- Establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters;

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- Identify those waters or parts thereof within its boundaries for which controls on thermal discharges are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife;
- Establish for the waters identified, in accordance with the priority ranking, the total maximum daily load for those pollutants which are identified as suitable for such calculation; and
- Estimate for the waters identified the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife.

Subchapter 5 of the proposed new rules contains provisions related to development and adoption 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. The proposed rules incorporate these Federal requirements by reference to ensure that the Department's process remains in step with the Federal requirements. The proposed rules provide at N.J.A.C. 7:15-5.4 that the Department shall propose TMDLs as amendments to areawide WQM plans, and include the procedures for the establishment of 303(d) Lists.

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 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. By

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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. In 2010, EPA and NOAA approved New Jersey’s Coastal Nonpoint Pollution Control Program. EPA and NOAA found that New Jersey met its septic management requirement by applying its TMDL development and implementation process to ensure that nitrogen loads from both existing and new septic systems are reduced as needed to attain State water quality standards.

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 several of these required elements through the Water Quality Management Planning rules. The proposed new rules would continue this practice, specifically by providing the means to regularly update WQM plans, establishing the List of Water Quality Limited Waters and TMDLs.

In summary, the Department believes that the proposed new rules 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 proposed rules will result in improved 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.

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Jobs Impact

The proposed new rules will continue to require the preparation of wastewater management plans on a pre-scheduled basis, but extend the schedule from every six years to every 10 years. Calculation of total maximum daily loads and development of associated restoration plans will still be required under the proposed new rules. The proposed new rules continue to provide a means to award grants to designated Watershed Management Groups for the purposes of, for example, monitoring, planning, management, and nonpoint source pollution prevention projects,. Therefore, the jobs currently generated by the need for services of planners, engineers, and environmental consultants to conduct these activities will continue but at a reduced level as regards the frequency and complexity of WMPs and site specific amendments. An offsetting effect may be that, as plans are completed and the Department works more proactively with local government agencies and nongovernmental organizations to implement specific water quality protection and restoration tasks, there would be new work in the area of implementation. The overall trend would be to shift the demand from one type of professional services to another. However, at this time, it is not possible to determine the potential magnitude of this trend.

The provisions of the proposed new rules that provide for greater efficiencies and flexibility and which eliminate the consequences that are included in the 2008 rules related to failure to have an up-to-date WMP will avoid the potential for a negative impact on jobs that was clearly envisioned by the Legislature in enacting P.L. 2011, c. 203 and P.L. 2013, c. 188.

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As the proposed changes may affect the allocation of development throughout the State and perhaps the form of development at a given location unsuitable for development, there may be some negative impacts to employment sectors associated with residential and commercial development in some parts of the State. However, 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 that development.

Agriculture Industry Impact

The proposed new rules will 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. Proposed changes will 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.

The proposed new rules will continue to direct delineation of sewer service areas to eliminate significant zones of environmentally sensitive areas. By directing the more intense land uses to areas where they can be supported, the proposed changes will continue to enable more informed decisions that will protect water quality, provide more consistency and predictability to the permitting processes, and provide incentives for more environmentally compatible land uses. While the proposed new rules are not expressly directed at preserving agriculture, they may encourage ongoing agricultural uses.

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The proposed new rules no longer require rezoning as a prerequisite to approving a WMP to address the nitrate dilution gap. The proposed new rules allow for consideration of options to address the gap, that could include rezoning, but is not limited to this option. For the agricultural community, this change is positive in that it will avoid immediate negative impacts on the speculative value of land. Some members of the agricultural community rely on the speculative value of land as the basis to finance the costs of producing the upcoming season's returns. Rezoning at a lower density would have the effect of reducing this value, which may turn out not to be necessary to address the nitrate dilution gap. Further, farmers who ultimately plan to sell their land may also experience a loss of return, if density is reduced on their land unnecessarily.

The proposed new rules maintain the procedure of generally eliminating environmentally sensitive areas from sewer service areas and allows for local planning considerations to affect sewer service area delineations, which may affect the overall potential value of lands excluded from sewer service. However, environmentally sensitive areas may otherwise be constrained from development by virtue of regulatory programs for wetlands and riparian zones, making the sewer service area determination of secondary importance in the development potential of a parcel.

If land in agricultural use within sewer service areas also serves as habitat for endangered or threatened species, there could be a decrease in value, which is necessary in order to protect these species. Where implementation of these rules adversely affects the reasonable development expectations of property owners, however, 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.

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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 of demonstrations needed for a development project depends on the complexity of what is proposed and 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. Because the incremental cost of preparing an amendment is not significant, there is no compelling reason to provide a different process for small businesses.

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The proposed new rules do limit the circumstances under which a WQM plan amendment or revision would be needed and significantly reduce the information required to proceed with an amendment. In addition, the information requirements for a WMP or a site specific amendment are reduced and, for site specific amendments, are further scaled so that they are aligned with the size and potential impact of the amendment. Amendments of all sizes will need to document that a change in sewer service area designation conforms to the requirements of the proposed new rules. For amendments involving 100 acres or more or 20,000 gpd or more, there would be a need to adjust the wastewater and nitrate dilution capacity analyses. However, below these thresholds the change to those capacity analyses is expected to be minimal and can be deferred to the overall 10-year update. This will be a positive change for small businesses with the proposed new rules. Overall, fewer actions would trigger an amendment and the requirements for an amendment are reduced, thereby reducing the cost to small businesses compared to the 2008 rules.

Through the proposed new rules, 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.

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Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008 c. 46, the Department has evaluated the proposed new rules to determine the impact, if any, on the affordability of housing. There are many variables that affect whether or not a residential property, community, township, or even region, has a higher median or average per/home value than another: regional location and topography of the area, densities of residential dwellings, level of municipal services provided, public transit capabilities, crime rate, condition of municipal infrastructure (for example, streets, sidewalks, municipal lighting), rating of the school system and condition of the facilities, etc. Assessing whether “housing affordability” will go up or down based solely on the type or types of wastewater treatment that are available will always, therefore, be subjective at best, as it is but one variable among so many others that are difficult to isolate and quantify in monetary specifics.

If any impacts to housing affordability are to result from the proposed new rules, the Department predicts they will be *de minimus* and will be positive rather than negative. For areas deemed appropriate for centralized sewer service, the proposed changes to the WQMP rules will make it less costly and time-consuming to either establish a new SSA or expand an existing one, which may have the indirect consequence of making housing in those areas more affordable, not less.

Smart Growth Development Impact Analysis

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In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed new rules to determine the impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). As indicated above, the proposed new rules allow sewer service in ESAs if they are located in an area identified for growth in an endorsed plan approved by the State Planning Commission, if they are in Planning Area 1, as defined in the State Development and Redevelopment Plan (State Plan) developed pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq., or to allow either infill development or to remove undulations in the sewer service area, provided the ESA is not a Natural Heritage Priority Site and the area is not critical to the survival of a local population of endangered or threatened wildlife species. The new rules will provide opportunities for smart growth in growth appropriate areas such as Planning Area 1 and areas identified for growth in an endorsed plan. However, even in areas determined to be appropriate for growth, the proposed rules prohibit expansion of sewer service into areas that are critical to the survival of a local population of endangered or threatened wildlife species. In addition, inclusion in a sewer service area does not guarantee that applicable Department permits will be obtained. Therefore, while these changes will result in some additional opportunities for additional growth, including the potential for housing production in Planning Area 1 and within areas designated for growth, including centers, the exact impact is impossible to quantify due to potential impacts including the presence of endangered or threatened species habitat, and the desire to conserve urban lands for needed open space, the ability to change zoning, updates to Master Plans, and market demands for housing,

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which could impact the ability of any potential development to obtain a Department permit or necessary local approvals.

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

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

CHAPTER 14A

POLLUTANT DISCHARGE ELIMINATION SYSTEM

SUBCHAPTER 4. PERMIT APPLICATION REQUIREMENTS

7:14A-4.3 Application information requirements

(a) All applicants for an individual NJPDES permit shall provide the following information to the Department using the application form(s) provided by the Department (except as specified in N.J.A.C. 7:14A-24.7, 25.9, and 25.10 for stormwater discharges):

1. – 11. (No change.)

12. [Evidence that a WQMP Amendment approval, or favorable consistency determination in accordance with N.J.A.C. 7:15-3.4, has been applied for and received, or, if not applied for and received, reasons why not. Renewals or modifications of existing permitted

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activities that do not propose significant modification, as determined by the Department, do not require a formal consistency determination review, but shall still not conflict with WQM plans]

A map identifying the land area intended to be served by the proposed treatment works on a U.S.G.S. quadrangle map or digital format map prepared in accordance with the Department’s mapping standards at N.J.A.C. 7:1D Appendix A and a certification that the area to be served is within an area eligible for sewer service in accordance with the applicable WQM plan;

13. – 27. (No change.)

(b) – (e) (No change.)

CHAPTER 15

WATER QUALITY MANAGEMENT PLANNING

SUBCHAPTER 1. GENERAL PROVISIONS AND PLANNING REQUIREMENTS

7:15-1.1 Purpose and scope

This chapter establishes the Department’s water quality management planning policies, procedures, and requirements.

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7:15-1.2 Policy goals

(a) The policy goals of the New Jersey water quality management (WQM) planning program are to:

- 1. Establish and support 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 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;**
- 2. Conserve the natural resources of the State, promote environmental protection, and prevent the pollution of the environment of the State;**
- 3. Encourage, direct, supervise, and aid areawide WQM planning;**
- 4. Ensure that projects and activities affecting water quality are developed and conducted in a manner that is consistent with this chapter and adopted WQM plans;**
- 5. Coordinate and integrate WQM plans with related Federal, State, regional, and local comprehensive land use, functional and other relevant planning activities, programs, and policies;**

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6. Provide opportunities for meaningful public participation; and

7. Achieve an effective and efficient planning process, which includes timely review of areawide WQM plan revisions and amendments; fosters the use of electronic communication media; and reduces duplication in the planning and permitting processes.

7:15-1.3 Validity of previously adopted or submitted water quality management plan revisions and amendments

(a) Except as provided in (b) below, all areawide WQM plans, and revisions and amendments thereto, adopted prior to (the effective date of these rules) shall remain in full force and effect until such time as modified in accordance with this chapter.

(b) Wastewater service area designations in areawide WQM plans adopted prior to (the effective date of these rules) shall be redesignated on (the effective date of these rules) as follows:

1. All areas designated as a sewer service area associated with a specific wastewater treatment facility are designated as assigned sewer service area;

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2. All general wastewater service area designations for wastewater facilities with planning flows less than 20,000 gallons per day and which discharge to ground water are designated as non-sewer service area; and

3. All general service area designations for wastewater facilities with planning flows of 2,000 gallons per day or less and which discharge to ground water and areas designated as non-discharge areas are designated as non-sewer service area.

(c) All revisions and amendments that were submitted to the Department, including those submitted under P.L. 2011, c. 203 as amended and supplemented by P.L. 2013, c. 188, prior to (the effective date of these rules) but not adopted shall be subject to the requirements of this chapter as of (the effective date of these rules), except that the electronic submittal requirements at N.J.A.C. 7:15-1.7(a) and (b) will not be required.

7:15-1.4 Construction and severability

(a) This chapter shall be liberally construed to effectuate the purposes of the statutes under which it was adopted.

(b) If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby and shall remain in full force and effect.

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7:15-1.5 Definitions

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

“Act” or “WQPA” means the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

“Advanced wastewater pretreatment device” means an NSF International (NSF) Standard 40 or Standard 245 certified technology which may be incorporated as a part of an onsite wastewater treatment system, which bears the NSF mark and is designed, installed, operated, monitored, and maintained in accordance with that certification and N.J.A.C. 7:9A. This definition also includes those technologies that are authorized for use in the Pinelands Area through the Pinelands Advanced Wastewater Treatment Systems Pilot Program at N.J.A.C. 7:50-10.23.

“Agriculturally dependent endangered or threatened wildlife species” means fauna that have been listed as endangered or threatened whose current suitable habitat within New Jersey is primarily a result of ongoing agricultural practices including, but not limited to, mowing, haying, and grazing, and whose persistence at a particular location is dependent on the continuation of specific agricultural practices. The following species meet this definition when their presence at a site is dependent upon specific ongoing

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agricultural practices: Cattle Egret (*Bubulcus ibis*), American Kestrel (*Falco sparverius*), Upland Sandpiper (*Bartramia longicauda*), Henslow's Sparrow (*Ammodramus henslowii*), Vesper Sparrow (*Pooecetes gramineus*), Grasshopper Sparrow (*Ammodramus* *savannarum*), Savannah Sparrow (*Passerculus sandwichensis*), Horned Lark (*Eremophila alpestris*), Bobolink (*Dolichonyx oryzivorus*), and Checkered White (*Pontia protodice*).

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

“Areawide plan” or “areawide WQM plan” or “WQM plan” means the areawide water quality management plan prepared pursuant to the Act and the Clean Water Act.

“Assigned sewer service area” means the eligible sewer service area from which sewage flows are conveyed to a specific DTW, or for the purposes of the wastewater capacity analysis, is reasonably expected by the WMP agency to generate sewage that will be conveyed to the DTW, or to an industrial treatment works that accepts sewage generated from areas other than the industrial facility.

“Best management practices (BMPs)” means:

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

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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.

“BPU-regulated sewer or water utilities” means sewer utilities or water utilities regulated by the Board of Public Utilities pursuant to 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.

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

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“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee.

“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 measures” means techniques to acquire, preserve, create, enhance, restore, or manage habitat for endangered or threatened wildlife species.

“Conservation restriction” means an interest in land as defined in N.J.S.A. 13:8B-2.b.

“Continuing planning process” or “CPP” means the Statewide planning process conducted by the Department pursuant to the Act.

“County utilities authority” means any public body created and organized by a county governing body pursuant to N.J.S.A. 40:14B-1 et seq., or any sewerage authority or county sewer authority reorganized as a county utilities authority pursuant to N.J.S.A. 40:14B-6.b.

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“Department” means the New Jersey Department of Environmental Protection.

“Designated area” means an area designated by the Governor as an areawide WQM planning area pursuant to the Act.

“Designated planning agency” or “DPA” means an agency designated by the Governor to conduct areawide WQM planning pursuant to the Act.

“Designated use” means those surface water uses, both existing and potential, established by the Department under the Surface Water Quality Standards, N.J.A.C. 7:9B, for the waters of the State.

“Discharge Monitoring Report” or “DMR” means the USEPA’s uniform national form, as amended, for the reporting of self-monitoring results by permittees, and includes Baseline Reports.

“District” means any or 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), or the Passaic Valley Sewerage District as defined at N.J.S.A. 58:14-1.

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“Disturbance” means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

“Domestic treatment works” or “DTW” means a publicly owned treatment works as well as any other treatment works processing primarily domestic sewage and pollutants together with any ground water, surface water, stormwater, or process wastewater that may be present.

“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.

“Eligible for sewer service area” means areas determined to meet the criteria for designation as sewer service in accordance with this chapter and are either assigned or unassigned to a specific wastewater treatment facility in the areawide WQM plan(s).

“Endangered wildlife 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 appearing on any Federal endangered species list pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq.

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“Environmentally sensitive areas” means those areas identified in an areawide WQM plan as land areas possessing characteristics or features that 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 most currently available 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.

“Franchise area” means the geographic area over which a designated private entity has the privilege or the exclusive right to control, operate, and provide for a specified utility or utilities that has been granted by the Board of Public Utilities for a period or periods of time and upon such other terms and conditions as it may fix and agree upon.

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“Governmental entity” means a Federal, state, county, or municipal government or school district whose jurisdiction is partially or entirely within New Jersey.

“Highlands center” means areas designated as such by the Highlands Council.

“Highlands conforming municipality” means a municipality in the Highlands planning area that has had its RMP conformance petition approved by the Highlands Council and has adopted a planning area conformance petition ordinance and land use ordinance amendments consistent with that approval.

“Highlands Council” means the Highlands Water Protection and Planning Council established pursuant to the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.

“Highlands planning area” means that portion of the Highlands Region not included within the Highlands preservation area as defined in the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-7.c.

“Highlands preservation area” means that portion of the Highlands Region as defined in the Highlands Water Protection and Planning Act, N.J.S.A 13:20-7.b.

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“Highlands redevelopment area” means previously developed areas, such as brownfields or grayfields, designated as such by the Highlands Council.

“Highlands Region” means that region as defined in the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-7.a.

“Highlands Regional Master Plan” means the master plan and any revisions thereto, adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

“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 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.

“Individual subsurface sewage disposal system” or “ISSDS” means a collection of components for disposal of sanitary sewage into the ground that is designed and constructed in conformance with N.J.A.C. 7:9A to treat sanitary sewage in a manner that

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will retain most of the settleable solids in a septic tank or may incorporate an advanced wastewater pretreatment device and discharges liquid effluent of typical domestic strength to a disposal field. An ISSDS may include advanced wastewater pretreatment. The terms “onsite wastewater treatment system” and “system” are equivalent in meaning.

“Industrial treatment works” means an industrial treatment works as defined at N.J.A.C. 7:14A.

“Infill development” means development of undeveloped or underdeveloped land in an area that is contiguous to and substantially surrounded by developed land that is served by a wastewater treatment facility as of the (effective date of these rules) and that will generate less than or equal to 8,000 gallons of wastewater per day.

“Integrated Water Quality Monitoring and Assessment Report” or “Integrated 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 overall quality of the waters of the State and their support of designated uses and includes the 303(d) List of Water Quality Limited Waters required under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d).

“Joint meeting” means the meeting or assembly of the members of the governing bodies or boards of the several municipalities having authority to make and enter into

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contracts for the construction jointly of the works or improvements authorized by N.J.S.A. 40:63-70.

“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 wildlife 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 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.

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“Load allocation” means the portion of a receiving water’s total maximum daily load for a specific pollutant that is allocated to existing or future nonpoint sources of pollution.

“Municipal authority” means a municipal authority as defined in the Municipal and County Utilities Authorities Law at N.J.S.A. 40:14B-3(5), and shall include a municipal utilities authority created by one or more municipalities and a county utilities authority created by a county.

“Municipal government” means a city, town, borough, village, township, or other municipal government created by State law, which has an elected governing body, a chief executive, and municipal public officials including a municipal clerk, tax assessor, and tax collector.

“Natural Heritage Database” means 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 endangered and threatened wildlife species, endangered plant species, plant species of concern, and ecological communities of concern in New Jersey.

“Natural Heritage Priority Sites” means areas identified on the Department’s geographic information systems (GIS) coverage that conserve New Jersey’s biological

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diversity, with particular emphasis on the habitat of endangered plant species, plant species of concern, and ecological communities of concern. These components of biological diversity are referred to as “natural resource elements” for the purposes of these rules. Natural Heritage Priority Sites are based on analysis of information in the Natural Heritage Database.

“Natural resource elements” means the habitat of endangered plant species, plant species of concern, and ecological communities of concern, which includes areas required to maintain the natural processes necessary for continued viability of such plant species or ecological community, such as ground water flow and water quality. Natural resource elements are the basis for the Department’s Natural Heritage Priority Sites.

“NJPDES” means the New Jersey Pollutant Discharge Elimination System established in N.J.A.C. 7:14A.

“NJPDES discharge permit” means a permit issued by the Department pursuant to N.J.A.C. 7:14A for a discharge to surface water or a discharge to ground water.

"No net loss of habitat value" means, when considering the net effects of a proposed activity and any required conservation measures, no net reduction in the capacity of an area to support a population of any endangered or threatened wildlife species similar in size and health to any such population that the same area was capable of supporting prior

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to completing the regulated activity. In this context, the area under consideration includes the combined area of suitable habitat affected by a proposed activity and the area where required conservation measures are implemented.

“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

3. Any activity, factor, or condition, other than a point source, that contributes or may contribute to water pollution.

“Non-sewer service area” means areas that are not designated as eligible to receive sewer service from a NJPDES permitted domestic or industrial treatment works. This type of wastewater service area allows wastewater facilities with discharge to ground water of 2,000 gallons per day or less.

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“OWRMC” means the Office of Water Resource Management Coordination, or its successor, in the Department of Environmental Protection.

“Passaic Valley Sewerage Commissioners” means the body described by that name pursuant to N.J.S.A. 58:14-2.

“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.

“Pinelands Area” means that area as defined in the Pinelands Protection Act, N.J.S.A. 13:18A-11.

“Pinelands Commission” means the Pinelands Commission created pursuant to N.J.S.A. 13:18A-4 and as authorized by the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 471i, creating the Pinelands National Reserve.

“Pinelands Comprehensive Management Plan” means the plan codified at N.J.A.C. 7:50, as adopted by the Pinelands Commission.

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“Pinelands Management Area” means those areas as established and amended pursuant to N.J.A.C. 7:50 and as depicted on the Pinelands Land Capability Map.

“Pinelands National Reserve” means that area as defined at section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 471i(c).

“Planning flow” means that daily flow which is estimated or anticipated to be contributed by wastewater generating facilities in a wastewater service area. Planning flow is calculated based on N.J.A.C. 7:14A-23.3 or 7:9A-7.4, as applicable for the type of wastewater facilities being considered.

“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 wastewater” means any water that, 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

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water. This definition includes the terms commercial wastewater and industrial wastewater as used in 40 CFR Part 503.

“Public advisory committee” or “PAC” means a representative committee of interests formed for the purpose of advising the Department on policy and other relevant issues in the development and implementation of a watershed management area plan or TMDL.

“Purveyor” or “water purveyor” means any person who owns or operates a public water supply.

“Riparian zone” means the land and vegetation adjacent to a surface water that is regulated under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-1.2.

“Sanitary sewage” means any liquid waste containing animal or vegetable matter in suspension or solution, or the water carried wastes resulting from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or any other source of water carried wastes of human origin or containing putrescible material. This term specifically excludes industrial, hazardous, or toxic wastes and materials.

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“Septage” means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

“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.

“Sewer service area” means the land area identified in an areawide WQM plan from which wastewater generated is conveyed to, or has been determined to be eligible, in accordance with this chapter, to pursue a permit to connect to a domestic treatment works or industrial treatment works. Inclusion in a sewer service area does not guarantee that capacity exists or will exist to provide treatment for all flow from that area.

“Sewerage agency” means the Passaic Valley Sewerage Commissioners, a sewerage authority, a municipal authority, or a joint meeting.

“Sewerage authority” means a sewerage authority created pursuant to the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq.

“State” means the State of New Jersey.

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“State Plan” means the State Development and Redevelopment Plan established pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq.

“State Plan Policy Map” means the State Plan Policy Map adopted by the State Planning Commission pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq.

“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 runoff” means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

“Subwatershed” means a portion of an identified watershed containing all the lands from which water, sediments, and dissolved materials drain to a particular receiving surface water body or to a particular point along a receiving surface water body.

“Suitable habitat” means habitat featuring ecological characteristics that may provide for the breeding, feeding, resting, or sheltering of any endangered and/or threatened wildlife species. Ecological characteristics may include, but are not limited to, seasonal wetland or dry land, roost sites, nesting grounds, spawning sites, feeding sites,

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vegetative community size, age, structure, or diversity; waterway or pond water quality, size, or substrate; and soil types or hydrologic characteristics.

“Surface water quality standards” or “SWQS” means the rules at N.J.A.C. 7:9B that set forth, for the surface waters of the State, designated uses, use classifications, and water quality criteria, and the Department’s policies concerning these uses, classifications, and criteria.

“Threatened wildlife 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, and any species or subspecies of wildlife appearing on any Federal threatened species list pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq.

“303(d) List of Water Quality Limited Waters” or “303(d) List” means a list generated by the Department pursuant to Section 303(d) of the Federal Clean Water Act, 33 U.S.C. § 1313(d).

“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

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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.

“Treatment works” means treatment works as defined at N.J.A.C. 7:14A.

“Treatment works approval” means an approval issued pursuant to N.J.S.A. 58:10A-6.b and N.J.A.C. 7:14A.

“201 Facilities Plans” means the plans for wastewater facilities prepared pursuant to Section 201 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq.

“Unassigned sewer service area” means areas eligible for sewer service for which a specific DTW or industrial treatment works has not been identified.

“Undeveloped and underdeveloped areas” means areas that are either unimproved or contain existing improvements but could be further developed in a manner that would create additional wastewater flow without the need to obtain a variance, according to existing zoning.

“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 most recent Land Use/Land Cover geographical information

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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).

“USEPA” means the United States Environmental Protection Agency.

“Wasteload allocation” or “WLA” means the portion of a receiving water’s total maximum daily load 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 management plan” or “WMP” means a written and graphic description of wastewater service areas, and wastewater treatment needs.

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“Wastewater management plan area” or “WMP area” means the geographic area for which a wastewater management planning agency has wastewater management planning responsibility.

“Wastewater management planning agency” or “WMP agency” means a governmental entity that has wastewater management planning responsibility.

“Wastewater-related jurisdictions” means a public sewerage authority district, as defined in N.J.S.A. 40:14A-3(6); municipal authority, as defined in N.J.S.A. 40:14B-3(5); joint meeting, as defined at N.J.S.A. 40:63-69; county utilities authority created pursuant to N.J.S.A. 40:14B-4.a; the Passaic Valley Sewerage District defined under N.J.S.A. 58:14-1 et seq.; or franchise areas for private sewer utilities regulated by the Board of Public Utilities.

“Wastewater service area” means a sewer service area or non-sewer service area as designated in a WQM plan adopted by the Department.

“Wastewater treatment facility” means any device or system at a fixed location, including a land application system or subsurface sewage disposal system, that is or will be utilized for treatment of wastewater that requires a NJPDES permit issued pursuant to N.J.A.C. 7:14A and those wastewater treatment and recycling systems that handle wastewater flows greater than 2,000 gallons per day as determined in accordance with N.J.A.C. 7:14A-23.3 or 7:9A.

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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.

“Watershed” means a geographic area containing all the lands from which water, sediments, and dissolved materials drain to a particular receiving surface water body or to a particular point along a receiving surface water body.

“Watershed management activity” means activities or projects undertaken by a watershed management group to improve the condition or prevent further degradation of a watershed, and may include, but need not be limited to, public meetings to discuss and exchange information on watershed issues, the establishment and operation of a stakeholders advisory group or groups or watershed associations dedicated to preserving and protecting a watershed, the monitoring, water quality modeling, or assessment of the condition of a watershed, the development of policy goals to reduce the amount of pollutants discharged into a watershed, the development of projects designed to enhance or restore a watershed, the development, in consultation with the Department, of a watershed management strategy, or the reassessment of a watershed to determine whether the policy goals or the objectives of a watershed management area plan or watershed management strategy have been attained.

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“Watershed Management Area” or “WMA” means a regional area established by the Department that is comprised of multiple watersheds and subwatersheds. WMA delineations are available from the Department and on the Department’s website at <http://www.state.nj.us/dep/gis>.

“Watershed Management Area Plan” or “WMA Plan” means the plan developed and adopted by the Department, in consultation with the PAC, to protect and improve New Jersey's water and water-related resources by identifying actions to maintain, restore, and enhance existing water quality, water quantity, and ecosystem health, wherever attainable, within a watershed management area.

“Watershed management group” means a group recognized by the Department pursuant to N.J.A.C. 7:15-6.3(b) as the entity representing various interests within one or more watersheds or subwatersheds located in a watershed management area and whose purpose is to improve the condition or prevent further degradation of a watershed or watersheds.

“Watershed management strategy” means a plan developed by a watershed management group, in consultation with the PAC and the Department, to improve the condition of one or more watersheds or reassess a watershed to determine whether the policy goals or the objectives of the watershed management area plan or watershed management strategy have been attained.

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“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. 7:7-9.27; and**
- 4. Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., at N.J.S.A. 13:18A-3 and 13:18A-11, and N.J.A.C. 7:50-2.11, 6.3, 6.4, and 6.5.**

7:15-1.6 Program forms and information; Internet website

(a) Forms or other information related to this chapter may be obtained from the Department’s Office of Water Resource Management Coordination (OWRMC) as follows:

- 1. Through the OWRMC website at <http://www.nj.gov/dep/wrm/>; or**

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2. By contacting the OWRMC at: New Jersey Department of Environmental Protection, Office of Water Resource Management Coordination, Mail Code: 401-02A, 401 East State Street, P.O. Box 420, Trenton, New Jersey 08625-0420, (609) 777-4349.

(b) Any correspondence not required to be submitted electronically may 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, Office of Water Resources Management Coordination, 401 East State Street, 3rd Floor West Wing, Trenton, New Jersey 08625-0420.

(c) 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 Geological and Water Survey, Mail Code: 29-01, P.O. Box 420, Trenton, New Jersey 08625-0420, (609) 292-1185, <http://www.nj.gov/dep/njgs/pricelst/index.htm> or from the Office of Science, Information Resource Center, Mail Code: 428-01, 428 East State Street, 1st Floor, P.O. Box 420, Trenton, New Jersey 08625-0420, (609) 984-6070, <http://www.nj.gov/dep/dsr/irc/HomePage.htm>.

(d) A person may obtain electronic notifications of actions taken by the Department pursuant to this chapter through the OWRMC website at <http://www.nj.gov/dep/wrm/> or [the Division of Water Monitoring and Standards, Bureau of Environmental Analysis, Restoration and Standards website at http://www.nj.gov/dep/wms/bears/generalinfo.htm](http://www.nj.gov/dep/wms/bears/generalinfo.htm).

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7:15-1.7 Water quality management plan data and mapping format

(a) The text of proposed WQM plan revisions and amendments shall be submitted 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 OWRMC.

(b) All maps in WQM plan amendments and revisions shall be prepared and submitted electronically in a digital format which is consistent with the Department's mapping standards at N.J.A.C. 7:1D Appendix A. Other maps at other scales may be provided as supplements. 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 areawide WQM plan revisions and amendments 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>.

SUBCHAPTER 2. PLANS, PLANNING ENTITIES, AND PLANNING RESPONSIBILITIES

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7:15-2.1 Scope

This subchapter identifies content and processes of New Jersey's continuing planning process (CPP) pursuant to the Act and the Clean Water Act.

7:15-2.2 Continuing planning process

(a) The Department conducts a CPP that is broadly accomplished throughout the Department and includes a Statewide implementation strategy to achieve the water quality standards and objectives and meet the requirements of the Act and the Clean Water Act.

(b) The CPP includes regulatory and non-regulatory strategies for the management of water quality and wastewater. These strategies are identified and posted on the Department's website at <http://www.nj.gov/dep/wrm/> and in this chapter.

(c) The Department will periodically update the strategies identified on its website as appropriate.

7:15-2.3 Areawide water quality management plans

(a) Areawide WQM plans identify and address selected water quality and wastewater management issues for a particular jurisdictional area, including strategies to

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address both point and nonpoint source pollution. The areawide WQM plan is the basis by which the Department and the designated planning agencies (DPAs) conduct selected water quality management planning activities for a particular area of the State.

(b) There are 12 areawide WQM plans which together cover the entire State of New Jersey that were established pursuant to Sections 208 and 303 of the Clean Water Act and the Act. The areawide WQM planning areas and their respective DPAs are listed in Table 1.1 below. This list is for informational purposes only.

Table 1.1

Areawide WQM

<u>Planning Area</u>	<u>Designated Planning Agency</u>
Atlantic County	Atlantic County Board of Chosen Freeholders
Cape May County	Cape May County Board of Chosen Freeholders
Lower Delaware	Department
Lower Raritan/ Middlesex County	Middlesex County Board of Chosen Freeholders
Mercer County	Mercer County Board of Chosen Freeholders
Monmouth County	Monmouth County Board of Chosen Freeholders
Northeast New Jersey	Department
Ocean County	Ocean County Board of Chosen Freeholders
Sussex County	Sussex County Board of Chosen Freeholders

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Tri-County **Delaware Valley Regional Planning Commission**

Upper Delaware **Department**

Upper Raritan **Department**

(c) **Areawide WQM plans include the WMPs, TMDLs, and other water quality improvement and wastewater related plans as determined appropriate by the DPA and the Department.**

7:15-2.4 Role of the Department

(a) **The Department shall:**

1. Conduct a CPP and establish and administer policies, procedures, standards, criteria, and rules for water quality management;

2. Post elements of the CPP on the Department's website at <http://www.nj.gov/dep/wrm/>;

3. Maintain and make available for public inspection the current areawide WQM plans including adopted revisions or amendments to the plans;

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4. Propose and process revisions or amendments to areawide WQM plans in accordance with this chapter;

5. Consider pertinent planning documents while developing or reviewing proposed revisions or amendments to areawide WQM plans. Pertinent planning documents include, but are not limited to, municipal, county, regional, State, and interstate land use plans and adopted components of the areawide WQM plans, such as WMPs and TMDLs;

6. Coordinate and direct the activities of designated planning agencies in accordance with the CPP and this chapter;

7. To the maximum extent feasible, act as a resource for designated planning agencies, county planning boards, county boards of chosen freeholders, and municipalities providing them with technical assistance, and information on best management practices and pollution control technologies;

8. Provide existing flow data from discharge monitoring reports (DMRs) for each permitted DTW and industrial treatment works to respective WMP agencies for WMP development;

9. Annually update and post at the Department's website at <http://www.nj.gov/dep/wrm/> the inventory of wastewater treatment facilities, their existing

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and permitted flows, and the wastewater management needs associated with each facility as identified pursuant to N.J.A.C. 7:15-4.5;

10. Maintain a current Wastewater Service Area Map for the entire State on the Department's website at <http://www.state.nj.us/dep/gis>;

11. Exercise its delegated authority from the Governor to adopt water quality management plan amendments and revisions;

12. Post adopted revisions and amendments to the areawide plans on the Department's website at <http://www.nj.gov/dep/wrm/>;

13. Delegate aspects and responsibilities of the CPP to other State, Federal, interstate, county, or local agencies, and also withdraw or transfer such delegations as necessary;

14. Identify water quality limited waters;

15. Prepare an Integrated Water Quality Monitoring and Assessment Report, and other water quality related reports;

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16. Establish total maximum daily loads, wasteload allocations, load allocations, and water quality based effluent limitations;

17. Review projects and activities affecting water quality pursuant to the Act;

18. In areas of the State not served by designated planning agencies, perform the designated WQM planning agency functions;

19. Make recommendations to the Governor regarding new or amended designations of planning agencies and planning areas; and

20. Process amendments or revision on its own initiative.

7:15-2.5 Role of designated planning agencies

(a) The designated planning agencies shall:

1. Process revisions or amendments to areawide WQM plans in accordance with this chapter;

2. Consider pertinent planning documents while developing or reviewing proposed revisions or amendments to areawide WQM plans. Pertinent planning documents include,

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but are not limited to, municipal, county, regional, State, and interstate land use plans and adopted components of the areawide WQM plans, such as WMPs and TMDLs; and

3. Fulfill all responsibilities assigned to them under this chapter, the areawide WQM plan, their charter, and any grant or other agreement with the State.

(b) All decisions by designated planning agencies concerning WQM plans are effective only upon review and approval by the Department.

(c) The Department and the designated planning agencies shall coordinate their work in shared river basins or sub-basins, and shall refer any conflicts to the Commissioner for mediation.

7:15-2.6 Role of wastewater management planning agencies

(a) The wastewater management planning agencies shall have the duty to:

1. Develop, prepare, and periodically submit a WMP for their WMP area in accordance with the procedural and substantive requirements of this chapter;

2. When developing a WMP, review for accuracy the data and mapping included therein;

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3. Coordinate its wastewater management planning activities with other regional water resource management planning agencies and plans whose planning jurisdiction falls partially or wholly within the spatial boundaries of its WMP area and with other WMP agencies at the county or municipal level;

4. Fulfill all responsibilities assigned to them under this chapter, the areawide WQM plan(s), and any grant or other agreement with the State;

5. Maintain a current WMP, including a record of all revisions and amendments approved under this chapter; and

6. Provide comments on proposed revisions and amendments in their WMP area in accordance with N.J.A.C. 7:15-3.4 and 3.5, respectively.

7:15-2.7 Roles of county boards of chosen freeholders, sewerage authorities, and municipal authorities, and municipalities

(a) A county board of chosen freeholders shall have wastewater management planning responsibility for a WMP area consisting of its entire county unless alternative assignments of wastewater management planning responsibility are established under N.J.A.C. 7:15-2.8.

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(b) The Passaic Valley Sewerage Commissioners (PVSC), joint meetings, county utilities authorities, and every sewerage authority and every municipal authority that performs sewerage-related functions in at least part of its district shall have the responsibility to prepare and submit required elements of a WMP to the WMP agency. Upon the request of the WMP agency, the following sewerage-related information regarding its district or assigned sewer service area shall be provided:

1. The following information for any DTW owned or operated by the entity by facility name and NJPDES permit number:

i. Identification of any contractual obligations to provide sewer service to an area and any associated capacity allocation to municipalities, or industrial or commercial customers if not part of the municipal allocation, within the district and sewer service area of the DTW;

ii. The relationships of the municipalities within each sewer service area (for example, sewerage agency members versus contract customer communities);

iii. Maps, prepared in accordance with the requirements at N.J.A.C. 7:15-1.7 and 4.3, showing the name and NJPDES discharge permit number of each DTW; and

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iv. Any other information needed to satisfy the requirements of N.J.A.C. 7:15-4.

(c) Where one or more sewerage agency has responsibility for an area within one or more WMP area(s), each sewerage agency shall provide all necessary sewerage-related information in accordance with (b) above to each WMP agency responsible for wastewater management planning within the sewerage agency's district or sewer service area.

(d) Upon the request of the WMP agency, every municipality shall provide the following information to the WMP agency:

1. The master plan, zoning, or local land use objective information identified at N.J.A.C. 7:15-4.4(h) including any relevant mapping; and

2. Where applicable, a septic management plan in accordance with N.J.A.C. 7:15-4.5(c)1vi.

7:15-2.8 Alternative assignment of wastewater management planning responsibility

(a) WMP responsibility may be reassigned from a county board of chosen freeholders to a municipality, if the municipality requests such responsibility. Requests for municipal WMP responsibility shall be made by the municipality as part of an application

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for a revision to an areawide plan or plans under N.J.A.C. 7:15-3.4 and shall include a proposed schedule for submission of the WMP.

(b) If an alternative assignment of WMP responsibility is granted to the municipality, the municipality shall have WMP responsibility for its entire municipality.

7:15-2.9 Coordination of planning activities with regional planning entities

(a) The Department supports implementation of comprehensive regional plans and, as specified in this chapter, will coordinate and integrate water quality planning actions undertaken or overseen under this chapter with the following Statewide and regional plans and the applicable agencies responsible for their development and implementation:

- 1. The Pinelands Comprehensive Management Plan;**
- 2. The Highlands Regional Master Plan;**
- 3. The Delaware River Basin Commission Comprehensive Plan, as authorized by the Delaware River Basin Compact, Pub. L. 87-328, 75 Stat. 688 (1961);**

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4. The Meadowlands Master Plan for the Hackensack Meadowlands District established pursuant to Hackensack Meadowlands Agency Consolidation Act, N.J.S.A. 5:10A-1 et seq.; and

5. The State Development and Redevelopment Plan.

SUBCHAPTER 3. PLAN ASSESSMENT, MODIFICATION, AND ADOPTION PROCEDURES

7:15-3.1 Scope

(a) This subchapter establishes the requirements for assessing the consistency of proposed projects and activities with adopted areawide WQM plans and this chapter. A person may simultaneously submit to the Department an application for a modification of an areawide plan and any associated permit applications.

(b) This subchapter identifies the types of possible modifications to areawide WQM plans and the application requirements and procedures applicable to each.

7:15-3.2 Water quality management plan consistency assessment

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(a) All projects and activities affecting water quality shall be developed and conducted in a manner that is consistent with this chapter and adopted areawide plans. The Department shall not issue a permit or approval that conflicts with an adopted areawide plan or this chapter.

(b) The Department shall determine if a project or activity is located within an area eligible for sewer service as part of the Department's review of a permit application. There is a rebuttable presumption that a project or activity that generates wastewater that is proposed to be conveyed to a NJPDES regulated wastewater facility is consistent with the areawide plan if it is within the sewer service area of the adopted areawide plan.

(c) A new wastewater treatment facility or a change in the permitted flow to a DTW not already addressed in a WQM plan requires a review of the WQM plan.

(d) Except as provided in (f) below, if a project or activity proposing use of a wastewater treatment facility is located in a non-sewer service area, the project or activity is inconsistent with the adopted areawide plan until the applicant resolves the inconsistency by:

1. Modifying the proposed project or activity to conform with the areawide WQM plan;

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2. Obtaining an amendment under N.J.A.C. 7:15-3.5; or

3. Obtaining a revision under N.J.A.C. 7:15-3.4.

(e) Interested persons may comment on the consistency of Department permits with areawide WQM plans, where there is a public review process associated with the permit action, through the appropriate draft or final permit public review and comment process. Such comments shall be taken into consideration prior to the issuance of a final permit.

(f) The following projects or activities shall be deemed consistent with adopted areawide plans:

1. Removal or remedial actions performed or required by the Department or by Federal agencies or by their agents, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., or under other statutes authorizing Department or Federal removal or remedial actions for hazardous substances;

2. Interim construction or interim expansion of, or interim connection with, domestic or industrial treatment works that are required by law to be abandoned or incorporated at a definite time into other treatment works:

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- i. That are under construction;**
 - ii. For which contracts have been awarded for construction; or**
 - iii. Whose construction is required by court order or Department order, or by a consent agreement to which the Department is a party;**
- 3. Expansions or improvements to treatment works to reduce or eliminate CSOs as authorized by a NJPDES permit;**
- 4. The initial performance of emergency activities, including emergency activities allowed by emergency permits issued pursuant to N.J.A.C. 7:14A-6.14;**
- 5. Activities identified under N.J.A.C. 7:14A-22.4 as not requiring treatment works approval;**
- 6. Treatment works components that only handle residual, and residual use or disposal practices defined at N.J.A.C. 7:14A-1.2 authorized in permits issued by the Department consistent with the Statewide Sludge Management Plan;**

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7. Industrial treatment works that only treat wastewater generated from on-site activities, except that these discharges shall comply with any wasteload allocation established in an adopted TMDL;

8. A permanent holding tank that complies with N.J.A.C. 7:14A-22.13(c);

9. Discharges to ground water of non-contact cooling water or discharges to ground water of filter backwash water from potable water treatment plants; or

10. General permit authorizations for an approved general permit issued pursuant to N.J.A.C. 7:14A-6.13, with the exception of new or expanded school(s) that require an expansion of the existing sewer service area.

(g) 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 or 9.5. 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.

7:15-3.3 Types of modifications to water quality management plans

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(a) Water quality management plans can be modified through a revision as set forth at N.J.A.C. 7:15-3.4 or amendment as set forth at N.J.A.C. 7:15-3.5 or 5.4. Amendments are either regional, including WMPs and TMDLs, or site specific.

(b) Site specific amendments are limited to proposed alterations to eligible sewer service area as needed to address a specific project or activity. Site specific amendments are either:

1. Site specific amendments for proposals to add, either solely or in conjunction with other proposals, areas greater than or equal to 100 acres to the sewer service area or that would generate 20,000 gallons per day or more of wastewater; or

2. Site specific amendments for proposals to add less than 100 acres to the sewer service area and that would generate less than 20,000 gallons per day of wastewater.

7:15-3.4 Water quality management plan revisions and revision procedures

(a) Revisions to areawide WQM plans shall be limited to actions that:

1. Correct or clarify erroneous or unclear information in the areawide WQM plan provided the change is not a substantive change;

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2. Upon application by the Pinelands Commission, update a wastewater service area map in accordance with N.J.A.C. 7:15-4.4(b)1 to reflect a redesignation of a Pinelands Management Area approved by the Pinelands Commission pursuant to N.J.A.C. 7:50-7 or the ordinance certification procedures of N.J.A.C. 7:50-3, if the notice of the proposed redesignation provides that, if approved, the redesignation could also modify the sewer service area in the areawide WQM;

3. Update a wastewater service area map in accordance with N.J.A.C. 7:15-4.4(c)2, to reflect a Highlands Regional Master Plan map adjustment, Highlands center, or Highlands redevelopment area designated by the Highlands Council in a Highlands conforming municipality if the notice of the proposed map adjustment provided that, if approved, such action could also modify the sewer service area in the areawide WQM;

4. Transfer or assign wastewater management plan responsibility under N.J.A.C. 7:15-2.8; or

5. Revise schedules for submission of wastewater management plans in accordance with N.J.A.C. 7:15-4.2.

(b) Applications for revisions shall include a detailed basis for the revision, including any documentation supporting the assertion that the project or activity qualifies

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as a revision and other documentation as determined by the Department necessary to determine that the project or activity qualifies as a revision.

1. Alternative assignment of WMP responsibility revisions under (a)4 above shall include a schedule for submission of the WMP; and

2. Reasons that may justify the establishment of an alternative schedule for submission of a wastewater management plan under (a)5 above include, but are not limited to:

i. Coordination of WMPs with the preparation of municipal or county master plans under N.J.S.A. 40:55D-28 or 40:27-2, or with reexaminations under N.J.S.A. 40:55D-89; or

ii. Coordination between adjacent WMP areas.

(c) An applicant may petition the Department to revise an areawide plan, or the Department may propose to revise areawide plan(s) on the Department's own initiative. Applications for revisions shall be submitted electronically on forms prescribed by the Department in accordance with N.J.A.C. 7:15-1.6. The procedure for revision of areawide plans is set forth in (d) through (i) below.

(d) Designated planning agency plan revision procedures approved by the

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Department prior to (the effective date of these rules) shall remain in full force and effect, unless or until modified by the designated planning agency and approved by the Department. Proposals submitted for revisions to a designated planning agency shall comply with these established procedures.

(e) Within 60 days of receiving an application for a revision, the Department shall review the application and notify the applicant that additional information is required, the application is disapproved, or that the application qualifies as a revision.

(f) The Department shall distribute the proposed revision to the entities identified in accordance with N.J.A.C. 7:15-3.5(f) and provide 21 days for comment.

(g) Based on the administrative record, the Department will adopt, adopt with minor changes that do not effectively destroy the value of the notification to affected entities, or disapprove and notify the applicant and affected entities.

(h) The Department shall provide written notification of its decision to the applicant and the affected entities. A revision is effective upon adoption by the Department, unless the adoption notice specifies otherwise.

(i) The Department shall post adopted revisions to areawide WQM plans on the Department's website at <http://www.nj.gov/dep/wrm/>.

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7:15-3.5 Water quality management plan amendment procedures

(a) The Department and the designated planning agencies shall periodically review areawide WQM plans in order to propose amendments as necessary. Amendments may be proposed for various reasons, such as to implement or comply with applicable State or Federal law; respond to new information or circumstances; improve the economic, social, or environmental impact of WQM plans; or address issues identified through the consistency assessment or permitting process.

(b) Except as provided in (e) below, areawide WQM plans shall be amended by designated planning agencies pursuant to this chapter and procedures approved by the Department in accordance with (c) and (d) below.

(c) Plan amendment procedures developed by the designated planning agencies shall be consistent with the Department's amendment procedures set forth below and must be approved by the Department. Within 15 days of approving an amendment, a designated planning agency shall submit to the Department a copy of the amendment, with relevant supporting documentation. WQM plan amendments approved by designated planning agencies are valid only upon adoption by the Department.

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(d) Designated planning agency plan amendment procedures approved by the Department prior to (the effective date of these rules) shall remain in full force and effect, unless or until modified by the designated planning agency and approved by the Department under this section. If a designated planning agency does not have its own approved amendment procedure, or where the Department proposes to amend the areawide plan on its own initiative, the procedures in (g) below apply.

(e) Amendments for any project or activity that is either proposed, constructed, operated, or conducted by the State or Federal government, or that is regulated by the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., shall be processed only by the Department.

(f) Entities that prepare an amendment to an areawide WQM plan shall, during such preparation, notify, seek comments from, and offer to consult with:

1. All governmental entities that have regulatory or planning jurisdiction over wastewater, water supply, or land use in any sewer service area being modified. Such governmental entities shall include, but not be limited to: designated planning agencies, wastewater management planning agencies, county planning boards, municipal governing bodies, sewerage authorities, county utilities or municipal authorities, joint meetings, the Passaic Valley Sewerage Commissioners, the Meadowlands Regional Commission, water

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purveyors, the Pinelands Commission, the Highlands Council, and the Delaware River Basin Commission, as appropriate; and

2. 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., with a legal or fiduciary interest in wastewater treatment facilities located within any sewer service area being amended under this section; and

3. For site specific amendments proposing to add 100 acres or more to the sewer service area or where the additional sewer service area would generate 20,000 gallons per day or more of wastewater, the entity shall initiate a public notification process to alert property owners who will experience a change in their wastewater service area designation.

(g) The Department procedure for amendment of areawide WQM plans is as follows:

1. An applicant 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. Applications for amendments shall be submitted electronically on forms prescribed by the Department in accordance with N.J.A.C. 7:15-1.6;

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2. Applications shall include a description of the proposed amendment, including documentation substantiating the need for the amendment, documentation demonstrating compliance with the notification and consultation requirements at (f) above and (h) below, and other documentation as determined by the Department to be necessary to determine compliance with the criteria established at N.J.A.C. 7:15-4.4 and 4.5;

3. For all site specific amendments, the applicant shall submit a copy of the request to the municipality and county for a letter or resolution regarding the consistency of the proposed wastewater producing project with the land use identified in the municipal master plan and zoning ordinances or the county master plans;

4. Within 90 days of receiving an amendment application, the Department shall review the application and notify the applicant that additional information is required, the application is disapproved, or that the application qualifies as an amendment;

5. If the Department's decision is to proceed further with the amendment application, the Department will notify the applicant and the designated planning agency, if applicable, and include the public notice for the proposed amendment and a list of entities from which a written statement of consent shall be requested. The Department shall publish the public notice in the New Jersey Register, on its website at <http://www.nj.gov/dep/wrm/>, and electronically to entities that have requested electronic notifications from the Department pursuant to N.J.A.C. 7:15-1.6(d). In cases where the

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Department's decision includes a requirement for a non-adversarial public hearing, the public notice shall provide at least 30 days' notice of the hearing;

6. Requirements concerning written statements of consent are as follows:

i. The Department shall identify a list of governmental entities, sewerage agencies, and BPU-regulated sewer and water utilities from (f) above 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 list, 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. A written statement of consent shall include a statement that the party concurs with, or does not object to, the proposed amendment. A statement of consent by a governmental entity shall be in the form of a resolution by that unit's governing body. If the party objects to the proposed amendment, the party shall state all reasons for objection in writing; and

iii. The applicant shall promptly forward to the Department a copy of all requests for consent (with return receipts) sent to parties and a copy of all statements of consent and

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other comments received. The Department will consider statements of consent and comments received within 60 days of receipt of the request under (g)6i above;

7. Written comments on the amendment or requests to extend the comment period shall be submitted to the Department by the close of the comment period, which shall be no less than 30 days of the date of the New Jersey Register notice;

8. Interested persons may also request that the Department hold a non-adversarial public hearing; such requests shall be submitted in writing to the Department within 30 days of the date of the New Jersey Register public notice. If there is sufficient public interest, as defined under N.J.A.C. 7:1D-5.2, then a public hearing will be held. A public notice providing at least 30 days' notice of the hearing will be published by the Department in the New Jersey Register, on its website at <http://www.nj.gov/dep/wrm/>, and electronically to entities that have requested electronic notifications from the Department pursuant to N.J.A.C. 7:15-1.6(d), 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, secure an acceptable location for the hearing, mail the public notice, secure a court stenographer, and provide a copy of a verbatim transcript of the hearing to the Department;

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9. If any data, information, or arguments submitted during the public comment period or in response to a request for written statement of consent raise substantial new issues concerning a proposed plan amendment, the Department may:

i. Reopen or extend the public comment period to give interested persons an opportunity to comment on the information or arguments submitted;

ii. Disapprove the proposed amendment and notify the applicant; or

iii. Notify the applicant that the amendment cannot be adopted as proposed and that additional information is required in order to determine if a new or revised plan amendment is necessary;

10. Based on the administrative record, the Department shall adopt, adopt with minor changes that do not effectively destroy the value of the public notice, or disapprove the amendment, and notify the applicant and affected entities; and

11. The Department shall provide written notification of its decision. Notice of the final decision shall also be published in the New Jersey Register and posted on the Department's website at <http://www.nj.gov/dep/wrm/>.

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(h) If the proposal is located in the Pinelands National Reserve or the Highlands Region, the applicant shall simultaneously submit the application to the Department and the Pinelands Commission or Highlands Council as applicable in order to provide an opportunity for those agencies to provide comment prior to the Department rendering any decision. The application shall be considered incomplete if the applicant does not provide a demonstration that this requirement has been met.

(i) An application for a site specific amendment located in the Highlands preservation area that requires a Highlands Preservation Area Approval or Approval with Waiver shall be governed by the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38-9.3, 9.5, 9.6, and 11.6. If the Department determines the application qualifies for an amendment, it shall be processed in accordance with (g)5 through 11 above and reviewed in accordance with the criteria established at N.J.A.C. 7:15-4.4(c).

(j) Applications for site specific amendments shall comply with the requirements of this section and the following:

1. Delineation of sewer service area shall be completed in accordance with the procedures set forth at N.J.A.C. 7:15-4.4; and

2. For site specific amendments that propose to add 100 or more acres to the sewer service area or where the additional sewer service area would generate 20,000 gallons per

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day or more of wastewater, the application shall include a proposed modification to the wastewater treatment capacity analysis prepared in accordance with N.J.A.C. 7:15-4.5(b) to include the proposed project or activity.

7:15-3.6 Appeals of agency decisions

A Department decision on an amendment or revision to an areawide WQM plan is a final agency action, and any appeal of that decision shall be taken to the Superior Court, Appellate Division pursuant to the New Jersey Court Rules.

SUBCHAPTER 4. WASTEWATER MANAGEMENT PLANS

7:15-4.1 Scope

(a) This subchapter establishes the requirements for the periodic preparation of wastewater management plans (WMPs). WMP components include wastewater service area mapping, a wastewater treatment capacity analysis, a nitrate dilution analysis, and potential strategies to address the potential capacity deficiencies.

(b) The components of a county-wide WMP may address the entire county or may be divided into chapters, with each chapter addressing an entire municipality within that county.

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7:15-4.2 Development and submittal schedule

(a) WMP agencies shall submit WMPs as requests to amend areawide plans in accordance with the schedule specified in (b) and (c) below. WMPs shall be processed in accordance with the procedures specified in N.J.A.C. 7:15-3.5.

(b) A WMP meeting the requirements of this chapter shall be submitted no later than (one year from the effective date of these rules), unless the WMP agency requests and is granted an alternative submission schedule in accordance with N.J.A.C. 7:15-3.4. A WMP prepared and adopted in accordance with the rules in effect as of July 7, 2008, will satisfy this submission requirement. A WMP component prepared and adopted in accordance with the 2008 rules, or P.L. 2011, c. 203 as amended and supplemented by P.L. 2013, c. 188 will be accepted as the comparable component for a WMP required pursuant to this chapter.

(c) Each WMP agency shall submit a WMP 11 years after (the effective date of these rules) and every 10 years thereafter, unless an alternative submission schedule is established in accordance with N.J.A.C. 7:15-3.4.

(d) If the WMP agency fails to submit a WMP in accordance with the time frames specified in (b) and (c) above and municipalities do not request WMP planning

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responsibility in accordance with N.J.A.C. 7:15-2.8 and submit a WMP, the Department may prepare and adopt WMP components for sewer service area mapping, wastewater treatment capacity analysis, and nitrate dilution capacity analysis for that area.

(e) Each WMP agency shall submit an updated WMP at least once every 10 years after the WMP submitted in accordance with (b) above. The WMP agency may submit an updated WMP prior to expiration of the 10-year period from the prior WMP. However, approval of an alternative submission schedule must be obtained from the Department in accordance with N.J.A.C. 7:15-3.4 to submit an updated WMP more than 10 years after the previously submitted WMP.

(f) Individual components of a WMP may be adopted, returned, or disapproved under N.J.A.C. 7:15-3.5 independent of other components or chapters; however, the minimum scale for these WMP components shall be an entire municipality.

7:15-4.3 Structure and content of wastewater management plans

(a) The requirements for each WMP component are set forth below. WMPs should be concise, using the minimum feasible narrative and mapping. All pages, tables, and figures in WMPs shall be legible and numbered. Specific requirements for these descriptions, maps, and analyses are set forth in N.J.A.C. 7:15-1.7 and this subchapter. A WMP shall contain:

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1. A title page, identifying the name of the WMP, the WMP agency, and areawide WQM plan(s) affected, the date submitted, and a blank line for the adoption date (for use by the Department). Only the date of the most recent draft shall appear as the date submitted;

2. A table of contents identifying major text components, tables, figures, and maps, with page and map number references;

3. A brief summary of actions proposed in the WMP including a description of the number of acres added and/or subtracted from the area eligible for sewer service and strategies to address any potential capacity deficiencies identified in the wastewater treatment capacity or nitrate dilution analyses;

4. A narrative section with a description of the following:

i. The WMP area;

ii. Wastewater treatment facilities tables required under (b) below and relationships between and among municipalities and the wastewater treatment facilities;

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iii. Descriptions of the information used to perform the build-out, wastewater treatment capacity, and nitrate dilution analyses required under N.J.A.C. 7:15-4.5 including, but limited to, the sources of the information, supporting, and background documentation and other factors considered in preparing the WMP;

iv. Results of the wastewater treatment capacity and nitrate dilution analyses required pursuant to N.J.A.C. 7:15-4.5; and

v. Strategies that demonstrate the potential to address capacity deficiencies identified through the analyses; and

5. Maps as required under (c) below.

(b) Wastewater treatment facility tables shall be prepared for each existing and anticipated wastewater treatment facility, and shall include the information listed below:

- 1. The name of the wastewater treatment facility;**
- 2. Identification of whether the wastewater treatment facility is existing or is an anticipated wastewater treatment facility;**
- 3. The name of the wastewater treatment facility owner and NJPDES permittee;**

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4. The physical location of the wastewater treatment facility including municipality, county, street address and lot/block;

5. The NJPDES permit number, if assigned. If the wastewater treatment facility has been assigned a NJPDES permit number but the final permit has not been issued, the word “pending” should follow the NJPDES permit number;

6. Identification of whether the wastewater treatment facility discharges or will discharge to surface water, ground water, or both;

7. The name of the receiving surface water body or aquifer;

8. Identification of the classification of the receiving surface water body or aquifer as specified in the Surface Water Quality Standards, N.J.A.C. 7:9B, or the Ground Water Quality Standards, N.J.A.C. 7:9C;

9. The discharge location (latitude and longitude or State Plane Coordinates) for each existing NJPDES-regulated wastewater treatment facility;

10. The flow identified in the NJPDES permit in millions of gallons per day. The flow shall be identified as to whether it is expressed as an annual average, maximum

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monthly average, 30-day average, daily maximum, or on some other basis. If the wastewater treatment facility does not have a final NJPDES permit, space shall be provided for insertion of the flow, once the permit is issued; and

11. Identification of the existing and projected population and/or development and wastewater flow to be served by the wastewater treatment facility during the planning period of 20-years for urbanized municipalities or at build-out for all other municipalities.

(c) Each WMP shall include the following maps:

1. WMP Area Map (Map No. 1). Where applicable, the following political and jurisdictional, boundaries, and features shall be identified on this map:

i. The WMP area boundary;

ii. Areawide WQM planning area boundaries;

iii. Municipal boundaries;

iv. The coastal area boundary, as described in N.J.S.A. 13:19-4, and the Department's Coastal Zone Management rules at N.J.A.C. 7:7-1.2(b) including the Hackensack Meadowlands District defined in N.J.S.A. 13:17-4;

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v. The Pinelands Area and the Pinelands National Reserve; and

vi. The Highlands preservation area and the Highlands planning area.

2. Selected Environmentally Sensitive Features Map (Map No. 2). A composite map depicting each of the following environmental features in (c)2i through viii below based on the most current GIS layers available from the Department at the time of WMP submission. This map shall also state that “Development in areas mapped as environmentally sensitive features may be subject to special restrictions under Federal or State statutes or rules. Interested persons should check with the Department of Environmental Protection 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.”

i. 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;

ii. Natural Heritage Priority Sites;

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iii. Surface waters, as mapped on the Department's graphic information systems (GIS) hydrography coverage;

iv. Category One waters designated in the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, based on the Department's maps of such waters, and their corresponding 300-foot riparian zone based on the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

v. Coastal wetlands that have been mapped by the Department under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.;

vi. Other freshwater and estuarine wetlands, based on maps prepared by the Department under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-25.c;

vii. Coastal Fringe Planning Areas, Coastal Rural Planning Areas, and Coastal Environmentally Sensitive Planning Area; and

viii. Environmentally sensitive areas in which 201 Facilities Plan grant limitations prohibit the extension of sewer service, if available.

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3. Wastewater Service Area Map (Map No. 3). Where applicable, the following regional planning area boundaries, wastewater-related jurisdictions, facilities, and wastewater service areas shall be identified on this map:

i. The Pinelands Management Area boundaries within the Pinelands Area and the Pinelands National Reserve;

ii. The land use capability zones established within the Highlands Regional Master Plan adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8;

iii. District boundaries of sewerage authority districts, as defined in N.J.S.A. 40:14A-3(6), districts of a municipal authority, as defined in N.J.S.A. 40:14B-3(5), and municipal utility authority districts. For the purposes of this section, district shall also mean the Passaic Valley Sewerage District defined under N.J.S.A. 58:14-1 et seq.;

iv. Franchise areas for sewer utilities regulated by the Board of Public Utilities and other contractual boundaries defining sewer service area commitments or other legally binding arrangements (for example, sewerage agency members or contract customer communities);

v. The location of each domestic and industrial wastewater treatment facility that is anticipated to exist in the future, including existing facilities that will remain in service, and

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the discharge outfall for each. The name and NJPDES permit number(s), if assigned, of each wastewater treatment facility shall be identified;

vi. A delineation of sewer service areas, as determined in accordance with N.J.A.C. 7:15-4.4, differentiating that area that is:

(1) Assigned sewer service area, differentiating between area that currently conveys sewage to each existing or proposed wastewater treatment facility and that which is proposed to convey sewage to each existing or proposed wastewater treatment facility; or

(2) Unassigned sewer service area; and

vii. A delineation of non-sewer service area.

4. Zoning map(s) (Map No. 4). Where applicable, a map or maps depicting municipal parcel mapping, current composite or municipal zoning as used as the basis for the build-out analysis required pursuant to N.J.A.C. 7:15-4.5.

5. Other map(s) (Map 5). Where applicable, map or maps depicting other factors considered in delineating sewer service areas.

7:15-4.4 Delineation of sewer service areas

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(a) Areas eligible for sewer service shall be determined in accordance with the provisions of this section.

(b) In the Pinelands Area, areas eligible for sewer service are delineated as follows:

1. The management area designations and boundaries established within the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50, as Regional Growth Areas, Pinelands Towns, and Pinelands Villages shall constitute the areas eligible for sewer service areas; and

2. Any other area approved by the Pinelands Commission as appropriate for the development of centralized wastewater treatment and collection facilities where the Department concurs.

(c) In the Highlands Region, areas eligible for sewer service are delineated as follows:

1. In the Highlands preservation area, those areas that were connected to a wastewater treatment facility as of August 10, 2004, or those areas that are eligible for sewer service pursuant to N.J.A.C. 7:38-2.3, 2.4, 2.6, and 3.4;

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2. In the Highlands planning area, for Highlands conforming municipalities, the areas established within the Highlands Regional Master Plan as Existing Community Zone, Lake Community Sub-Zone, or designated as Highlands redevelopment areas or Highlands centers; and

3. In the Highlands planning areas, for municipalities that do not conform with the Highlands Regional Master Plan, areas eligible for sewer service shall conform to (d) and (h) below.

(d) Except for areas identified in (b) and (c)1 and 2 above, areas shall only be eligible for sewer service area delineation if they are not identified as environmentally sensitive areas at (e) below, coastal planning areas listed at (f) below, or areas subject to EPA grant conditions at (g) below, except as otherwise provided at (i), (j), (k), and (l) below. These represent the minimum standards; WMP agencies may incorporate more protective standards into the applicable WMP.

(e) 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 as identified on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other

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Priority Wildlife as Rank 3, 4 and 5. The data are available as a download at the Department’s webpage at <http://www.nj.gov/dep/gis/listall.html> titled “Landscape Project Data”;

2. Areas mapped as Natural Heritage Priority Sites. The Natural Heritage Priority Site data is available as a digital data download at the Department’s webpage at <http://www.nj.gov/dep/gis/listall.html> titled “Natural Heritage Priority Sites”;

3. Category One waters designated in the Department’s Surface Water Quality Standards, N.J.A.C. 7:9B, based on the Department’s maps of such waters, and their corresponding 300 foot riparian zone based upon the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. 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 at <http://www.nj.gov/dep/gis/listall.html> titled “Wetlands.”

(f) Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or Coastal Environmentally Sensitive Planning Areas identified on the CAFRA Planning Map,

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available as a download on the Department's webpage at

<http://www.nj.gov/dep/gis/listall.html> titled "CAFRA Layer" shall not be identified as

eligible for sewer service area, unless documentation is provided demonstrating that their inclusion is necessary to:

1. Abate an existing imminent public health and safety issue; or
2. Accommodate infill development or as necessary to create a linear boundary that coincides with recognizable geographic, political, or environmental features depicted in Department GIS coverages.

(g) Environmentally sensitive areas in which 201 Facilities Plan grant limitations prohibit the extension of sewer service shall not be included in areas designated as eligible for sewer service area, unless documentation is provided demonstrating that a mapping revision or waiver has been obtained from EPA.

(h) Except for areas identified in (b) and (c)1 and 2 above, the following factors shall be considered in the delineation of areas eligible for sewer service:

1. Land uses allowed in zoning ordinances that have been adopted and are in effect under N.J.S.A. 40:55D-62;
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 40:27-2; and

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3. Local land use objectives, such as preservation of permanently preserved agricultural lands or public open space, forests, wildlife management areas, natural areas, preserves or other conservation areas, source water protection, or other areas that are not expected to support development that would require connection to sewers.

(i) With the exception of Natural Heritage Priority Sites, environmentally sensitive areas listed at (e) above may be included in the sewer service area provided:

1. The environmentally sensitive areas are:

i. Located within an area of an endorsed plan identified for growth and approved by the State Planning Commission;

ii. Located within Planning Area 1 as defined in the State Plan Policy Map in the State Development and Redevelopment Plan, established pursuant to State Planning Act, N.J.S.A. 52:18A-196 et seq.; or

iii. Included to accommodate infill development, or to remove undulations in the sewer service area boundary as necessary to create a linear boundary that coincides with recognizable geographic, political, or environmental features depicted in Department GIS coverages;

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2. The Department has determined that such areas are not critical to the survival of a local population of endangered or threatened wildlife species; and

3. Environmentally sensitive areas included in a sewer service area pursuant to this provision remain subject to the Department's regulatory permitting programs on a site specific basis.

(j) An applicant for an amendment to an areawide plan under N.J.A.C. 7:15-3.5 may rebut the presumption that the environmental data identified in (e) above is accurate by providing the following information for the Department's review and concurrence:

1. An updated version of the Landscape Maps relative to the one used to determine eligibility for sewer service area delineation, demonstrating that the area is no longer mapped as suitable habitat for endangered or threatened wildlife species as identified on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Wildlife as Rank 3, 4 and 5;

2. A Habitat Suitability Determination prepared pursuant to N.J.A.C. 7:15-4.6 that demonstrates that an area is not suitable habitat for endangered or threatened wildlife species or that the habitat does not contain and no longer supports the natural resource element that caused the area to be identified as a Natural Heritage Priority Site;

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3. A Letter of Interpretation issued by the Department pursuant to N.J.A.C. 7:7A-3 to demonstrate that an area is not wetlands; or

4. Any other information that demonstrates that the Department's GIS coverage is inaccurate at a particular location.

(k) Areas designated as environmentally sensitive based on the Landscape Maps may be included in the sewer service area provided the Department determines, based upon a review of data provided by the applicant as part of a Habitat Impact Assessment prepared in accordance with N.J.A.C. 7:15-4.7 that the proposed project or activity:

- 1. Avoids the endangered or threatened wildlife species habitat;**
- 2. Will result in insignificant or discountable effects on the maintenance of local breeding, resting, or feeding of the endangered or threatened species;**
- 3. To the extent that the impacts to endangered and threatened wildlife species habitat cannot be avoided, except as provided in (k)4 below, the proposed project or activity includes implementation of conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat and will mitigate for any such adverse modification in a manner that provides for no net loss of habitat value**

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to endangered or threatened species including the local population of that species.

Mitigation includes the initiation of new activities benefiting the endangered or threatened species and may include, but is not limited to the creation, enhancement, restoration, management, maintenance, and/or the acquisition of unprotected habitat or any combination thereof as near as feasible to the project or activity that is adversely modifying habitat for agriculturally dependent species and generally within the local municipality or county where the project or activity is located. Mitigation measures shall be memorialized in an enforceable document approved by the Department, such as a conservation restriction to be filed in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq. Where a conservation restriction is required, any plan amendment shall not be effective until receipt by the Department of a “file stamped” copy of the conservation restriction; or

4. For agriculturally dependent endangered or threatened wildlife species as identified by the Department, to the extent that the impacts to endangered and threatened wildlife species habitat cannot be avoided, the proposed project or activity includes implementation of conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat and will mitigate for any such adverse modification of habitat. Mitigation shall include activities intended to benefit agriculturally dependent wildlife species that would not otherwise occur. Activities may include the creation, enhancement, restoration, management, maintenance, and/or acquisition of habitat by a responsible third party, such as a governmental body or

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nonprofit organization with a conservation purpose, as near as feasible to the project or activity that is adversely modifying habitat for agriculturally dependent species and generally within the local municipality or county where the project or activity is located. Documentation shall be provided by the applicant indicating the nature of the activities, the entity responsible to carry them out and the time frame associated with initiation and maintenance of the activities. Mitigation activities may be for a specified term of years. Mitigation measures shall be memorialized in an enforceable document approved by the Department, such as a conservation restriction to be filed in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq. Where a conservation restriction is required, any plan amendment shall not be effective until receipt by the Department of a “file stamped” copy of the conservation restriction.

(l) An area designated as environmentally sensitive because it has been identified as a Natural Heritage Priority Site may be included in the sewer service area only if the Department determines that the proposed project or activity avoids or does not adversely impact natural resource element(s) occurring within the Natural Heritage Priority Site. In order to make this determination, the Department shall consider data provided by the applicant as part of a Habitat Suitability Determination as provided at N.J.A.C. 7:15-4.6, or upon review of a Habitat Impact Assessment prepared in accordance with N.J.A.C. 7:15-4.7.

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(m) A Department determination that an environmentally sensitive area may be included within a sewer service area does not constitute a finding that proposed activities on the property will comply with any other Department rule, including requirements applicable to the environmental feature that results in the area being classified as environmentally sensitive; the applicant seeking to construct a project or conduct an activity in a sewer service area must still obtain any permit or approval applicable to the project or activity and comply with all requirements applicable to that program.

7:15-4.5 Wastewater capacity analyses

(a) This section sets forth the content of the wastewater treatment capacity analysis, the content of the nitrate dilution analysis, and the requirements to consider strategies to address potential capacity deficiencies where there is inadequate wastewater infrastructure to serve the existing and future wastewater management needs.

(b) The existing and future wastewater management needs of each sewer service area of a DTW, or industrial wastewater facility that receives wastewater from outside the industrial facility boundaries, shall be identified and evaluated in a wastewater treatment capacity analysis prepared in conformance with the following:

1. For assigned sewer service area, the applicant shall identify the existing and projected future flows that will be generated.

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i. For the purposes of this paragraph, the existing flow is the highest consecutive 12 months rolling average over the most recent five-year period preceding development of the WMP, as reported in the Discharge Monitoring Reports required pursuant to N.J.A.C. 7:14A-6.8 for the facility, or other method approved by the Department if the Department determines that the alternate method better predicts flow taking into account factors unique to the area, such as significant variability of flows due to seasonal population shifts, the effects of weather, or variable volumes of combined sewage conveyed to the wastewater treatment facility.

ii. The projected future flow that will be generated from future development is calculated in accordance with the following:

(1) For urbanized municipalities, estimate future wastewater flows by multiplying the 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 flows from sources such as expanded or redeveloped industries, landfill leachate or septage; and

(2) For municipalities not subject to (b)1ii(1) above, estimate build-out future wastewater flows from existing development that is not currently connected and future

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development based on flow projections from N.J.A.C. 7:14A-23.3, 7:14A-23.2(c), or 7:9A, as applicable. Federal lands and areas with limited development potential, such as preserved open space or areas subject to statutory restrictions, may be excluded from the calculation of future flows provided the WMP agency identifies the area to be excluded and the reason for exclusion, and the basis for exclusion is approved by the Department.

2. For unassigned sewer service areas, the applicant shall identify the future flows from the entire area in accordance with (b)1ii above.

3. For each assigned and unassigned sewer service area, the applicant shall determine if there is a potential capacity deficiency in accordance with the following:

i. For each assigned sewer service area, compare the sum of the existing flow and the results of the calculation at (b)1ii above with the current permitted flow at the wastewater treatment facility. Any deficit between the need and the permitted flow constitutes a potential capacity deficiency; and

ii. For any unassigned sewer service area, the entire wastewater demand calculated at (b)2 above constitutes a potential capacity deficiency.

4. The applicant shall identify and evaluate strategies for addressing the potential capacity deficiencies identified in (b)3 above, including management approaches and

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infrastructure improvements. As part of this evaluation, the applicant shall consider the growth trajectory for the sewer service area using population projections, number of treatment works approvals, or other indicators of rate of development. Strategies identified shall take into account the size of the identified potential capacity deficiency and the time frame within which the estimated need is anticipated to exceed the current permitted flow.

5. For existing permitted wastewater treatment facilities, where the existing flow is 80 percent or more of the permitted flow at the time of WMP development, the wastewater management planning agency shall coordinate with the Department and the entity responsible for the applicable wastewater treatment facility to determine if remaining projected growth will result in a capacity deficiency and, if the potential for a capacity deficiency exists, to analyze effective strategies to address this potential deficiency.

6. If the average flow for a facility over 12 consecutive months reaches or exceeds 100 percent of the permitted flow for any wastewater treatment facility, the entity responsible for the wastewater treatment facility shall conduct a capacity analysis in accordance with N.J.A.C. 7:14A-22.16.

7. If infrastructure improvements are expected to be needed within five years, the wastewater management planning agency shall begin coordinating with the Department and the entity responsible for the applicable wastewater treatment facility to evaluate the

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technical feasibility and establish a schedule within which various steps will be taken to accomplish installation of the improvements.

8. For each proposed new or expanded domestic or industrial treatment works with discharge to surface water, the permit applicant shall perform an antidegradation analysis in accordance with the antidegradation policies in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.5(d). The applicant shall evaluate a wastewater treatment and disposal alternative consistent with the following hierarchy:

i. Expansions of existing permitted domestic or industrial treatment works facilities shall maintain the current pollutant load as expressed in any effective effluent limitations imposed through a permit or an adopted total maximum daily load;

ii. To the extent that load increases cannot be avoided in accordance with (b)8i 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 ambient water study approved by the Department or limits needed to comply with adopted total maximum daily load wasteload allocations; and

iii. 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

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on the ambient water study in (b)8ii 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.

(c) For areas not covered by (b) above, the future wastewater treatment needs shall be evaluated through a nitrate dilution analysis in conformance with the following:

1. Except as provided in (c)2 and 3 below, for 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 two 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 V6.2” developed by the New Jersey Geological Survey, incorporated herein by reference, as amended and supplemented, available at <http://www.nj.gov/dep/wrm/>; or

(2) A simplified model using HUC 11 recharge values called “A Recharge-Based HUC 11-Scale Nitrate-Carrying-Capacity Planning Exercise for New Jersey, MS Excel Workbook, version 3.0,” (2009) incorporated by reference, as amended and supplemented, available at <http://www.nj.gov/dep/wrm/>;

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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 (c)1i above to determine the number of additional equivalent dwelling units;

iii. Apply existing zoning to all undeveloped and underdeveloped areas to determine the number of equivalent dwelling units for comparison to (c)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. Identify areas where the number of additional equivalent dwelling units calculated in (c)1iii above exceeds the allowable number of additional equivalent dwelling units in (c)1ii above;

v. If the future nitrate dilution capacity is insufficient to meet the projected loading from future development, the local government unit shall work with the Department to evaluate options to address this capacity gap. The CPP, which is posted on the Department's website at <http://www.nj.gov/dep/wrm/>, identifies potential strategies to address this capacity deficiency;

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vi. 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 inspected at a frequency to adequately determine if they are functioning properly; and

vii. 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 permit applicant shall demonstrate compliance with Ground Water Quality Standards, N.J.A.C. 7:9C, through the permitting process;

2. In the Pinelands Area, the future wastewater treatment needs shall be based on the density and water quality standards established in the Comprehensive Management Plan; and

3. 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. In the Highlands planning area, for Highlands conforming municipalities the nitrate dilution capacity analysis shall be performed according to the procedures set forth pursuant to the Highlands Regional Master Plan.

7:15-4.6 Habitat Suitability Determinations

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(a) Where an area is excluded from being eligible for sewer service area in accordance with N.J.A.C. 7:15-4.4 on the basis that it is within a habitat Rank 3, 4, or 5 on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife, or within a Natural Heritage Priority Site, an applicant may seek a Habitat Suitability Determination from the Department to rebut the presumption that the habitat patch rank is accurate or that the habitat is suitable for the natural resource elements contained in a Natural Heritage Priority Site.

(b) If a project or activity requires a permit from the Department that addresses habitat for endangered and threatened wildlife species or natural resource elements occurring within a Natural Heritage Priority Site, the applicant may submit the permit application, request for habitat suitability determination, and plan amendment application concurrently, so that the Department may review a single Habitat Suitability Determination for a particular project or activity for compliance with this chapter and any relevant permit requirements. A habitat suitability determination is based upon conditions and information available at the time of the determination. A habitat suitability determination obtained prior to permit application may be subject to review to ensure that conditions and/or information have not changed since the issuance of the original determination. Issuance of a favorable Habitat Suitability Determination does not guarantee that other Department permits or approvals will be granted.

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(c) An application for a Habitat Suitability Determination shall be submitted to the Department in accordance with N.J.A.C. 7:15-1.6 and shall include all the information required below, unless the Department advises the applicant in writing that any particular item(s) is not required for the area that is the subject of the application:

1. A letter from the Department's Natural Heritage Program issued within six months of the date of application stating if any endangered or threatened wildlife species or natural resource elements (plant species and/or ecological communities) 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 State Forestry Services web page at www.nj.gov/dep/parksandforests/natural/heritage or obtained from the Office of Natural Lands Management, Natural Heritage Program at:

**New Jersey Department of Environmental Protection
State Forestry Services
Office of Natural Lands Management
Mail Code 501-04, P.O. Box 420
501 East State Street
Station Plaza #5, 4th Floor
Trenton, New Jersey 08625-0420
Phone: (609) 984-1339;**

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2. A description of the local/regional habitat requirements for each species identified by the Natural Heritage Program, including citations to appropriate literature and studies specific to local or New Jersey populations;

3. 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 from 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 Natural Resources Conservation Service and the location and description of any important soil features present within 0.25 miles from the boundary of the site;

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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.vegbank.org/vegdocs/panel/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; 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: <https://rucore.libraries.rutgers.edu/rutgers-lib/37114/>; and Northeastern Terrestrial Wildlife Habitat Classification by Morton et al. (2014) available at: <http://rengrants.org/content/northeastern-terrestrial-wildlife-habitat-classification>.

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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 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 endangered or threatened wildlife or plant species surveys, or biodiversity inventory, if such surveys or inventory were conducted for the purpose of supplementing scientific data regarding the suitability of a particular habitat for particular species or natural resource elements. Any such survey must be conducted in consultation with the Department and in accordance with all Federal and State laws and regulations, including for each species or natural resource element surveyed: the survey method, the surveyor's name(s), dates and times surveys were performed, number of samples, and number of replications. Note that negative survey results will not be interpreted by the Department as conclusive evidence that a site does not feature suitable habitat for an endangered or threatened wildlife species or natural resource element;

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ix. The names, addresses, and professional qualifications of all persons who performed habitat evaluations and/or species surveys relied upon to support the application;

x. A copy of any or all other relevant survey(s) or report(s) conducted regarding the subject site 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 endangered or threatened wildlife species or natural resource element occurrence.

(d) In making a Habitat Suitability Determination, the Department shall consider as suitable habitat any site that, based on the best available scientific information, provides any of the components necessary to sustain any endangered or threatened wildlife species or natural resource elements. For wildlife species, this may include, but is 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 endangered or threatened wildlife species in question. The determination shall be based upon evaluation of the administrative record consisting of, at a minimum:

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- 1. The information provided by the applicant under (c) above;**

- 2. Information available to the Department identifying which, if any, endangered or threatened wildlife species or natural resource element may have suitable habitat on the site. Such information includes, but is not limited to, the Landscape Maps, Natural Heritage Database, and records of documented species occurrences;**

- 3. Scientific information related to the life history characteristics and habitat needs of the species, specific to New Jersey/regional populations;**

- 4. The results of any wildlife or plant and/or natural resource element habitat surveys conducted by or in consultation with the Department and in accordance with the survey procedures at N.J.A.C. 7:7-11.4(a) and (b); and**

- 5. The extent to which the site contains the characteristics of suitable habitat for each endangered and threatened wildlife species, or natural resource element 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 endangered or threatened wildlife species and/or natural resource element that are identified as part of on-site inspection(s).**

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(e) Based on the available information, the Department will:

1. Issue a written finding regarding the extent of suitable habitat, if any, for the parcel; or

2. Notify the applicant that seasonal conditions and/or conditions particular to a particular wildlife species or natural resource element in question do not permit the Department to verify the applicant's assessment of the suitability of habitat, explain the seasonal or species-specific conditions involved, and provide the applicant the option of either accepting a finding that the site constitutes suitable habitat for that wildlife species or natural resource element, or requesting that the Department delay verification of the applicant's assessment regarding the suitability of habitat until the appropriate season or when the appropriate species-specific conditions are present. If the applicant requests that the Department delay verification, the Department shall issue a finding in accordance with (e)1 above after its verification investigation is complete.

(f) A finding issued by the Department pursuant to (e) above shall be based upon the best information available to the Department at the time of issuance, and is subject to revision at any time based on new information.

7:15-4.7 Habitat Impact Assessment

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(a) Where an area is excluded from being eligible for sewer service area in accordance with N.J.A.C. 7:15-4.4 on the basis that it is within a habitat Rank 3, 4, or 5 on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife, or within a Natural Heritage Priority Site, an applicant may seek a Habitat Impact Assessment from the Department for a proposed project or activity to determine if the area may be included within the sewer service area. The Habitat Impact Assessment shall consider the likely effects of the proposed development on the local populations of the particular wildlife species or on the natural resource elements. The impacts shall be assessed using accepted ecological principles and scientific literature on each species or natural resource element and both direct and indirect impacts of the proposed development shall be considered. This assessment shall be based on habitat requirements and life history of each species, or natural resource element occurrence, and the manner in which the proposed development may alter habitat, including, but not limited to, vegetation, soils, substrate, bathymetry, salinity, hydrology, wildlife movement corridors, human disturbance, and effects on competitor, parasite, or predator species.

(b) The information submitted in support of an application for a Habitat Impact Assessment in accordance with (d) below shall demonstrate that the proposed development will not adversely affect the population(s) or habitat of endangered or threatened wildlife species that resulted in identification of the site, or an area surrounding the site, as endangered or threatened wildlife species habitat, or the natural resource element occurring within the Natural Heritage Priority Site.

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(c) If a project or activity requires a permit from the Department that addresses habitat for endangered and threatened wildlife species or natural resource elements occurring within a Natural Heritage Priority Site, the applicant may submit the permit application, request for habitat impact assessment, and plan amendment application concurrently, so that the Department may review a single Habitat Impact Assessment for a particular project or activity. A Habitat Impact Assessment is based upon conditions and information available at the time of the assessment. A Habitat Impact Assessment obtained prior to permit application may be subject to review to ensure that conditions and/or information have not changed since the issuance of the original assessment. Issuance of a favorable Habitat Impact Assessment does not guarantee that other Department permits or approvals will be granted.

(d) An application for a Habitat Impact Assessment shall be submitted to the Department in accordance with N.J.A.C. 7:15-1.6 and shall include the information required in N.J.A.C. 7:15-4.6(c) and all the information required below, unless the Department advises the applicant in writing that any particular item(s) is not required for the area that is the subject of the application:

- 1. An introduction describing the goals of the Habitat Impact Assessment;**
- 2. A USGS quad map(s) meeting the standards identified at N.J.A.C. 7:15-1.7 showing the location of the site, with the State plane coordinates of the site. The accuracy**

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of these coordinates shall be within 50 feet of the actual center point of the site. For linear sites, 2,000 feet in length and longer, additional coordinates shall be provided at each 1,000-foot interval;

3. The lot, block, municipality, and county in which the site is located;

4. For Habitat Impact Assessments for wildlife species, a digital map identifying the site, and the areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps onsite and surrounding the site, along with a list of the endangered or threatened species that resulted in the mapping of endangered or threatened species habitat;

5. For Habitat Impact Assessments for natural resource elements, a map identifying the location of the natural resource element habitat and Natural Heritage Priority Site boundaries on the site or surrounding the site along with a list of the potential plant species and other natural resource elements from the Department's Natural Heritage Database;

6. A description of the habitat requirements for each of these wildlife species and natural resource elements identified at (d)4 and 5 above, specific to New Jersey/regional populations including appropriate literature citations;

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7. The names, addresses, and professional qualifications of all persons who performed habitat evaluations, species surveys, and/or impact assessments; and

8. A narrative, including supporting documentation, such as maps and photographs, which contains the following:

i. A description for each wildlife species and natural resource element, of how the proposed development will alter habitat, including vegetation, soils, hydrology, human disturbance, and effects on competitor, parasite, or predator species. The impact assessment shall describe the likely effects of the proposed development on the local populations of the particular wildlife species or natural resource element on or surrounding the site and why the development would not directly or through secondary impacts adversely affect each endangered or threatened wildlife species habitat or natural resource element; and

ii. Literature citations used to reach the conclusions in (d)8i above.

(e) Based on the available information, the Department will:

1. Issue a written finding that the proposed project or activity will not adversely impact local populations or habitat of endangered or threatened wildlife species or the natural resource element(s), within the Natural Heritage Priority Site because:

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i. The project or activity will avoid the habitat of endangered or threatened wildlife species that resulted in identification of the site, as endangered or threatened wildlife species habitat, or the natural resource element(s) within the Natural Heritage Priority Site;

ii. The proposed project or activity will result in insignificant or discountable effects on the maintenance of local breeding, resting, and feeding of the endangered or threatened wildlife species, or on the natural resource elements occurring within the Natural Heritage Priority Site. This determination is based upon assessment of the landscape context of the habitat, the location or absence of essential ecological features, and the location and scope of proposed activities. For purposes of this section, insignificant impacts are responses that are incapable of being detected, measured, or evaluated. This analysis relates to the extent of the impacts. If the impacts will likely be negative but the consequences are so minute that a person could not measure or detect such responses, then the Department will find that there are insignificant impacts. Discountable impacts means impacts that are extremely unlikely to occur; or

iii. The proposed project or activity will include conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat, and will mitigate for any such adverse modification of habitat so that there is no net loss of habitat value for the local population of endangered or threatened wildlife species

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documented on-site or their suitable habitat. Conservation measures under this paragraph may not be used to mitigate for adverse impacts to natural resource elements;

2. Issue a written finding that the proposed project or activity will adversely impact the local populations or habitat of endangered or threatened wildlife species that resulted in identification of the site or an area surrounding the site, as endangered or threatened wildlife species habitat, or a natural resource element occurring within the Natural Heritage Priority Site. A finding of adverse impacts under this paragraph shall preclude the inclusion of this area in sewer service area; or

3. Issue a written finding with respect to N.J.A.C. 7:15-4.4(i)4 that the proposed project or activity will or will not adversely impact an area critical to the survival of a local population of endangered or threatened wildlife species.

(f) A finding issued by the Department pursuant to (e) above, shall be based upon the best information available to the Department at the time of issuance, and is subject to revision at any time based on new information.

SUBCHAPTER 5. 303(d) WATER QUALITY LIMITED WATERS LISTS AND TOTAL MAXIMUM DAILY LOADS

7:15-5.1 Scope and purpose

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This subchapter sets forth the processes for identifying and listing the 303(d) List of Water Quality Limited Waters, setting the priorities and schedule for development of total maximum daily loads (TMDLs) to address impairments in water quality limited waters, and for developing TMDLs and plans to implement TMDLs.

7:15-5.2 Listing of 303(d) Water Quality Limited Waters

(a) The Department shall develop a biennial 303(d) List of Water Quality Limited Waters, also known as the “303(d) List” required by Section 303(d) of the Federal Clean Water Act, 33 U.S.C. § 1313(d). The 303(d) List shall be developed 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 2014 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions” from Denise Keehner, September 3, 2013 (available at <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/guidance.cfm#program>) incorporated herein by reference, as amended and supplemented; and pursuant to the process set forth in (b) through (e) below.

(b) The Department shall set forth the methods to be used to develop each 303(d) List. These methods, known collectively as the “Integrated Water Quality Monitoring and Assessment Methods Document” or “Methods Document,” shall include:

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1. Data quality requirements;

2. Methods to evaluate water quality data to assess attainment of applicable water quality criteria and standards as set forth in the SWQS at N.J.A.C. 7:9B, assess support of applicable designated uses, and identify water quality limited waters; and

3. The basis for assigning priority for development of TMDLs to all waterbody/pollutant combinations on the 303(d) List.

(c) From time to time, the Department may revise the Methods Document prior to the development of the 303(d) List. If the Department proposes a revised Methods Document, the Department shall provide the public with the opportunity to review and comment on the draft Methods Document prior to development of the corresponding 303(d) List in accordance with (c)1 and 2 below:

1. The Department shall post the draft Methods Document and an announcement of its availability for public comment on its website at <http://www.nj.gov/dep/wms/bears/generalinfo.htm>. The Department shall also publish a notice in the New Jersey Register to request public comment and will announce the availability of the document electronically to entities that have requested electronic notifications from the Department pursuant to N.J.A.C. 7:15-1.6(d). The public will be

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afforded the opportunity to review and comment on the proposed Methods Document during the comment period established in the public notice.

2. Following the public comment period, the Department may make revisions to the draft Methods Document and will post the final Methods Document at

<http://www.nj.gov/dep/wms/bears/generalinfo.htm>.

(d) The Department shall provide the public with the opportunity to submit water quality data to be considered in the development of the 303(d) List. The Department shall publish data submission requirements and deadlines in the New Jersey Register, on its website at <http://www.nj.gov/dep/wms/bears/generalinfo.htm>, and electronically to entities that have requested electronic notifications from the Department pursuant to N.J.A.C. 7:15-1.6(d).

(e) The Department shall propose each 303(d) List, provide an opportunity for public comment, and adopt the 303(d) List in accordance with N.J.A.C. 7:15-5.4.

7:15-5.3 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 waters in accordance with:

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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

<http://www.nj.gov/dep/wrm/>:

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 May 20, 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;

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; and

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iv. USEPA. 2014. Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs.” Office of Wastewater Management and Office of Wetlands, Oceans and Watersheds Memorandum from Andrew D. Sawyers and Benita Best-Wong, dated November 26, 2014.

(b) A TMDL document shall include the following components:

1. An identification of water(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:

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- i. Load allocations for nonpoint sources of pollutant load;**

- ii. Wasteload allocations for point sources of pollutant load;**

- iii. A margin of safety required to include 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. 7:15-5.4, the Department may provide opportunities for public participation in the TMDL development process, based upon anticipated interest, which may include the following:

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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.

7:15-5.4 Amendment procedures for 303(d) List and TMDLs

(a) The Department shall propose TMDLs as amendments to areawide WQM plans and shall establish 303(d) Lists pursuant to (a)1 through 4 below:

1. The Department shall publish a notice of the proposed new 303(d) List, or intent to amend the applicable areawide WQM plans for TMDLs, in the New Jersey Register, on the Department's website <http://www.nj.gov/dep/wms/bears/generalinfo.htm>, and electronically to entities that have requested electronic notifications from the Department pursuant to N.J.A.C. 7:15-1.6(d). 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

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will be identified in the notice. If a public hearing is to be held, notice will be provided at least 30 days prior to the public hearing and the comment period will remain open until 15 days after the public hearing;

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 in accordance with (a)1 above. The Department shall additionally provide notice of the public hearing to those requesting the hearing;

3. At the conclusion of the public comment period, the Department will make any appropriate revisions to the document(s) and prepare a written response to the comments. The Department shall either:

- i. Establish the 303(d) List or the TMDL as proposed;**
- ii. Establish all or portions of the 303(d) List or the TMDL with changes which do not effectively destroy the value of the public notice regarding the proposed 303(d) List or TMDL, as applicable; or**

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iii. Re-propose in accordance with (a)1 above, all or portions of the 303(d) List or the TMDL with substantive changes; and

4. The Department shall submit the established 303(d) List 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 303(d) List or TMDL amendment if USEPA requests substantive changes that effectively destroy the value of the original public notice; or

2. Adopt the 303(d) List document(s) directly or adopt the TMDL documents as an amendment to the areawide WQM plan by placing a notice in the New Jersey Register and the Department's website at <http://www.nj.gov/dep/wms/bears/generalinfo.htm>. This step constitutes final agency action.

SUBCHAPTER 6. WATERSHED MANAGEMENT GRANTS

7:15-6.1 Scope and purpose

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The purpose of this subchapter is to set forth the rules governing grants from the Watershed Management Fund to assist watershed management groups in the funding of watershed management activities in accordance with the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq. This subchapter establishes policies and procedures for the award and distribution of Watershed Management Fund monies.

7:15-6.2 Project priority system and project priority award list

(a) Each year the Department shall develop a Project Priority System that establishes the project category priorities for watershed management grants for that year.

(b) The Department shall publish a notice of availability of watershed management grants in the New Jersey Register, identifying the Project Priority System, application requirements, and deadline for submittal of applications. This notice shall additionally be posted on the Department's Grants and Loans Webpage at <http://www.nj.gov/dep/grantandloanprograms/>.

(c) Unless otherwise specified in the notice of availability, the Department shall, in general, give priority to the following watershed management activities:

1. The initial establishment of watershed associations and/or stakeholder groups to support watershed management planning activities;

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2. Watershed management activities identified as a priority action in an adopted Watershed Management Area (WMA) Plan;

3. Watershed management activities identified by a PAC as a priority action prior to adoption of a WMA Plan;

4. Watershed management activities that are designed to address documented water resource problems or issues of particular concern in a subwatershed, watershed or watershed management area, as indicated in the Integrated Water Quality Monitoring and Assessment Report, or a characterization and assessment of water quality and water quantity report prepared by or for the Department, or other Department-approved sources of assessment;

5. Watershed management activities conducted in partnership with other watershed management groups or other entities or interests other than those participating in the applicant's watershed management group;

6. Monitoring and/or modeling activities designed to support the development, implementation and assessment of TMDLs for waterbodies listed on the most recently approved 303(d) List;

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7. Watershed management activities to be conducted for an entire watershed management area or areas; and

8. Development of watershed or subwatershed management strategies.

(d) Each year, the Department shall develop a Project Priority Award List for projects determined to be eligible for funding based on the Project Priority System. The list shall be submitted to the Legislature for consideration and approval in accordance with N.J.A.C. 7:15-6.5.

7:15-6.3 Pre-application procedures

(a) The Department encourages potential grant applicants to consult with the Department and the applicable PAC(s) prior to application submission in order to facilitate preparation and evaluation of the grant application. Inquiries to the Department may relate to procedural or substantive matters and may range from informal telephone advice to pre-arranged meetings.

(b) Watershed management grants shall only be issued to watershed management groups recognized in accordance with the following:

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1. A watershed management group is a group recognized by the Department as the entity representing various interests within one or more watersheds or subwatersheds located in a watershed management area and whose purpose is to improve the condition or prevent further degradation of a watershed or watersheds;

2. The activities of a watershed management group may include:

i. Holding public meetings to discuss and exchange information on watershed issues;

ii. Establishing and operating a stakeholder's advisory group or groups or watershed associations dedicated to preserving and protecting a watershed;

iii. Engaging in water quality and quantity monitoring, water quality modeling or assessment of the condition of a watershed;

iv. Developing policy goals to reduce the amount of pollutants discharged into a watershed;

v. Developing projects designed to enhance or restore a watershed; or

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vi. Developing, in consultation with the Department and the PAC established for the WMA, a watershed management strategy, or the reassessment of a watershed to determine whether the policies, goals or the objectives of a WMA Plan or a watershed management strategy have been attained. The watershed management strategy addresses one or more watersheds or subwatersheds and is developed by the watershed management group, whereas the WMA Plan addresses the watershed management area, which consists of more than one watershed, and is developed by the Department;

3. At a minimum, the following entities and individuals shall be invited to participate in a watershed management group:

i. The mayor or equivalent government official, or such official's designee, for each municipal government located partially or entirely within the watershed or watersheds represented by the watershed management group;

ii. The county board of chosen freeholders, or the freeholders' designee, for each county located partially or entirely within the watershed or watersheds represented by the watershed management group;

iii. A representative of water purveyors;

iv. A representative of wastewater utilities or authorities;

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- v. A representative of the business community;**

- vi. A representative of the development community;**

- vii. A representative of the agricultural community, if appropriate;**

- viii. A representative of the applicable Soil Conservation District(s);**

- ix. A representative of the academic community;**

- x. A representative of the environmental community;**

- xi. A representative of the general public; and**

- xii. An official of any regional planning agency (including regional planning boards established pursuant to N.J.S.A. 40:55D-77 et seq.) that has been created for all or part of the watershed or watersheds to be represented by the watershed management group, as applicable;**

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4. A request for recognition as a watershed management group shall be submitted to the Department with a copy to the applicable PAC(s), and include the following information:

i. A copy of the mailing list used to establish the watershed management group, including the entities identified in (b)3 above;

ii. A copy of the letter of invitation to participate in the watershed management group;

iii. A copy of the responses from those officials or representatives agreeing to participate;

iv. A copy of the responses from those officials or representatives declining to participate; and

v. In cases where no response to the letter of invitation was received within 60 days, the group shall send a follow-up request by certified mail, return receipt requested, and submit proof of such follow-up;

5. The Department shall respond in writing within 45 days of the receipt of a complete request for recognition as a watershed management group;

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6. To qualify for funding under this chapter, a watershed management group shall make an application to the Department for recognition, identify a government entity, 501(c)3 corporation or other corporate entity that will serve as the fiscal agent for the watershed management group and provide a statement of agreement from that entity to serve as the fiscal agent for the watershed management group. The fiscal agent shall be responsible for all financial interactions with the Department; and

7. All meetings of a watershed management group shall be open to the public with prior notification in a newspaper of general circulation that covers area of the group.

(c) Potential grant applicants are encouraged to obtain recognition as a watershed management group at least 60 days prior to the submittal of grant applications.

7:15-6.4 Application procedures for grants for watershed management activities

(a) Any recognized watershed management group may submit an application to the Department for a watershed management grant.

(b) The watershed management group should submit an application pertaining to watershed management activities for which the watershed management group has a high probability of success. Factors for consideration include the extent to which available

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resources (personnel and fiscal) are sufficient for complete and successful implementation of the activities and achievement of the stated objectives.

(c) The applicant shall submit the information identified in the notice of availability published annually by the Department, in accordance with N.J.A.C. 7:15-6.2. In order to be considered for a grant, the information shall be submitted by the application deadline specified in the notice of availability.

(d) Grant applications shall provide, at a minimum, the following information, as specified in the notice of availability:

1. Proof that the applicant has been recognized as a watershed management group in accordance with N.J.A.C. 7:15-6.3(b);

2. A description of the watershed or watersheds in which the activity is to be conducted, including a map as appropriate;

3. A scope of work that includes an executive summary, a description of the proposed watershed management activities, environmental objectives and measures (as appropriate), a budget, and a schedule for completion;

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4. A description of how the proposed activities correspond to and will achieve the goals and objectives of this chapter and conformance with the priorities defined in the annual Project Priority System or N.J.A.C. 7:15-6.2;

5. A description of any proposed environmental monitoring, including evaluation criteria, environmental indicators, and an approved quality assurance/quality control plan, as applicable;

6. Identification of the source and availability of any additional supplementary funds, in the form of cash, in-kind services or both, to be used with this grant to implement the proposed watershed management activity;

7. Identification of all personnel and consultant(s) who will be performing the activity and a description of their experience and expertise in the proposed watershed management activity;

8. Evidence that the PAC(s) of the watershed management areas within which the proposal is located were provided an opportunity to comment on the proposal, including a copy of the PAC's response; and

9. Any additional information as specified in the notice of availability.

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(e) If a grant is awarded, a grant agreement shall be executed between the Department and the watershed management group. The watershed management group is responsible for all performance reports, expenditure reports, deliverables, and all other requirements specified in the executed grant agreement.

(f) A watershed management group may contract for services for all or part of the grant to another person or entity to perform a watershed management activity(ies) in accordance with Department procedures and forms provided in the grant agreement, subject to the following conditions:

1. The watershed management group shall not enter into any contract with any person debarred, suspended, or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2 for any services within the scope of work;

2. If the watershed management group distributes a grant to a person who has a NJPDES permit to discharge pollutants into the waters of the State pursuant to N.J.A.C. 7:14A, the distribution shall be conditioned upon the NJPDES permittee providing a match of one dollar for every dollar distributed to the NJPDES permittee. The match may be made either as a monetary payment or as an in-kind contribution; and

3. The use of any of the grant monies for the purpose of complying with a NJPDES permit is prohibited.

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(g) All grant applications, grant agreements, and any supporting documentation are public records.

(h) Unless otherwise specified in the notice of availability, applications for watershed management grants shall be submitted to:

Watershed Management Grant Program

New Jersey Department of Environmental Protection

Division of Water Monitoring & Standards

P.O. Box 420, Mail Code 401-04I

Trenton, NJ 08625-0420

7:15-6.5 Project priority award process

(a) The Department shall submit the Project Priority Award List of recommended watershed management grant projects developed under N.J.A.C. 7:15-6.2 to the Legislature for consideration and approval.

(b) The Department shall post a notice on the Department's Grants and Loans Webpage at <http://www.nj.gov/dep/grantandloanprograms/> of those projects recommended to the Legislature for approval in the Project Priority Award List.

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(c) For all watershed management grant applications included on the Project Priority Award List and approved by the Legislature, the Department shall transmit to the applicant for execution a grant agreement specifying the terms and conditions of the grant, including the scope of work, the approved budget, and the schedule for completion. The applicant shall execute the grant agreement in the manner specified by the Department and shall return the grant agreement to the Department within 60 days, unless the applicant has requested and received from the Department an extension of the 60-day period. If the grant agreement is not returned by the deadline, the Department reserves the right to award the grant monies to the next highest ranked eligible project.

(d) Funds under a watershed management grant shall be released only after a grant agreement has been executed by both the applicant and the Department.

(e) The budget in the grant agreement shall specify the items eligible for funding under this subchapter, which may include, for example:

1. Costs of materials, supplies, and reproduction for reports, policy recommendations, draft ordinances, publications, maps, diagrams, and other similar documents;

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2. Project implementation costs, including costs for travel, materials, tools, and disposal costs for debris;

3. Equipment purchases such as computers and global position satellite units may be eligible for grant funding. However, upon completion of the grant commitments, these purchases are subject to the Department's procedures for the disposition of equipment purchased with State funds;

4. Contractual costs for services necessary to implement the grant;

5. Costs of acquisition of real property, including administrative costs, where such property must be acquired as a site for the construction or implementation of nonstructural stormwater management, nonpoint source pollution controls, or best management practices, including but not limited to, real property to be used for buffers or to protect aquifer recharge areas; and

6. The acquisition of land, as a means of avoiding new pollutant inputs or water body degradation, may be made eligible, if included in the notice of availability, but shall have a lower priority for watershed management grants than implementation projects that mitigate current stresses or prevent future stresses to water and water-related resources in ways other than land acquisition.

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(f) The following items are not eligible for funding under this subchapter:

- 1. Building construction or other kinds of real property improvements;**
- 2. Bonus payments, charges for contingency reserves, deficits, or overdrafts, costs of discounts not taken, and interest expenses;**
- 3. Costs of services, materials, or equipment obtained under any other State or Federal grant or loan program;**
- 4. Costs of fund raising and lobbying;**
- 5. Work performed at the direction of a county or municipal government which has not been awarded in compliance with the Local Public Contracts Law, N.J.S.A. 40A:1-1 et seq.;**
- 6. Costs associated with the compliance with permit conditions or enforcement orders; and**
- 7. Any additional item(s) specified by the Department in the notice of availability and the grant agreement as not eligible for funding.**

7:15-6.6 Administration and performance of grants

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(a) The Department shall release funds to the grant recipient in accordance with the terms of the grant agreement. Upon execution of the grant agreement, up to 60 percent of the grant award may be released. If the grant agreement is for a multiple-year project, up to 60 percent of the funds budgeted for each year may be released at the beginning of each contract year.

(b) After the initial release of funds, any subsequent release of State funds is conditioned upon the submittal of properly documented expenditure reports and final deliverables.

(c) As the grant recipient, the watershed management group has sole responsibility for the administration and success of the grant project, including any work performed on behalf of the grant recipient for accomplishing grant objectives. Watershed management groups are encouraged to seek the advice and opinion of the Department on problems that may arise; however, such advice shall not shift the responsibility for final decisions from the recipient to the Department. The watershed management group shall be solely responsible for the use of the grant funds awarded pursuant to this subchapter in conformance with applicable State requirements to achieve grant and program objectives and to ensure the most efficient use of public funds.

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(d) The grant recipient shall supply performance reports to the Department within the time period specified in the grant agreement.

(e) The grant recipient shall supply expenditure reports to the Department within the time period specified in the grant agreement.

7:15-6.7 Project changes: amendment of grant agreement

(a) The grant recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of any event or proposed change which may require an amendment of the grant agreement, including the following:

- 1. A significant change in budgeting cost or in scope of work;**
- 2. A significant change in the scheduled project completion date;**
- 3. A significant changed conditions at the project site;**
- 4. A change in the schedule in the time for performance of the project or any major phase thereof;**

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5. A change in personnel responsible for grant and subsequent project implementation; and

6. A change in approved technical plans or specifications for the project.

(b) If the Department determines that a formal amendment is necessary, it shall notify the grant recipient and a formal amendment to the grant agreement shall be prepared and executed.

(c) If the Department determines that the project change does not require an amendment of the grant agreement under (a) and (b) above, the Department shall notify the grant recipient in writing.

7:15-6.8 Noncompliance

(a) If the grant recipient does not comply with the terms and conditions of the grant agreement, the Department may:

1. Issue written notice identifying the deficiency (for example, failure to submit timely performance reports) and directing the grant recipient to correct the deficiency;

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2. Meet with the grant recipient to review the terms and conditions of the grant agreement and amend the grant as necessary;

3. Demand reimbursement of any advance payment(s) and/or withhold scheduled payments under the grant agreement;

4. Rescind the grant agreement by issuance of a notice of termination of grant award; or

5. Award the grant to another watershed management group to perform the previously approved scope of work.

CHAPTER 38

HIGHLANDS WATER PROTECTION AND PLANNING ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:38-1.1 Scope and authority

(a)–(j) (No change.)

(k) For both the planning area and preservation areas, the Department shall review the Highlands Council regional master plan and consider amending the appropriate areawide Water Quality Management Plans to maintain consistency with the regional master plan. [The Department shall approve a Water Quality Management Plan amendment only after receiving

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from the Highlands Council a determination of consistency with the Regional Master Plan to be incorporated by reference in (l) below, when adopted by the Highlands Council. Pending completion of the Regional Master Plan, the Department shall not approve a Water Quality Management Plan amendment for a project proposed in the planning area or preservation area without first obtaining a recommendation from the Highlands Council.]

(l) (No change.)