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N.J.A.C. 7:15

## WATER QUALITY MANAGEMENT PLANNING

Statutory authority: 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 through 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.

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## **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.

##### **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;
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**

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(a) Except as provided in (b) below, all areawide WQM plans, and revisions and amendments thereto, adopted prior to November 7, 2016, 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 November 7, 2016, shall be redesignated on November 7, 2016, 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;
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 November 7, 2016, but not adopted shall be subject to the requirements of this chapter as of November 7, 2016, 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.

#### **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

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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 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
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.

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"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.

"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.

"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.

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"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.

"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.

"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

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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.

"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.

"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.

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"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 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 November 7, 2016, 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 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

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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.

"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 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

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population that the same area was capable of supporting prior 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.

"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 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 system as defined in N.J.A.C. 7:10.

"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.

"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.

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"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, a municipal utility, 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.

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

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"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 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 systems database as amended and updated, available as a digital data download from the Department at [www.state.nj.us/dep/gis](http://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). Urbanized municipalities also include those municipalities identified as "Urban Aid" municipalities pursuant to the New Jersey Redevelopment Act, N.J.S.A. 55:19-20 et seq.; as an Urban Enterprise Zone pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.; as a "Garden State Growth

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Zone" municipality pursuant to the New Jersey Economic Opportunity Act of 2013, N.J.S.A. 52:27D-489p et seq.; and as Transit Villages approved by the New Jersey Department of Transportation and NJ Transit.

"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.

"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.; a municipal utility 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.

"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.

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"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.

"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.

"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;

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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

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](http://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>.

#### **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.

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(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

### **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 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.

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Table 1.1

<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
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;

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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;
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 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;

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

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2. When developing a WMP, review for accuracy the data and mapping included therein;
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 or a county executive, where applicable, 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.

(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 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);
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

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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**

(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;
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

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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:

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;

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

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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**

(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;

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

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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 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 Department prior to November 7, 2016, 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.

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(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/>.

### **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.

(d) Designated planning agency plan amendment procedures approved by the Department prior to November 7, 2016, 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.

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(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 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;

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;

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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 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 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

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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;

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/>.

(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

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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 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.

#### **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 May 7, 2018, 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 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.

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(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 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) 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:

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;
  - 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

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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;
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) or planned discharge location (if known) for each existing NJPDES-regulated wastewater treatment facility and each wastewater treatment facility for which an NJPDES permit application is pending;
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 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

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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;

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;

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

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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.

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, as defined in N.J.S.A. 40:62-1 et seq. 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 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:

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(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**

(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, Pinelands Villages, and substantially developed portions of a Military and Federal Installation Area, 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;

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.

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(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 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, 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

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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

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;

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:

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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;

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 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 the 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

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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 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.

(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:

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1. For assigned sewer service area, the applicant shall identify the existing and projected future flows that will be generated.

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 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.

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4. The applicant shall identify and evaluate strategies for addressing the potential capacity deficiencies identified in (b)3 above, including management approaches and 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 the threshold established at N.J.A.C. 7:14A-22.16, the entity responsible for the wastewater treatment facility shall conduct a capacity analysis in accordance with that section.

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 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 on the ambient

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water study in (b)8ii above, the applicant shall make the demonstrations at N.J.A.C. 7:9B-1.5 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/>;

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;

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

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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**

(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.

(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:

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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](http://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;

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;

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

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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](http://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](http://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: <http://rucore.libraries.rutgers.edu/rutgers-lib/37114/>; and Northeastern Terrestrial Wildlife Habitat Classification by Morton et al. (2014) available at: <http://rcngrants.org/content/northeastern-terrestrial-wildlife-habitat-classification>. 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;

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.

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(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:

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).

(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.

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(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**

(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.

(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:

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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 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;
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:

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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:

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 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)2 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**

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### **7:15-5.1 Scope and purpose**

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:

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

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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 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:

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:
  - 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 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
  - iii. Re-propose in accordance with (a)1 above, all or portions of the 303(d) List or the TMDL with substantive changes; and

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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**

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;

2. Watershed management activities identified as a priority action in an adopted Watershed Management Area (WMA) Plan;

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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;
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:

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:

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- 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
  - 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;
  - 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);

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- 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;
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;
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.

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**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 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;
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;

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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.

(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.

(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**

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(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.

(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;
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

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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.

(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**

(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

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requirements to achieve grant and program objectives and to ensure the most efficient use of public funds.

(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;
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.