

CHAPTER 14A

POLLUTANT DISCHARGE ELIMINATION SYSTEM

Authority

N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-64 et seq., N.J.S.A. 4:24-39 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:4A-5, 58:4A-4.1, and 58:12A-1 et seq.

Source and Effective Date

R.1989 d.339, effective June 2, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Executive Order No. 66(1978) Expiration Date

Chapter 14A, The New Jersey Pollutant Discharge Elimination System, expires on June 2, 1995.

Chapter Historical Note

Chapter 14A was filed and became effective as R.1981 d.84, effective March 6, 1981. See: 12 N.J.R. 569(f), 13 N.J.R. 194(c). Pursuant to Executive Order No. 66(1978), Chapter 14A was readopted as R.1983 d.260, effective June 8, 1983. See: 15 N.J.R. 606(a), 15 N.J.R. 1094(c). Pursuant to Executive Order No. 66(1978), Chapter 14A was readopted as R.1989 d.339. See Source and Effective Date. Notice of Petition to amend New Jersey Pollution Discharge Elimination System permits. See: 23 N.J.R. 222(a). Notice of Action on Petition to amend New Jersey Pollution Discharge Elimination System permits. See: 23 N.J.R. 622(b). Public Notice: Opportunity for interested party review for rule amendment. See: 25 N.J.R. 411(a). Public Notice: Revocation of NJPDES/SIU permits noticed at 24 N.J.R. 491(a). See: 25 N.J.R. 600(a).

The Executive Order No. 66(1978) expiration date for Chapter 14A was extended by gubernatorial waiver from June 2, 1994 to June 2, 1995. See: 26 N.J.R. 2462(a).

Law Review and Journal Commentaries

Discharge Permit Rules Encourage Prevention. Robert J. Curley, Francis X. Journick, Jr., 135 N.J.L.J. No. 8, S14 (1993).

RESEARCH NOTE

The Water Quality Regulations of the Interstate Sanitation Commission appear as Appendix A to Title 7.

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SUBCHAPTER 1. GENERAL INFORMATION

7:14A-1.1 Purpose

- (a) It is the purpose of this chapter to:
 1. Restore, enhance, and maintain the chemical, physical, and biological integrity of the waters of the State;
 2. Protect public health and safety;
 3. Protect potable water supplies;
 4. Safeguard fish and aquatic life and scenic and ecological values;
 5. Enhance the domestic, municipal, recreational, industrial, agricultural and other uses of water;

6. Prevent, control, and abate water pollution and to implement the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

7:14A-1.2 Scope

(a) This chapter prescribes procedures and guidelines for implementation and operation of the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program.

(b) No person shall build, install, modify, or operate any facility for the collection, treatment or discharge of any pollutant, except in conformance with a valid final draft New Jersey Pollutant Discharge Elimination System (NJPDES) permit (or where applicable, a final NJPDES permit or treatment works approval) that has been issued by the Department pursuant to the State Act and these regulations.

(c) No person shall discharge any pollutant except in conformity with a valid NJPDES permit that has been issued by the Department pursuant to the State Act or a valid NJPDES permit issued by the Administrator pursuant to the Federal Act, as the case may be. A discharger which existed prior to the effective date of this chapter who has submitted a complete application shall be deemed to satisfy only the requirement of applying for a permit. This shall not preclude the Department from taking any appropriate enforcement action for violation of the State Act, this chapter, or other applicable law or regulation.

(d) It is the intent of the Department to regulate, at a minimum, the following by means of the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program:

1. Discharge of pollutants to surface and ground waters;
2. Discharge of industrial pollutants by a significant indirect user and any other indirect discharger into a municipal or privately owned treatment works. All indirect dischargers are required to either obtain and comply with an individual NJPDES permit, or comply with the applicable NJPDES permit-by-rule provisions. No exemption, express or implied, conferred by this chapter from the requirement of obtaining an individual NJPDES permit shall be so construed as to bar criminal prosecution under N.J.S.A. 58:10A-10f of any indirect discharger who discharges in violation of the requirements of this chapter applicable to indirect dischargers who are not required to obtain individual NJPDES permits. See also N.J.A.C. 7:14A-13.4(c). Although all dischargers who discharge to privately owned treatment works may not be required to obtain a NJPDES permit, such dischargers shall comply with N.J.A.C. 7:14-3.13(a)13;
3. Land application of residuals;
4. Land application of municipal and industrial wastewaters;

5. Discharge of leachate to surface waters and into the ground water from facilities under the jurisdiction of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

6. Criteria for the construction and operation of treatment works;

7. The storage of any liquid or solid pollutant in a manner designed to keep it from entering the waters of the State;

8. Discharge of pollutants into wells;

9. Concentrated animal feeding operations as defined in N.J.A.C. 7:14A-3.4;

10. Concentrated aquatic animal production facilities as defined in N.J.A.C. 7:14A-3.5;

11. Discharges into aquaculture projects as defined in N.J.A.C. 7:14A-3.6;

12. Silvicultural point sources as defined in N.J.A.C. 7:14A-3.7;

13. Discharges of stormwater to surface waters, including discharges through storm sewers, as set forth in N.J.A.C. 7:14A-3.8; and

14. Treatment, storage or disposal of hazardous waste as defined in subchapter 4 of this chapter.

(e) The Department may issue, at a minimum, permits under the NJPDES permit program for:

1. Discharge of pollutants to surface water (DSW), (subchapter 3 of this chapter) including, where applicable, a discharge allocation certification (DAC) (N.J.A.C. 7:14A-3.3);
2. Discharge of pollutants into a municipal or privately owned treatment works (Significant Industrial User (SIU) (subchapter 12 of this chapter));
3. Treatment, storage or disposal of hazardous waste which is not regulated by the "Hazardous Waste Management Regulations", N.J.A.C. 7:26;
4. Discharge of pollutants into wells (Underground Injection Control (UIC) (subchapter 5 of this chapter)) in accordance with the State Act and as required to be regulated under the "Resource Conservation and Recovery Act", as amended (Industrial Waste Management Facility (IWMF) (subchapter 4 of this chapter));
5. Surface impoundments (SI);
6. Land application of sludge and septage (LAS);
7. Land application of effluents by spray irrigation (LSI);
8. Land application of effluents by overland flow (LOF);
9. Land disposal by infiltration-percolation lagoons (LIPL);

10. Discharges from operating and non-operating sanitary landfills (a DGW or DSW).

As amended, R.1984 d.133, effective April 16, 1984.

See: 15 N.J.R. 1059(b), 16 N.J.R. 882(a).

(d)2: "indirect discharger" language added; conformance with 40 CFR 403 deleted.

Amended by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Added substantial amendments.

Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Changes to conform to N.J.S.A. 58:10A-6.

Case Notes

Standing to challenge pollutant discharge: no federal limitation period applicable to citizen suit; liability established by polluter's admissions and official reports that effluent limits exceeded. Student Public Interest Research Group of New Jersey v. P.D. Oil & Chemical Storage, Inc., 627 F.Supp. 1074 (D.N.J.1986).

7:14A-1.3 General prohibitions

(a) The Department shall not issue a NJPDES permit:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations;

2. When the NJPDES permit would be for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

3. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;

4. For any discharge which conflicts with any areawide plan or plan amendment adopted pursuant to law;

5. To a domestic treatment works (DTW) where the NJPDES permit provides for the disposal of domestic wastewater sludge at a landfill unless:

i. The Department determines that there are no reasonable alternative sludge management options available to the DTW;

ii. The Department determines that the landfill is equipped with an adequate system for the interception, collection and treatment of any and all leachate; and

iii. The DTW has signed a consent order with the Department which sets forth the date sewage sludge disposal shall cease and the date acceptable sewage sludge management shall be instituted.

6. For any discharge which the United States Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage or navigation;

7. For any discharge to which the Administrator has objected in writing pursuant to the Federal Act.

Amended by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (a)5, changed "facility" to "domestic treatment works" and added i-iii, criteria for non-issuance.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Changes to conform to N.J.S.A. 58:10A-6.

Case Notes

Standing to challenge pollutant discharge; relief could be sought for past violation of discharge permit in Clean Water Act citizen's suit; Clean Water Act violated; plaintiff could seek injunction to set up discharge monitoring program. Student Public Interest Research Group of New Jersey v. Georgia-Pacific Corp., 615 F.Supp. 1419 (D.N.J.1985).

Landfill operator entitled to rate increase to pay for closure measures and postclosure maintenance required by Department of Environmental Protection. In re Petition of Landfill and Development Co., 207 N.J.Super. 5, 503 A.2d 881 (App.Div.1985).

7:14A-1.4 Consolidation of permit processing

(a) It is the intent of the Department to issue a single NJPDES permit which includes all of the discharges covered by this chapter. (See N.J.A.C. 7:14A-1.2(e)). The Department has designated the types of discharges separately because certain information required in the permit applications and certain provisions that will be established as permit conditions are only applicable to a specific type of discharge. Herein where a person is required to obtain a permit for a discharge covered under this chapter, this shall mean that a specific type of discharge shall be included in and regulated by the NJPDES permit. The general provisions of this chapter shall apply to all types of discharges included in the NJPDES regulations (Subchapters 1, 2, 7 and 8 of this chapter). Additional conditions may apply to specific types of discharges.

(b) Whenever a facility or activity has more than one type of discharge covered by this chapter, application for all required permits to discharge shall be made at the earliest required date of filing for any of the discharges in accordance with N.J.A.C. 7:14A-2.1(g) and 10.1.

(c) Whenever a facility or activity has more than one type of discharge covered by this chapter, processing of two or more applications for those permits shall, to the extent practicable as determined by the Department, be consolidated. The first step in consolidation shall be the simultaneous preparation of draft permits.

(d) Whenever draft permits are simultaneously prepared, the statements of basis (required under N.J.A.C. 7:14A-7.7) or fact sheets (N.J.A.C. 7:14A-7.8), administrative records (required under N.J.A.C. 7:14A-7.9), public comment periods (N.J.A.C. 7:14A-8.1), and any public hearings (N.J.A.C. 7:14A-8.3) on those permits shall also be consolidated. The final permits shall, to the extent practicable, be simultaneously issued. Final permits need not be simultaneously issued if, in the judgment of the Department, joint process-

ing would result in unreasonable delay in the issuance of one or more approval(s) for discharge.

(e) Whenever an existing facility or activity requires additional permits covered by this chapter, the Department shall, to the extent practicable, coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits simultaneously expire. Processing of the subsequent application for renewal shall then be consolidated.

(f) Processing of permit applications under (b), (c), and (d) above may be consolidated as follows:

1. The Department, at its discretion may, to the extent practicable, consolidate permit processing;
2. Permit applicants may recommend whether or not the processing of their applications shall be consolidated.

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).
Substantially amended.

7:14A-1.5 Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this chapter, and to this end, the provisions of this chapter are declared to be severable.

7:14A-1.6 Conflict of interest

(a) Any board or body which approves all or portions of a permit shall not include as a member any person who receives, or has during the previous two years received, a significant portion of direct or indirect income from permit holders or applicants for a permit.

(b) For the purposes of this section:

1. "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.
2. "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

3. "Permit holders or applicants for a permit" does not include any department or agency of State government.

4. "Income" includes retirement benefits, consultant fees, interest, and stock dividends.

(c) For the purposes of this section, "direct or indirect income from permit holders or applicants for a permit" is not received when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the primary sources of income.

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).
Substantially amended.

7:14A-1.7 Application

(a) This chapter should be liberally construed to permit the Department to effectuate the purposes of the State Act.

(b) The Department may require an applicant to provide additional information where such information, in the opinion of the Department, is necessary to attain all relevant facts concerning the permit application or permit, including proprietary data. Any failure to submit such information shall constitute valid cause for denial of the permit or other remedy as provided by law. The applicant may, however, assert a claim of confidentiality pursuant to N.J.A.C. 7:14A-11.1 et seq.

(c) Upon notice to all persons involved in a specific proceeding, and after public notice in the DEP Bulletin with a 30-day comment period, the Commissioner or an authorized representative may, in the public interest, relax the application of these regulations.

(d) The issuance and compliance of all DSW, UIC, IWMF permits shall, at a minimum, satisfy the requirements of 40 CFR Parts 122, 123 and 124, the Federal Act, and the State Act, notwithstanding (c) above.

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).
Substantially amended.

Amended by R.1992 d.434, effective November 2, 1992.
See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) Except as provided in (i) and (j) below, the general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1. Except as provided by (k) below, the Department shall collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a NJPDES permit or authorization to discharge under a NJPDES general permit, or submit a NJPDES permit application or request for authorization.

2. The Department shall not assess any fee to public schools or religious or charitable institutions.

3. All NJPDES permittees/applicants that are issued a draft or final NJPDES permit, or that are issued an authorization to discharge under a final NJPDES general permit, shall submit payment within 30 days of assessment of the fee by the Department.

i. Upon receipt of a completed application or request for authorization, the Department shall assess the minimum fee as set forth in (h) below.

ii. Upon issuance of the final permit or of an authorization to discharge under a final NJPDES general permit, the annual fee shall be calculated and pro-rated for the period of the fee year remaining. The minimum fee already paid shall then be subtracted from the pro-rated assessment. In no case, however, will such payment of a pro-rated fee result in a fee that is less than the minimum fee for the category of discharge. The permittee may request a fee recalculation as provided at (a)6 below, once the first required monitoring report has been completed.

4. Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
 Bureau of Revenue
 CN 402
 Trenton, New Jersey 08625

5. If the permittee/applicant fails to submit payment to the Department within 30 days of assessment of the fee, the Department may, in its discretion, take one or more of the following actions:

i. Return the NJPDES permit application or request for authorization to the applicant;

ii. Deny issuance of a final permit or authorization under a final general permit;

iii. Terminate a final permit (including termination of a permittee's authorization to discharge under a general permit); and/or

iv. Assess penalties pursuant to N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

6. If the permittee objects to the assessment, the Department shall recalculate a permit fee upon receipt of a request from the permittee in writing within 30 days of assessment of the fee. The Department will not recalculate a fee where the permittee has failed to submit information in compliance with its NJPDES permit.

i. A permittee may only contest a fee imposed pursuant to (k) below based on the following:

(1) The Department has no factual basis to sustain the charges assessed in the fee;

(2) The activities for which the fee was imposed did not occur;

(3) The charges are false or duplicative; or

(4) The charges were not properly incurred because they were not associated with the Department's oversight or remediation of the case.

ii. A permittee may not contest a fee imposed pursuant to (k) below if the challenge is based on the following:

(1) An employee's hourly salary rate;

(2) The Department's salary additive rate, indirect rate, or fringe benefit rate; or

(3) Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

iii. A permittee objecting to a fee imposed pursuant to (k) below shall include the following in a request for a fee review:

(1) A copy of the bill;

(2) Payment of all uncontested charges, if not previously paid;

(3) A list of the specific fee charges contested;

(4) The factual questions at issue in each of the contested charges;

(5) The name, mailing address and telephone number of the person making the request;

(6) Information supporting the request or other written documents relied upon to support the request.

7. The Department, in calculating Environmental Impact, shall use information reported by the permittee on Discharge Monitoring Reports (DMRs) and/or Monitoring Report Forms (MRFs) for the 12 month period for which data is available on the Department's computer. The selected 12 month monitoring period will be documented in the Annual NJPDES Fee Schedule Report. Where this information is not available, the Department shall use permit limitations, information submitted in permit applications, technical reports prepared by the Department or submitted by the permittee, or other permits issued by the Department.

8. Except as provided by (k) below, the Department, upon the termination of a NJPDES permit, or revocation of a NJPDES/SIU permit in accordance with N.J.A.C. 7:14A-10.5(g) shall upon written request of the permittee prorate the fee for the number of days that the facility was in operation or was discharging under a valid NJPDES/SIU permit during the billing year and return to

the permittee the amount that is in excess of the minimum annual fee for the specific category of discharge.

9. Except as provided by (k) below, the annual fee for all discharges is calculated by applying the formula: Fee = (Environmental Impact x Rate) + Minimum Fee, where:

i. Environmental Impact is the Department's assessment of potential risk of discharge to the environment as derived under (c) through (g) below.

ii. Rate is the dollar cost for each weighted unit of Environmental Impact. Rate is calculated as follows:

$$\text{Rate} = \frac{\text{Budget} - \text{Sum of Minimum Fees}}{\text{Total Environmental Impact}}$$

(1) Budget is the total budget for the category of Discharge.

(2) The Sum of Minimum Fees is the total amount of minimum fees to be paid by all dischargers in the category of discharge. The minimum fee is a base cost added to the calculated individual fee. The minimum fees are set forth in (h) below.

(3) Total Environmental Impact is the sum of environmental impact for all dischargers in the category.

10. The Department shall use the total pollutant load as calculated in (c)1i below for surface water discharges, the quantity discharged as calculated in (d)1ii below for permittees subject to (d)1 below, or the total weighted concentration as calculated in (d)2ii below for permittees subject to (d)2 below to calculate environmental impact. The maximum fee to be assessed for any category of discharge shall be 10 percent of the budget for the category of discharge.

11. If a factual dispute involving a fee imposed pursuant to (k) below cannot be resolved informally, a permittee may request an adjudicatory hearing on the matter pursuant to N.J.A.C. 7:14A-8.9.

(b) The Department shall prepare an Annual NJPDES Fee Schedule Report and provide for a public hearing on the Report.

1. The Annual NJPDES Fee Schedule Report shall include the following:

i. A detailed financial statement of the actual administrative cost of the NJPDES program by account title;

ii. A detailed financial statement of the actual revenue collected, including any surplus which can be credited or any deficit to be assessed in determining the fee schedule.

iii. A detailed financial statement of the anticipated cost of the NJPDES program, including:

- (1) A breakdown of the program by account title;
- (2) An estimate of the amount of fees that will be collected; and
- (3) The current year's fee schedule.

iv. A report of the NJPDES program activities, including:

- (1) A list of permits issued;
- (2) A list of facilities inspected;
- (3) A list of administrative orders and administrative consent orders issued by the Department (by type of order and discharge involved); and
- (4) A summary of variance request activities under section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

2. The Department shall provide for a hearing on the Annual NJPDES Fee Schedule Report. The Department shall provide public notice of the hearing at least 30 days prior to the date of the hearing:

- i. In the New Jersey Register and one newspaper of general circulation; and
- ii. By mailing a copy of the Report to each NJPDES applicant/permittee.

(c) Except as provided in (i) and (j) below, the annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Surface Water is derived by applying the formula: Environmental Impact = (Total Pollutant Load + Heat Load) x (Bioassay Factor + Stream Factor), where:

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

(1) Net loadings will be used if a net limit has been established in the NJPDES permit. If a permittee reports a pollutant load less than zero, a zero will be used to calculate the Total Pollutant Load.

(2) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected at least once in the monitoring period, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations.

ii. Heat Load is the average mBTU's (million British Thermal Units) per hour of the effluent discharged. Where heat load is not reported in mBTU's per hour, the Department shall estimate the heat load using the calculated difference between the influent and effluent temperature multiplied by the amount (in million gallons per day) of effluent discharged. The Department shall use an average influent temperature of 5.57 degrees centigrade during the period November to April and 18.87 degrees centigrade during the period May to October.

iii. Bioassay Factor is the effluent limit in the permit divided by the percent effluent resulting in the 96 Hour LC₅₀. Where the effluent limit set forth in the permit is less stringent than the Wastewater Discharge Requirements (N.J.A.C. 7:9-5.1 et seq.), an effluent limit of 50 shall apply. Where the effluent limit set forth in the permit requires No Measurable Acute Toxicity (N.M.A.T.), an effluent limit of 100 shall apply, except:

(1) Where Bioassay testing is not required by the permit, a Bioassay Factor of 1 will be used; or

(2) Where the permit specifies a limit of N.M.A.T. and the mortality is less than or equal to the control mortality, the Department will use a Bioassay Factor of 0.5.

iv. Stream factor is the sum of the reported Water Quality Index (listed in the New Jersey Water Quality Inventory Report, prepared by the Division of Water Resources and available from the Department) divided by 100, the reported Water Use Index (listed in the New Jersey Water Quality Inventory Report) divided by 50, and the Designated Use Index (derived from the New Jersey Water Quality Inventory Report) assigned by the Department as follows:

Designated Use	Uses met in the Stream Segment
1.00	Segment does not meet designated uses.
0.75	Sometimes meets one use, or a small portion of the watershed meets designated uses.
0.50	Segment meets one designated use.
0.25	A small portion of the watershed does not meet or seasonally does not meet all designated uses.
0.00	All designated uses are met in the watershed.

Note: Designated uses are established by N.J.A.C. 7:9-4. The Department shall use the most recent edition of New Jersey Water Quality Inventory Report.

2. The Department shall assess an additional fee to NJPDES permittees who request a variance under Section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.). The annual fee shall be assessed on the basis of the administrative cost that is incurred by the

Department and the cost of the technical review performed by a consultant hired by the Department.

(d) Except as provided by (k) below, the annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is based upon the level of monitoring and/or remedial activity required by the Department at the permitted site. Permittees not required to conduct detection monitoring shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees required by the Department to conduct ground water monitoring, which is defined as monitoring performed by the permittee to determine whether current or past discharges have resulted in environmental impact, shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees which are required by the Department, in a NJPDES permit, administrative order, administrative consent order, directive letter, or other form of notice, to conduct compliance monitoring in accordance with N.J.A.C. 7:14A-6.15, source removal, and/or ground water remediation, shall use the Environmental Impact in d(2) below in the annual fee formula.

1. The Environmental Impact of a Discharge to Ground Water for permittees not required to conduct ground water monitoring or permittees required to conduct detection monitoring is derived by applying the formula: Environmental Impact = (Risk x Quantity x Ground Water Rating Factor) where:

i. Risk is the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each type of waste stored, treated or discharged. The rating numbers are assigned as follows:

Rating	Risk
1	Non-contact cooling water, treated ground water, filter backwash, sanitary wastewater with at least secondary treatment.
2	Other treated and untreated sanitary wastewater, food processing waste, stormwater runoff including runoff from non-hazardous waste storage areas, sanitary sludge.
5	Non-hazardous industrial process waste.
15	Metal plating waste, hazardous industrial process waste, landfill leachate, or ground water, wastewater, stormwater runoff or sludge containing hazardous constituents.

ii. Quantity is the average daily volume in millions of gallons discharged by the permittee for the monitoring period selected by the Department in (a)7 above.

iii. Ground Water Rating Factor is the sum of the Ground Water Monitoring Status Factor, the Aquifer Factor, Ground Water Use Factor and Permeability Rating divided by 10 where:

(1) Ground Water Monitoring Status Factor is the rating number, assigned to the facility based on the level of monitoring and/or remediation required at the facility, as set forth in the NJPDES permit,

administrative order, administrative consent order or directive letter in accordance with N.J.A.C. 7:14A-6.15, as follows:

Rating	Status
1	Permittee is not required to conduct ground water monitoring under the NJPDES permit.
2	Permittee is conducting post-closure or post remediation monitoring.
2	Permittee is required to conduct detection monitoring.
5	Ground water remediation and/or hydraulic source control is being performed at the site.
5	Alternative concentration limits have been established.
10	Compliance monitoring is required as ground water contamination has been identified in detection monitoring phase and/or ground water remediation is required.

(2) Aquifer Factor is the rating number, based on ground water yield potential, assigned to each aquifer formation listed in Table II. Where a facility is located on an unlisted aquifer, the Department will determine the aquifer factor. Where the facility is located on more than one aquifer the highest rating number will be assigned.

(3) Ground Water Use is the rating number assigned to the municipality where the permitted facility is located based on the percentage of the municipality that relies on public or private wells for drinking water and the volume of ground water withdrawn in million gallons per day (MGD). The Department, in the Annual NJPDES Fee Schedule Report, prepared pursuant to (b) above, shall set forth the individual ratings assigned to each municipality. Where a municipality's percent use and volume result in different ratings, the highest Ground Water Use rating number derived below shall apply. Ground Water Use rating numbers are assigned as follows:

Rating	Ground Water Use	Percent Use	Volume in MGD
5	A	>50%	>3
3	B	10%-50%	.1-3
1	C	<10%	<.1

(4) Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation immediately beneath the regulated unit or if present, the facility liner material for the facilities in detection monitoring. For all other facilities, the permeability factor is based on the hydraulic conductivity of the geological material contaminated. Facilities assigned a Ground Water Monitoring Status factor of 10, that have demonstrated control of the plume of ground water contamination shall be assigned a permeability factor of 10. Where permeability is not provided to the Department by the permittee, the Department shall assume a permeability factor of 10^{-2} . The rating numbers are assigned as follows:

Rating	Permeability
10	$<10^{-7}$
11	10^{-6}
12	10^{-5}
14	10^{-4}
18	10^{-3}
20	10^{-2}
22	$>10^{-2}$

2. The Environmental Impact for a Discharge to Ground Water for permittees required to conduct compliance monitoring, source removal, and/or ground water remediation is derived by applying the formula: Environmental Impact = (Area x Total Weighted Concentration x Ground Water Rating Factor) where:

i. Area is:

(1) The total acres of the permitted site; or

(2) Where the permittee has delineated the plume, in accordance with the requirements of the NJPDES permit, the total area in acres affected by the plume based on a surface projection.

ii. Total Weighted Concentration is the sum of all pollutant concentrations limited in the NJPDES permit and converted to milligrams per liter (mg/l) multiplied by their associated risk as listed in Table I. The highest average pollutant concentration detected in any well during the monitoring period selected by the Department in (a)7 above shall be used unless the permittee has delineated the extent of plume as required by their NJPDES permit. Where plume has been delineated, the Department shall use the average pollutant concentration for all wells for the monitoring period selected by the Department in (a)7 above.

(1) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Concentration, if reported as non-detectable in all samples for the monitoring period. To calculate the average concentration for a delineated plume, the Department will use zeros for these pollutant concentrations if not detected in a well. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected once, the Department shall calculate the Total Weighted Concentration using one-half the reported minimum detection limit for pollutant concentrations.

iii. Ground Water Rating Factor is the number derived in (d)1iii above.

(e) The annual fee for residuals is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of residuals is derived by applying the formula: Environmental Impact = Pathogen Reduction x (Nitrogen + Total Metals Load), where:

i. Pathogen Reduction is 1 where the residual satisfies the requirements for "Processes to Significantly Reduce Pathogens" set forth at 40 CFR 257 or 0.8 where the residual satisfies the requirements for "Processes to Further Reduce Pathogens" set forth at 40 CFR 257.

ii. Nitrogen is the annual amount of nitrogen (in pounds) generated or land applied to the site.

iii. Total Metals Load is the total metal equivalent in pounds generated or land applied, derived from the average concentration of cadmium, copper, nickel, lead and zinc multiplied by the relative toxicity value of that metal (Cadmium 10.0, Copper 0.4, Nickel 1.0, Lead 1.0, and Zinc 0.2).

(f) Except as provided by (k) below, the annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water from sanitary landfills and sites containing wrecked or discarded equipment is derived by applying the formula: $Environmental\ Impact = (W1 + W2) \times (Closure\ Status\ Factor + Ground\ Water\ Rating\ Factor)$ where:

i. W1 is the total number of acres filled as of January 1, 1985 multiplied by the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each waste type (as set forth in N.J.A.C. 7:26-2.13) permitted for disposal before January 1, 1985. The rating numbers are assigned as follows:

Rating	Waste Type
1	Types 13, 23
2	Types 10, 12, 27, 72, 73, 74
4	Types 18, 25
8	Types 26, 70 and wrecked or discarded equipment
16	Types 17, 28, 76, 77.

ii. W2 is the total cumulative amount of each waste type received (in cubic yards) since January 1, 1985 divided by 4,840 (the square yards in an acre) and multiplied by the rating number assigned to each waste type as set forth in (f)1i above.

iii. Closure Status Factor is the rating number, based on the operating status of the landfill, assigned by the Department to each facility. The rating numbers are assigned as follows:

Rating	Closure Status
1.0	Operating landfill and sites containing wrecked or discarded equipment.
0.5	Landfill terminated after January 1, 1982 without a Department approved closure plan.
0.2	Landfill terminated prior to January 1, 1982.

Rating	Closure Status
0.1	Landfill terminated and properly closed in accordance with a Department approved closure plan.

iv. Ground Water Rating Factor is the number derived under (d)1iii above.

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge by a significant indirect user (SIU) to a domestic treatment works (DTW) is derived by applying the formula: $Environmental\ Impact = (Total\ Pollutant\ Load)$.

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

(1) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected once, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations. The Department shall use one-half the reported detection limit for pollutant concentrations reported as non-detectable to calculate the Total Pollutant Load.

(h) Except as provided by (k) below, minimum fees are as follows:

1. The minimum fee for Discharge to Surface Water permits shall be \$500.00, except that:

i. The minimum fee for hazardous waste facilities regulated by N.J.A.C. 7:26 and for the Industrial Waste Management Facilities regulated by N.J.A.C. 7:14A-4 shall be \$10,000.

ii. The fee for NJPDES Permit No. NJ0088323 (N.J.A.C. 7:14A-3, Appendix B) is specified in (j) below.

2. The minimum fee for Discharge to Ground Water (DGW) permits, except for residuals and landfills covered in (h)3 and 4 below, shall be assessed as follows:

i. Facilities assigned a Ground Water Monitoring Status Factor of 1 or 2 under (d)1iii(1) above shall be assessed a minimum fee of \$500.00;

ii. Facilities assigned a Ground Water Monitoring Status Factor of 5 under (d)1iii(1) above shall be assessed a minimum fee of \$1,500;

iii. Facilities assigned a Ground Water Monitoring Status Factor of 10 under (d)liii(1) above shall be assessed a minimum fee of \$5,000;

iv. Facilities who have obtained a ground water discharge permit-by-rule pursuant to N.J.A.C. 7:14A-5.5(a) shall be assessed a minimum fee of \$250.00; and

v. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit, facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES ground water permit for a Resource Conservation Recovery Act (RCRA) unit assigned a Ground Water Monitoring Status of 1 or 2 shall be assessed a minimum fee of \$10,000;

vi. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit and facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES ground water permit for a RCRA unit assigned a Ground Water Monitoring Status of 5 shall be assessed a minimum fee of \$20,000; and

vii. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit and facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES Ground Water permit for a RCRA unit assigned a Ground Water Monitoring Status of 10 shall be assessed a minimum fee of \$40,000.

3. The minimum fee for a Residuals permit shall be assessed as follows:

i. The minimum fee for domestic sludge shall be \$500.00;

ii. The minimum fee for non-hazardous industrial sludge shall be \$1,000.00; and

iii. The minimum fee for hazardous industrial sludge shall be \$5,000.00.

4. The minimum fee for sanitary landfills shall be assessed as follows:

i. Landfills that are operating or terminated after January 1, 1982 without an approved closure plan shall be assessed a minimum fee of \$2,500.00;

ii. Terminated Landfills properly closed with a Department approved closure plan, or closed prior to January 1, 1982 shall be assessed a minimum fee of \$500.00.

5. The minimum fee for a transfer station shall be \$500.00 and the annual fee for a transfer station shall be \$500.00.

6. The minimum fee for a permit to discharge to a Domestic Treatment Works shall be \$500.00, except that the minimum fee for a permit issued pursuant to N.J.A.C. 7:14A-4 shall be \$10,000.

7. The minimum fee for an emergency permit issued pursuant to N.J.A.C. 7:14A-2.2 shall be determined based on (h)1 and 2 above but in no case will it be less than \$1,000.00.

8. The minimum fee for land based soil treatment operation shall be \$1,500 except for a RCRA unit which shall be subject to the minimum fee of \$20,000.

(i) For NJPDES Permit No. NJ0088315 (N.J.A.C. 7:14A-3, Appendix A, incorporated herein by reference), the annual fee collected under (a) above shall be the minimum fee of \$500.00 set forth in (h)1 above. A request for authorization under that permit shall not be complete unless this fee is included in that request, or unless this permit has been reissued and this fee has already been paid for the billing year in which the RFA is submitted.

(j) For NJPDES Permit No. NJ0088323 (N.J.A.C. 7:14A-3, Appendix B, incorporated herein by reference), there is no annual or minimum fee. Instead, a fee of \$200.00 shall be paid by check or money order, payable to "Treasurer, State of New Jersey," and submitted to the soil conservation district along with each request for authorization submitted under that permit. The soil conservation district shall forward all such checks and money orders to the State Soil Conservation Committee in the Department of Agriculture, which shall cause such checks and money orders to be deposited to the credit of the State. The soil conservation district shall not certify any request for authorization that is not accompanied by this fee.

(k) The fee for discharges to ground water required for conducting remediation, as defined by N.J.A.C. 7:26E, of contaminated sites is calculated by using the following formula:

1. Fee = A + B, where:

A = (Number of coded hours × Hourly Salary Rate) × Salary Additive Rate × Fringe Benefit Rate × Indirect Cost Rate.

B = any contractual costs or sampling costs of the Department directly attributable to a specific permittee.

i. Number of coded hours represents the sum of hours each employee has coded to the site-specific project activity code (PAC) for the case. Actual hours for all staff members including without limitation managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, using the specific PAC, will be included in the formula calculations.

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year.

iii. The NJDEPE salary additive rate represents the prorated percentage of charges attributable to employees' reimbursable "down time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges (number of coded hours x hourly salary rate) are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular case.

iv. The fringe benefit represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs.

v. The indirect cost rate represents the rate which has been developed for the recovery of indirect costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

(1) The components of the indirect cost rate include operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Division of Publicly Funded Site Remediation and the Division of Responsible Party Site Remediation. In addition, the indirect rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commission-

er, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services and the Division of Personnel.

(2) The indirect rate includes operating costs such as office and data processing equipment, and telephones as well as building rent and the Department's share of statewide costs as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30. The total of these indirect costs is divided by the total direct costs of the Site Remediation Program to determine the indirect cost rate.

vi. Sampling costs and contractor expenses represent non-salary direct, site specific costs. These costs are billed directly as an add on to the formula.

2. The Department shall develop on an annual basis and publish notice of the salary additive rate, fringe benefit rate and the indirect cost rate for the fiscal year in the New Jersey Register. These rates are developed on an annual basis after the close of the fiscal year.

3. The Department will charge fixed and non-refundable fees for the following categories of activities:

- i. The fee for an emergency permit is \$700.00 and is due and payable upon issuance.
- ii. The fee for a permit application is \$350.00 and is due and payable with the application.

4. The Department will bill permittees at regular intervals throughout the life of the permit based on the formula in (k)1 above. The permittee shall submit the fee to the Department within 30 calendar days after receipt from the Department of a summary of the Department's oversight costs for the period being charged. The Department shall include the following information in the summary: description of work performed, staff member(s) performing work, number of hours worked by the staff member(s) and staff members' hourly salary rate.

(l) Any fee under this section that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

TABLE I
RISK CATEGORIES

Risk Factor	100	101	102	103	104	105
				SURFACE WATER		
TDS	TSS	Tin		Styrene	Arsenic	Lead
Chloride	Phosphorus	Aluminum		Nickel	Beryllium	Mercury
Sulfate	Phtahalic Acid	Antimony		Copper	Asbestos	Cadmium
Fluoride	Sulfide	Barium		Silver	Acid fraction compounds	Chromium-hex
Iron	Molybdenum	Chromium-trivalent		Cobalt	Base-Neutral Compounds	Pesticides
	Bismuth	Oil & Grease		Ammonia		PCB

Risk Factor 100	101 Manganese Zinc	102 Surfactants N (nitrite, nitrate Kjeldhal, diss. & Total) Oxidizable Matter Petroleum Hydrocarbons	103 Cyanide Selenium	104 Volatile Organics	105 PBB
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GROUND WATER

TSS	TDS	Iron	Silver	Lead	Mercury
Aluminum	Chloride	Manganese	Fluoride	Arsenic	Cadmium
Phosphorus	Sodium	Chromium-trivalent	Barium	Beryllium	Chromium-hex
	Antimony	Zinc	Nitrate	Pesticides	Petroleum
	Bismuth	Copper	Phenol	Acid fraction compounds	hydrocarbons
	Sulfate	Ammonia	Cobalt	Base-Neutrals	Total Volatile
		Oil & Grease	Selenium		Organics
		Surfactants	Nickel		(including
		Oxidizable Matter			TTHM)
		TOC			

INDIRECT DISCHARGERS

BOD	TDS	1, 1-Dichloroethylene	Nickel	Beryllium	Carbon
TSS	Iron	Copper	Silver	1,1,1-Trichloroethane	Tetrachloride
COD	Antimony	Zinc	Asbestos	Lead	Mercury
	Bismuth	Chromium-Trivalent	Cobalt	Arsenic	Cadmium
	Tin	Barium	Selenium	Bis (2-ethylhexyl) phthalate	Chromium, hex &
	Manganese	Cyanide	Benzene	Dichlorodifluoromethane	Total
	Inorganic Sulfur	Dimethyl phthalate	1,2-Dichloroethane	Trichlorofluoromethane	Pesticides
	Compounds	Surfactants	Chloroform	Total Toxic Organics**	PCBs
		Oil & Grease	Ethylbenzene	Volatile Organics*	Dioxin
		Petroleum Hydrocarbons	Naphthalene	TVOS as in N.J.A.C.	
		Total Toxic Metals**	1,2,4-Trichlorobenzene	7:27-17.3 **	
		Nitrogen Compounds/ Ammonia	Vinyl Chloride	Chlorobenzene	
		Phenols	Base Neutral Compounds*	Toluene	
			Acid Extractables Compounds*	1,2-Trans-Dichloroethylene	
			1,1,2,2-Tetrachloroethane	Trichloroethylene	
			Bromoethane		
			1,2-Dichloropropane		
			1,1-Dichloroethane		
			1,1,2-Trichloroethane		
			Dichlorobenzene		
			Di-n-butyl phthalate		
			Anthracene		
			Tetrachloroethylene		
			Pentachlorophenol		
			Butyl Benzyl Phthalate		
			Di-n-octyl Phthalate		

* Unlisted
** Not Itemized

**TABLE II
FORMATION RATINGS**

System	Formation	Potential	Points	System	Formation	Potential	Points	
Quaternary	Pleistocene	Glacial drift			Triassic	Wenonah	Minor	4
		Mercer, Middlesex Other counties	Poor	2		Marshalltown	None to Poor	2
		Cape May	Mod. to Very Good	10		Englishtown	Good to Mod.	8
		Pennsauken	Moderate to Good	8		Woodbury	None	1
		Bridgeton	Mod. to Minor	6		Merchantville	None	1
Tertiary	Pleistocene	Beacon Hill	Poor	2	Raritan-Magothy	Very Good	10	
		Cohansey	Very Good	10	Devonian	Watchung	Minor	4
	Miocene	Kirkwood	Good to Mod.	8		Diabase	Minor	4
	Eocene	Piney Point	Minor	4		Brunswick	Minor to Good	8
		Shark River	None	1		Lockatong	Poor	2
	Paleocene	Manasquan	Poor	2		Stockton	Mod. to Good	8
		Vincentown	Poor to Good	8		Border Conglomerates	Minor	4
		Hornerstown	None to Poor	2		Quaternary	Skunnemunk	Poor
	Cretaceous	Tinton	None to Poor	2			Bellvale	Poor to Minor
		Red Bank	Poor to Minor	4	Cornwall/Pequanac		Poor	2
Navesink		None to Poor	2	Kanouse	Poor		2	
Mt. Laurel		Moderate	6	Marcellus	Poor		2	
			6	Onondaga	Moderate		6	
			4	Schoharie	Minor	4		

System	Formation	Potential	Points	
	Esopus	Poor	2	
	Oriskany (includes Glenerie and Port Ewen)	Minor	4	
	Becraft (Minisink)	Poor	2	
	New Scotland	Minor	4	
	Kalkberg (Stormville)	Minor	4	
	Coeymans	Minor	4	
	Silurian	Manlius	Minor	4
		Rondout	Minor	4
		Decker	Minor	4
		Bossardville	Minor	4
Poxono Island		Minor	4	
High Falls		Minor	4	
Longwood		Minor	4	
Shawangunk and Green Pond		Poor	2	
Ordovician	Jacksonburg	Minor	4	
	Ontelaunee	Minor	4	
	Epier	Minor	4	
	Rickenback	Moderate	6	
Cambrian	Allentown Upper	Minor	4	
	Lower	Mod. to Very Good	10	
	Leithsville	Very Good	10	
	Hardyston	Poor	2	
Precambrian	Franklin	Minor to Mod.	6	
	Crystalline Rocks	Minor to Mod.	6	

Amended by R.1982 d.495, effective January 17, 1983.

See: 14 N.J.R. 684(a), 15 N.J.R. 85(a).

Testing replaced.

Amended by R.1985 d.315, effective June 17, 1985.

See: 17 N.J.R. 13(a), 17 N.J.R. 1551(b).

Section substantially amended.

Administrative Correction: Formulas corrected.

See: 17 N.J.R. 1882(a).

New Rule, R.1987 d.281, effective July 6, 1987.

See: 19 N.J.R. 706(a), 19 N.J.R. 1191(a).

Repealed old rule "Fee schedule for NJPDES permittees."

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (a)4, "Bureau of Collection and licensing" changed to "Bureau of Revenue"; at (d)1i, filter backwash added as # 1 rated pollutant; at (g)1i, glass added as # 1 rated industrial category.

Amended by R.1990 d.197, effective April 2, 1990.

See: 21 N.J.R. 3590(a), 22 N.J.R. 1124(a).

Fee schedule calculations clarified and specified further.

Notice of Public Hearing for 1990-91 Annual Fee Report and Fee Schedule.

See: 22 N.J.R. 3882(d).

Public Notice: Adoption of New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Fee Schedule.

See: 23 N.J.R. 1204(c).

Amended by R.1991 d.214, effective April 15, 1991.

See: 22 N.J.R. 3679(a), 23 N.J.R. 1151(a).

Added reference in (a)3ii to fee recalculation as provided at (a)6. Replaced rate calculation formula in (a)9ii with new formula. Added new definitions of Budget in (a)9ii(1); Sum of Minimum Fees in (a)9ii(2); and Total Environmental Impact in (a)9ii(3). Deleted (a)9iii. Eliminated reference to a square root function in the environmental impact calculation. Added statement on maximum permit fee in (a)10. Added (c)1 and 2. Deleted the date reference for the New Jersey Water Quality Inventory Report in (c)1iv. Added "Facilities assigned a Ground Water Monitoring Status factor of 10, that have demonstrated control of the plume of ground water contamination shall be assigned a permeability factor of 10." in (d)1iii(4). Added (d)2ii(1). Added "Total Pollutant Load" in (g)1. Replaced (g)1i and ii with (g)1i. Added "and facilities with a NJPDES ground water permit for a Resource Conservation Recovery Act (RCRA) unit assigned a Ground Water Monitoring Status of 1 or 2" in (h)2v. Added (h)2vi and vii. Added (b)8. Added in Table I—Surface Water, 10²—Petroleum Hydrocarbons and 10⁴—Volatile Organics. Added category "Indirect Dischargers" in Table I.

Administrative Correction to (d)1iii(4).

See: 23 N.J.R. 2346(a).

Public Notice: Notice of 1991-92 New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Fee Schedule.

See: 24 N.J.R. 1909(d).

Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a), 24 N.J.R. 4364(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Allows the Department to prorate fees in delegated service areas as a result of permit revocation.

Public Notice: Adoption of 1992-93 Annual Fee Report and Fee Schedule.

See: 25 N.J.R. 2592(b).

Amended by R.1993 d.477, effective September 20, 1993.

See: 25 N.J.R. 1358(a), 25 N.J.R. 4486(a).

Public Notice: Adoption of 1993-94 NJPDES Annual Fee Report and Assessment of Fees.

See: 26 N.J.R. 3895(b).

Public Notice: Adoption of 1994 Annual Fee Report and Fee Schedule for Stormwater Permitting Program.

See: 26 N.J.R. 4102(a).

Amended by R.1995 d.205, effective April 17, 1995.

See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

Public Notice: Adoption of 1995 Annual Fee Report and Fee Schedule for Stormwater Permitting Program.

See: 27 N.J.R. 1695(a).

Case Notes

DEP could issue discharge permit to owner of closed landfill, only if Department had substantial evidential basis for believing that landfill actually was discharging pollutants that might flow or drain into State's waters. *V. Concrete Co. v. Department of Environmental Protection*, 115 N.J. 1, 556 A.2d 761 (1989).

Fee structure for pollutant discharge elimination system permits issued under Water Pollution Control Act did not have to be determined on a permit-specific cost-related basis; graduated fee schedule proportional to the deleterious impact of the permittee's discharge was reasonable; use of a bioassay factor in determining toxicity and calculating the NJPDES fees was neither arbitrary nor unreasonable. *GAF Corp. v. New Jersey Dep't of Environmental Protection*, 214 N.J. Super. 446, 519 A.2d 931 (App.Div.1986).

Fee schedule adopted to recover cost of surface water pollutant discharge permitting system proper as based on aggregate, rather than individual permit, costs: volume-based system for thermal dischargers proper: refunds due industrial users properly limited to credit on behalf of suit parties. *Public Service Electric and Gas Co. v. Dept. of Environmental Protection*, 101 N.J. 95, 501 A.2d 125 (1985).

Former regulation's method of assessing fees for discharges to surface waters invalid as unrelated to legislative policy and not established in a reasonable manner; Department's determination as to excess fee assessment credits supported by substantial credible evidence. *Public Service Electric and Gas Co. v. Dept. of Environmental Protection*, 193 N.J. Super. 676, 475 A.2d 665 (App.Div.1984), affirmed 101 N.J. 95, 501 A.2d 125 (1985).

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

"Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

"Acidizing" means the injection of acid through the borehole or "well" into a "formation" to increase permeability and porosity by dissolving the acid-soluble portion of the rock constituents.

"Actual flow" means the volume of sewage and other wastes which a domestic treatment works receives; actual flow shall be determined by the arithmetic average of the metered daily volumes of waste received at a treatment works for the preceding period of three consecutive calendar months. Where peak flows have been determined by the Department to be seasonal in nature, the seasonal peak flow period shall be used in determining actual flow.

"Adequate conveyance capacity" means:

1. That in the downstream sewers, the peak dry weather flow does not exceed 80 percent of the depth of the pipe and the peak wet weather flow does not result in overflows or discharges from any unpermitted location.

2. That in downstream pumping stations, with two pumps, peak dry weather flow shall be handled by one pump and in pumping stations with more than two pumps, peak dry weather flow shall be handled with the largest pump out of service, and the peak wet weather flow does not result in any overflow or discharge.

"Administrator" means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative.

"Affected person" means a person who has asserted (and not waived or withdrawn) a confidentiality claim covering information submitted to the Department.

"Affected sewage authority" means any public or private sewage authority, municipal utilities authority, joint meeting, state agency, county, municipality, or other entity which owns or operates any sewage treatment plant or sewage collection system, into which a treatment works will discharge; or which has jurisdiction to treat or convey sewage or other wastewater in the service area in which the proposed treatment works are to be located.

"Algacide" means chemical agents which have the capacity to destroy or otherwise control phytoplankton (algae) in water.

"Applicable standards and limitations" means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject under the Federal or State Acts including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices", and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the Federal Act and Sections 4, 6, and 8 of the State Act.

"Applicant" means any person, corporation, government body or other legal entity which applies for a NJPDES permit, DAC, or Departmental approval pursuant to this chapter, or makes a request for an exemption from a sewer connection ban as provided for at N.J.A.C. 7:14A-12.22 and has a substantial interest in the property subject to such ban.

"Application rates" means the hydraulic or loading limits determined and set by the Department governing the application of pollutants to the land or waters of the State.

"Approved industrial pretreatment program" means an industrial pretreatment program prepared by a local agency and approved by the Department in accordance with 40 CFR Part 403 and N.J.A.C. 7:14A-13.1(a).

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Area of review" means the area surrounding an "injection well" described according to the criteria set forth in N.J.A.C. 7:14A-5.14(b).

"Areawide plan" means any water quality management plan adopted pursuant to Section 208 of the Federal Act and Section 5 of the "New Jersey Water Quality Planning Act", N.J.S.A. 58:11A-1 et seq.

"Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of "daily discharges" over any seven consecutive days, calculated as the sum of all daily discharges measured during any seven consecutive days, divided by the number of daily discharges measured during that seven day period.

"Best Engineering Judgment" means a limitation determined on a case-by-case basis on any pollutant, combination of pollutants, or practice(s) which is determined necessary to carry out the provisions of the Federal and State Acts. (Such limitations are specifically authorized by Section 402(a)(1) of the Federal Act and Section 6 of the State Act.) "Best Engineering Judgment" limitations can be used to set Best Available Technology Economically Achievable, Best Conventional Pollutant Control Technology, Best Practicable Control Currently Available, or "Best Management Practices" limitations as defined in the Federal Act in the absence of an applicable promulgated effluent guideline.

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the State". BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Biological Monitoring Method” means a testing method which utilizes any biological system or any of its parts for assessing the presence or effects of one or more pollutants and/or environmental factors, either alone or in combination. Biomonitoring refers to acute toxic bioassays.

“Biocide” means chemical agents with the capacity to destroy biological life forms. Bactericides, insecticides, pesticides, etc., are examples of biocides.

“BMPs” means “Best Management Practices”.

“BOD” (biochemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter, mg/l) required during stabilization of decomposable organic matter by aerobic biochemical action as determined by analytical procedures set forth in the “Manual of Methods for Chemical Analysis of Water and Wastes” (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

“Bypass” means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

“Casing” means a pipe or tubing of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering the hole. For injection wells in Classes I, II, III, and IV, the pipe or tubing must be a heavy metal (steel or iron).

“Catastrophic collapse” means the sudden and utter failure of overlying “strata” caused by removal of underlying materials.

“Cementing” means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

“COD” (chemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter, mg/l) required to oxidize the organic matter in a waste sample under specific conditions of an oxidizing agent, temperature and time as determined by analytical procedures set forth in the “Manual of Methods for Chemical Analysis of Water and Wastes” (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

“Combined sewer system” means a sewer system that is designed to carry sanitary sewage at all times and that also is designed to collect and transport stormwater from streets and other sources, thus serving a combined purpose.

“Commercial unit” means one or more buildings, or one or more rooms within a building, which will be occupied by a single individual, corporation, company, association, society, firm, partnership or joint stock company, and used for nonresidential purposes.

“Commissioner” means the Commissioner of New Jersey Department of Environmental Protection or an authorized representative.

“Committed flow” means the sum of the actual flow plus the sum of all flows which are anticipated from connections which have been approved but are not yet in operation. The flow to be anticipated from any such connections shall be that flow referred to in the Departmental approval.

“Community onsite subsurface disposal system” means an onsite subsurface disposal system which serves five or more realty improvements as defined in N.J.S.A. 58:11-23 et seq. or any onsite subsurface disposal system receiving domestic waste and serving one or more realty improvements where the design flow is greater than 2,000 gpd.

“Confidentiality claim” means a claim or allegation that information is entitled to confidential treatment because such information constitutes a trade secret.

“Confined aquifer” means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

“Confining bed” means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

“Confining zone” means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

“Connection” means any physical or operational change, associated with an increase in projected flow, to a collection system of any building, facility, or other structure either proposed or existing for which a building permit or other municipal approval including site plan or subdivision approval is required, and which connects directly or indirectly to any portion of a treatment works.

“Connection approval” means a treatment works approval to construct and/or operate a connection pursuant to N.J.S.A. 58:10A-6, N.J.A.C. 7:14-2.1 et seq. or 7:14A-12.1 et seq. or an approval permit to construct and operate a sewer connection.

“Construction” means any placement, assembly or installation of facilities, equipment or treatment works, or modification of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities, equipment or treatment works, or entering into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and

design studies do not constitute a contractual obligation for the purposes of this definition.

“Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

“Contiguous zone” means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

“Continuous discharge” means a “discharge” which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

“Control authority” means the entity responsible for administering an industrial pretreatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-13.1(a) and shall be the Department in areas of the State served by a local agency without an approved industrial pretreatment program or the delegated local agency in all other areas of the State.

“Conventional pollutant” means those pollutants designated under the authority of Section 304(b)(4) of the Federal Act.

“DAC” means “Discharge Allocation Certificate”.

“Daily discharge” means the “discharge of a pollutant” measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the “daily discharge” is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the “daily discharge” is calculated as the average measurement of the pollutant over the day.

“Delegated local agency” means a local agency with an industrial pretreatment program approved by the Department.

“DEP” means “Department”.

“DEP Bulletin” means the publication issued by the Department designed to provide public notice of certain Department actions.

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

“Design flow” means the average daily volume of wastewater, which a domestic treatment works was designed to treat or convey, or the maximum permissible volume of flow to a domestic treatment works as established by a NPDES permit, an NJPDES permit, or a treatment works approval, whichever permit or approval is most recently issued.

“DGW” means a discharge to ground water.

“Diffuser” means a multi-port device which is attached to the discharge end of an outfall pipe and is used to mix two or more fluids.

“Dike” means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids or other materials.

“Director” means the Director of the Department’s Division of Water Resources or an authorized representative.

“Discharge” means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of this State, onto land or into wells from which the pollutant might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the state which pollutant enters the waters of this State, and shall include the release of any pollutant into a municipal treatment works. A leak into a secondary containment system which does not involve a release into the waters or lands of this State is not a “discharge” for purposes of applying the rules under this chapter to violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq. and the rules promulgated pursuant thereto, N.J.A.C. 7:14B.

“Discharge Allocation Certificate” (DAC) means the certificate issued by the Department pursuant to N.J.A.C. 7:14A-3.3 which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which will result in a discharge to surface water or a substantial modification in a discharge to surface water.

“Discharge monitoring report” or “DMR” means the Environmental Protection Agency’s current uniform national form, including any subsequent additions, revisions, modifications and replacements, for the reporting of self-monitoring results by permittees for discharge point sources.

“Discharger” means any person, corporation, municipality, sewerage authority or other legal entity, who causes, knows of or should have reason to know of, or allows, any discharge.

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

“Disposal well” means a well used for the disposal of waste into a subsurface stratum.

“Division” means the Division of Water Resources in the Department of Environmental Protection.

“DMR” means “Discharge Monitoring Report”.

“Domestic pollutant” means a pollutant which results from the discharge of household, commercial or other wastes from bathrooms, toilet facilities, home laundries and kitchens which are predominantly the result of natural human waste elimination associated with bodily function and food preparation.

“Domestic treatment works” (DTW) means all publicly owned treatment works as well as any privately owned treatment works processing primarily domestic wastewater and pollutants together with any ground water, surface water, storm water or process wastewater that may be present.

“Domestic wastewater” means the liquid waste or liquid borne wastes discharged into a domestic treatment works.

“Draft DAC” means a document prepared under N.J.A.C. 7:14A-7.6 indicating the Department’s tentative decision to issue or deny a DAC as required under N.J.A.C. 7:14A-3.3.

“Draft permit” means a document prepared under N.J.A.C. 7:14A-7.6 indicating the Department’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a “permit”. A notice of intent to terminate a permit or DAC, and a notice of intent to deny a permit or DAC, as discussed in N.J.A.C. 7:14A-7.5, are types of “draft permits”. A denial or a request for modification, revocation and reissuance, or termination, as discussed in N.J.A.C. 7:14A-7.5, is not a “draft permit”. A “proposed permit” is not a “draft permit”.

“DSW” means discharge to surface water.

“DTW” means “Domestic Treatment Works”.

“Drilling mud” means a heavy suspension used in drilling an “injection well”, introduced down the drill pipe and through the drill bit.

“Effective day of a UIC program” means the date that a State UIC program is approved or established by the Administrator.

“Effective permit” means a “permit”.

“Effluent data” means with reference to any source of discharge of any pollutant:

1. Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (or of any pollutant resulting from any discharge from the source), or any combination of the foregoing;
2. Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of

the pollutants which, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purpose, a description of the manner or rate of operation of the source); and

3. A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

4. Notwithstanding the above, the following information shall be considered to be “effluent data” only to the extent necessary to allow the Department to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow the Department to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:

- i. Information concerning research, or the results of research, on any product, method, device, or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and
- ii. Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.

“Effluent limitation” means any restriction on quantities, quality, discharge rates and concentration of chemical, physical, thermal, biological, 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.

“Effluent limitation guidelines” means a regulation published by the Administrator under Section 304(b) of the Federal Act to adopt or revise “effluent limitations”.

“Emergency permit” means a “permit” issued in accordance with N.J.A.C. 7:14A-2.2.

“EPA” means the United States Environmental Protection Agency.

“Existing injection well” means an “injection well” other than a “new injection well”.

“Existing source” means any source which is not a new source including presently existing discharges which are not currently permitted.

“Facility” means any IWMF facility, UIC “injection well”, DSW “point source”, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NJPDES permit program. Facilities or equipment also means buildings, structures, process or pro-

duction equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent or substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

"Federal Act" means the "Federal Water Pollution Control Act Amendments of 1972" (Public Law 92-500; 33 U.S.C. 1251 et seq.), including any subsequent amendments.

"Final draft permit" means a document issued according to the procedures in N.J.A.C. 7:14A-7.2.

"Flow rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, or turbine or passes along a conduit or channel.

"Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

"Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"Formation" means a body of rock or unconsolidated sediments characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

"Formation fluid" means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as "drilling mud".

"Freeboard" means the vertical distance between the top of a surface impoundment dike and the surface of the waste contained therein.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"General permit" means a NJPDES "permit" authorizing a category of discharges within a geographic area.

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

"Grab sample" means a single sample collected at a particular time and place.

"Ground water" means that portion of water beneath the land surface that is within the zone of saturation (below the water table) where pore spaces are filled with water.

"Hazardous pollutant" means:

1. Any toxic pollutant;
2. Any hazardous substance as defined pursuant to section 3 of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11b);
3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.;
4. Any substance the use or manufacture of which is prohibited under the Federal Toxic Substances Control Act, Pub. L. 94-469 (15 U.S.C. § 2601 et seq.);
5. Any substance identified as a known carcinogen by the International Agency for Research on Cancer; or
6. Any hazardous waste as designated pursuant to section 3 of P.L. 1981, c.279 (N.J.S.A. 13:1E-51) or the "Resource Conservation and Recovery Act", Pub. L. 194-580 (42 U.S.C. § 6901 et seq.).

"Hazardous substance" means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Federal Act, the "Spill Compensation and Control Act" N.J.S.A. 58:10-23.11 et seq., or Section 4 of the State Act.

"Hazardous waste" means any solid waste that is defined or identified as a hazardous waste pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. in N.J.A.C. 7:26-8 or pursuant to 40 CFR Part 261.

"Indirect discharge" means any discharge, excluding any discharges by municipal collection systems, into any domestic treatment works.

"Indirect discharger" means any person or user, excluding municipal collection systems, who has an indirect discharge of primarily non-domestic pollutants including septage.

"Individual IWMF permit" means a permit, authorization, license, or equivalent control document issued by the Department to an IWMF pursuant to N.J.A.C. 7:14A-4.4. An individual IWMF permit does not include an IWMF permit-by-rule.

"Individual subsurface sewage disposal system" means a system for the disposal of sewage into the ground, which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and to discharge the liquid portion to an adequate disposal area.

"Industrial pollutants" means non-domestic pollutants, including but not limited to, those pollutants regulated under Section 307(a), (b) or (c) of the Federal Act.

“Industrial treatment works” means a treatment works which treats primarily process wastewater and/or industrial pollutants as determined by the percentage of process wastewater, or mass loading of BOD, COD or suspended solids in the wastewater flow. Industrial treatment works shall also include any treatment works, whether publicly or privately owned, which treats primarily wastewater or leachate from a municipal solid waste facility or a potable water treatment plant. This definition shall also encompass SIU pretreatment works.

“Industrial waste” means non-domestic waste, including, but not limited to, those pollutants regulated under Section 307(a), (b) or (c) of the Federal Water Pollution Control Act.

“Industrial Waste Management Facility” means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or, where applicable, disposing of “hazardous waste”. A facility may consist of several operational units.

“IWMF” means Industrial Waste Management Facility.

“Infiltration percolation lagoon” means a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold and transmit fluids to the subsurface and which is not an injection well.

“Injection well” means a “well” into which “fluids” are being injected.

“Injection zone” means a geological “formation”, group of formations, or part of a formation receiving fluids through a “well”.

“Interference” means:

1. Inhibiting or disrupting the operation of a DTW or its treatment process so as to contribute to, or cause a violation of any condition of a State or Federal permit under which the DTW operates; or
2. Discharging industrial process wastewater which, in combination with existing domestic flows are of such volume and/or strength as to exceed the treatment process design capacity; or
3. Preventing the use or disposal of sludge produced by the DTW in accordance with Section 405 of the Federal Act, any regulations, criteria or guidelines developed pursuant to the Federal Resource Conservation and Recovery Act of 1976, (42 U.S.C. 3251 et seq.) the Federal Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.) Sections 2, 4 and 6 of the State Act, and to the extent practicable, the New Jersey Guidelines for the Utilization and Disposal of Municipal and Industrial Sludges and Septage.

“Interstate agency” means an agency of two or more states established by or under an agreement or compact approved by the Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the appropriate Act and regulations.

“Joint meeting” means a joint meeting as defined in N.J.S.A. 40:63-69.

“Landfill” means “sanitary landfill”.

“Land application” means the controlled discharge of pollutants onto or into the surface soil horizon in such a manner that the materials are treated by and/or become incorporated into and blended with the soil.

“Large municipal separate storm sewer system” means a “large municipal separate storm sewer system” as defined at 40 CFR 122.26(b)(4).

“Lawful entry” means an entry by the Commissioner into any building, place, or premise pursuant to N.J.S.A. 13:1D, 58:10A and as otherwise provided by law, ordinance, regulation, order, permit or agreement.

“LC50” means the median lethal concentration of a toxic substance, including an effluent, expressed as a statistical estimate of the concentration that is lethal to 50 percent of the test organisms under specified test conditions, based on the results of an acute toxicity test. For purposes of this subchapter, it includes an EC50, the median effective concentration, based on daphnid immobilization.

“Leachate” means liquid that has been in contact with solid waste and contains dissolved or suspended materials from that solid waste.

“Liner” means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, or landfill which restricts the downward or lateral escape of any waste, waste constituents, or leachate.

“Lithology” means the description of rocks on the basis of their physical, chemical and mineralogical characteristics.

“Local agency” means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works.

“Major facility” means any facility or activity classified as such by the Administrator of the United States Environmental Protection Agency, or his or her representative, in conjunction with the Department, and includes industrial facilities and municipal treatment works.

“Maximum daily discharge limitation” means the highest allowable “daily discharge” during the reporting period.

"Maximum sewage treatment capacity" means the hydraulic, biological and sludge handling capacity limitations necessary to meet the terms and conditions of the NJPDES or NPDES Permit.

"Medium municipal separate storm sewer system" means a "medium municipal separate storm sewer system" as defined at 40 CFR 122.26(b)(7).

"Memorandum of Agreement" means the agreement entered into under the Federal Act between the Administrator and the Commissioner, governing the relationship, duties, and rights of the parties in operating a State NPDES and UIC programs (NJPDES).

"MGD" means million gallons per day.

"Minor facility" means any facility or activity not classified a "major facility" by the Regional Administrator or the Department.

"Modification" means an alteration, expansion, equipment replacement or other change which may reasonably be expected to affect the quantity of flow treated or the quality of the effluent discharged to the waters of the State or to a publicly owned treatment works.

"Monitoring report form" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees pursuant to certain DGW permits.

"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.

"Municipality" means a city, town, borough, county, parish, district, association or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under Section 208 of the Federal Act.

"Municipal separate storm sewer" means a "municipal separate storm sewer" as defined at 40 CFR 122.26(b)(8).

"Municipal treatment works" means "POTW".

"National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the Federal Act. The term includes any State program which has been approved by the Administrator.

"New IWMF" means an "Industrial Waste Management Facility" which began operation after or for which construction commenced after November 19, 1980.

"New injection well" means a "well" which begins injection after the State UIC program is approved.

"New Jersey Pollutant Discharge Elimination System" means the New Jersey system for the issuing, modifying, suspending, revoking and reissuing, terminating, monitoring and enforcing, discharge permits pursuant to the State Act. The system includes a discharge allocation certificate and a final draft permit.

"New Source" means any building, structure, facility, site or installation from which there is or may be a "discharge of pollutants", the construction of which commenced after promulgation of this chapter.

"NJPDES" means the "New Jersey Pollutant Discharge Elimination System".

"NOEC" or "no observable effect concentration" means the highest concentration of a toxic substance, including an effluent, that has no adverse effect on survival, growth or reproduction of test organisms based upon the results of chronic toxicity testing.

"No Measurable Acute Toxicity" or "NMAT" means a type of water quality based acute whole effluent toxicity limit imposed in accordance with N.J.A.C. 7:9-4.6(c)5i(2), which requires that no mortality occurs in any acute toxicity test concentration, including 100 percent effluent, above normal background mortality levels for the test organism population. The normal background mortality level is the acceptable level of control mortality for a valid test specific in N.J.A.C. 7:18-6.6(v).

"Non contact cooling water" means water used to reduce temperature for the purpose of cooling. Such waters do not come into direct contact with any raw material, intermediate product (other than heat) or finished product. Non contact cooling water may however contain algacides, or biocides to control fouling of heat exchanges.

"Non-conventional pollutant" means any pollutant not defined as a conventional pollutant or a toxic pollutant.

"Non-hazardous waste" means a waste which is not defined as hazardous.

"Non-point source" means a contributing factor to water pollution that cannot be traced to a specific discernible confined and discrete conveyance, e.g., certain cases of agricultural fertilizer runoff.

"NPDES" means "National Pollutant Discharge Elimination System".

"Owner or operator" means the owner or operator of any facility or activity subject to this chapter.

"Overland flow" means the controlled discharge, by spraying or other means, of effluent onto a sloping land and with a large proportion of the wastewater appearing as runoff. As the effluent flows over the land, the suspended solids are filtered out and the organic matter is oxidized by the bacteria living in the vegetative litter.

"Packer" means a device lowered into a well to produce a fluid-tight seal.

"Participating municipality" means a municipality or other body which is a member of an affected sewage authority or which has contracted to obtain sewage treatment services from a sewage authority or other domestic treatment works.

"Passaic Valley Sewerage Commissioners" means the body described by that name under N.J.S.A. 58:14-2.

"Permit" means an authorization, license, or equivalent control document issued by the Department to implement the requirements of this chapter even where any or all of the conditions of the permit have been stayed. A permittee is not subject to enforcement for an exceedance of any permit conditions which have been stayed. Permit does not include any permit which requires EPA review pursuant to 40 CFR Part 123.75, such as a "draft permit" or a "proposed permit." Permit includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works.

"Permit by rule" means a provision of this chapter stating that a "facility or activity" is deemed to have a RCRA or NJPDES permit if it meets the requirements of the applicable regulations.

"Permitted flow" means a treatment work's maximum allowable flow (in MGD) as stated in the facility's NJPDES Permit.

"Person" means an individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State and any state, Federal or interstate agency or an agent or employee thereof. "Person" shall also mean any responsible corporate official for the purpose of enforcement action under Section 10 of the State Act.

"Plugging" means the act or process of stopping the flow of water, oil, or gas in "formation" penetrated by a borehole or "well".

"Plugging record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

"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, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, agricultural and construction waste or runoff or other residue discharged to the land, ground waters or surface waters of the State.

"POTW" means "publicly owned treatment works".

"Pressure" means the total load or force per unit area acting on a surface.

"Pretreatment" means applications of physical, chemical and/or biological processes to reduce the amount of pollutants in, or alter the nature of the polluting properties of, a process wastewater prior to discharging such wastewater into a domestic treatment works.

"Pretreatment Act" means the "Pretreatment Standards for Sewerage", N.J.S.A. 58:11-49 et seq.

"Pretreatment standard" means any limitation on quantities, quality, rates, and/or concentrations of pollutants discharged into municipal or privately owned treatment works, adopted pursuant to "Pretreatment Standards for Sewerage" N.J.S.A. 58:11-49 et seq., Section 4 of the State Act, or any applicable National, State, or local regulations.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C.1976), modified 12 E.R.C. 1833 (D.D.C.1979)); also listed in Appendix E.

"Priority pollutant" means those pollutants listed pursuant to Section 307(a)(1) of the Federal Act and Sections 4

and 6 of the State Act or Tables II, III, V and VI of Appendix B.

“Privately owned treatment works” means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and not a “POTW”.

“Process to further reduce pathogens” (PFRP) means any sludge stabilization process which meets the criteria for PFRP set forth in Appendix II B in 40 CFR 257, including, at a minimum, composting, heat drying, heat treatment, and thermophilic aerobic digestion.

“Process to significantly reduce pathogens” (PSRP) means any sludge stabilization process which meets the criteria for PSRP set forth in Appendix II A in 40 CFR 257, including, at a minimum, aerobic digestion, air drying, anaerobic digestion, composting and lime stabilization.

“Process waste water” means any water which, 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 waste water includes, but is not limited to, “leachate” and cooling water other than “non contact cooling water.”

“Projected flow” means that flow which is estimated or anticipated to be generated from a facility, based upon the criteria contained in N.J.A.C. 7:14A-23.3.

“Proposed permit” means a NJPDES “permit” prepared which is sent to EPA for review before final issuance by the State. A “proposed permit” is not a “draft permit”.

“Proprietary information” means commercial or financial information which is used in one’s business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.

“Public hearing” is a legislative type hearing before a representative of the Department providing the opportunity for public comment but which does not include cross-examination.

“Publicly owned or operated” means owned or operated by the State, a county, a municipality, or other public body.

“Publicly owned treatment works” (“POTW”) means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a “State” or “municipality”. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. However, despite public ownership of potable water treatment plants and solid waste facilities which may provide for treatment and/or discharge of pollutants, treatment works associated with potable water treatment and solid waste facilities shall be considered industrial treatment works for the purpose of this chapter.

“Radioactive waste” means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2, or exceed the “Criteria for Identifying and Applying Characteristics of Hazardous Waste and for Listing Hazardous Waste” in 40 CFR Part 261, whichever is applicable.

“RCRA” means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, 42 U.S.C. 6901 et seq.).

“Regional Administrator” means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or an authorized representative of the Regional Administrator.

“Regional pump station” means any wastewater pumping station which conveys wastewater from more than one municipality or from at least 25 percent of a single municipality’s sewer service area, and has a design capacity of at least 0.5 MGD.

“Request for authorization” is the document submitted under N.J.A.C. 7:14A-3.9 to obtain authorization to discharge under a general permit.

“Residuals” means solids and associated liquids which are removed through a physical, chemical or biological process or any other process designed to treat wastewater or any other discharges subject to regulation under the State Act. For the purposes of this chapter residuals include, but are not limited to, sludges, grit and screenings and scum.

“Run-off” means, for purposes of N.J.A.C. 7:14A-4.7 only, any stormwater, leachate, or other liquid that drains overland from any part of a facility.

“Run-on” means, for purposes of N.J.A.C. 7:14A-4.7 only, any stormwater, leachate, or other liquid that drains overland onto any part of a facility.

“Sanitary landfill” means a land disposal site employing an engineered method of disposal of solid waste in a manner that minimizes environmental hazards, including but not limited to the spreading of the solid waste in thin layers, compacting the waste to the smallest practical volume, and applying cover material on a daily or more frequent basis.

“Sanitary sewage” means any liquid waste containing animal or vegetable matter in suspension or solution of the water carried wastes resulting from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or any other source of water-carried waste of human origin or containing putrescible material.

“Saturated zone” or “zone of saturation” means that part of the earth’s crust in which all voids are filled with water.

“Schedule of compliance” or “compliance schedule” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard.

“SDWA” means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 U.S.C. 300f et seq.).

“Seasonal high water table” means the maximum level to which ground water will be normally expected to rise.

“Secretary” means the Secretary of the Army, acting through the Chief of Engineers.

“Section 316 variance request” means a request by a discharger for the relaxation of an effluent limitation in accordance with Section 316 of the Federal Act.

“Separate storm sewer” means a conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, gutters, ditches, man-made channels, or storm drains):

1. Designed or used for collecting or conveying storm water;
2. Which is not part of a “combined sewer system”; and
3. Which is not part of a “Publicly Owned Treatment Works” (“POTW”).

“Septage” means the combination of liquid and solid residues resulting from the treatment of waterborne domestic waste in individual subsurface sewage disposal system.

“Serious violation” means an exceedance, as set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1. For effluent limitations for pollutants that are measured by concentration or mass, except for whole effluent toxicity;
 - i. Violations of an effluent limitation that is expressed as a monthly average;
 - (1) By 20 percent or more for a hazardous pollutant; and
 - (2) By 40 percent or more for a nonhazardous pollutant;
 - ii. Violations of an effluent limitation that is expressed as a daily maximum or daily minimum without a monthly average;
 - (1) By 20 percent or more of the average of all of the daily maximum or minimum values for hazardous pollutant; and

(2) By 40 percent or more of the average of all of the daily maximum or minimum values for a nonhazardous pollutant;

2. For effluent limitations for whole effluent toxicity as follows:

i. For any violation of an LC50 or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (Percent Effluent)	Difference (Percent Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

ii. For any violation of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) with greater than or equal to 50 percent mortality in any test concentration, including 100 percent effluent; and

3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

For example: Assuming that a permittee’s effluent limitation range for pH is 6.0 to 9.0, the midpoint would be 7.5.

If the five separate readings of pH during a given day were 4.3, 5.8, 6.5, 6.0 and 6.5, the reading of 4.3 would be a serious violation as follows:

$$7.5 \text{ (midpoint)} - 4.3 \text{ (greatest exceedance)} \times 100 = 42.6\% \text{ (7.5 (midpoint))}$$

For example: Using the same information as above.

Forty percent of 7.5 is 3; therefore, if the greatest violation of a pH effluent range for any calendar day has a pH of 4.5 or less or a pH of 10.5 or greater, the violation would be a “serious violation.”

4. Notwithstanding the above, the Department may utilize, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation if the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment.

“Severe property damage” means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

“Sewage” means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a DTW.

“Sewage authority” means a county sewage authority, municipal utilities authority, municipality, corporation or other legal entity which owns or operates a sewage facility.

“Sewage from vessels” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels, including graywater and regulated under Section 312 of the Federal Act or under the State Act. For the purposes of this definition, “graywater” means galley, bath, and shower water.

“Sewage sludge” means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a DTW.

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

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

“Sewer extension” means any sewer, pipe, line, structure or appurtenance used for the conveyance of domestic or industrial waste of a liquid nature, whether forced or by gravity, which:

1. Will extend along an easement through more than two properties, a roadway or public right-of-way;
2. Conveys flows from more than two buildings; or
3. Conveys, or will convey, 8,000 gallons per day or more of sewerage flow determined in accordance with the criteria specified in N.J.A.C. 7:14A-23.3. This includes all sewer lines from a single building if the building utilizes more than one sewer line to convey waste to the sewer system and the aggregate waste flow is 8,000 gallons per day or more.

“Significant indirect user” (“SIU”) means, solely for the purposes of this chapter:

1. Any user in the State including, but not limited to, any Significant Industrial User as defined in 40 CFR 403.3(t) but excluding municipal collection systems, who discharges wastewater into a local agency where:

i. The user is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; or

ii. The user’s average volume of process wastewater exceeds 25,000 gallons per day; or

iii. The amount of BOD, COD or Suspended Solids in the user’s process wastewater discharge exceeds the mass equivalent of 25,000 gallons per day of the domestic waste of the affected local agency; or

iv. The volume of process wastewater in the discharge exceeds five percent or more of the average daily dry weather flow of the local agency; or

v. The user’s discharge of process wastewater contributes five percent or more of the daily mass loading of any of the pollutants listed in Appendix B Tables II-VI; or

vi. The user is designated as an SIU by the Control Authority on the basis that the user has a reasonable potential for adversely affecting the local agency’s operation; or

vii. The user is designated as an SIU by the Control Authority on the basis that the user has been in violation of any Federal, State, or local pretreatment standard or requirement, including but not limited to, significant noncompliance as defined in 40 CFR 403.8(f)(2)(vii); or

viii. The Control Authority determines it would be consistent with the intent of the Pretreatment Act or State Act to require a permit for the indirect discharger; and

2. Any user in areas of the State in which the Department is the Control Authority where:

i. The user is determined to be a Hazardous Waste Facility under N.J.A.C. 7:26-12 and meets the requirements of N.J.A.C. 7:14A-4.2(b)1; or

ii. The user is determined to be an Industrial Waste Management Facility under N.J.A.C. 7:14A-4; or

iii. The user’s discharge consists of landfill leachate, which is either pure, treated or diluted; or

iv. The user’s discharge consists of 25,000 gallons per day or more of polluted groundwater which is pumped from the ground in order to decontaminate an aquifer; however

3. Upon finding that any user in the State has no reasonable potential for adversely affecting the local agency's operation or for violating any Federal, State, or local pretreatment standard or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from a user or a local agency, and in accordance with 40 CFR 403.8(f)(6), determine that any user specified in paragraphs 1 or 2 above, unless the user is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N, is not a significant indirect user.

4. The discharge of industrial process wastewater contributes, prior to any pretreatment, five percent or more of the daily mass loading of any of the pollutants listed in Appendix B Tables II-VI; or

5. The user of a DTW is determined to be a Hazardous Waste Facility under N.J.A.C. 7:26-12 and meets the requirements of N.J.A.C. 7:14A-4.2(b)1; or

6. The user is determined to be an Industrial Waste Management Facility under N.J.A.C. 7:14A-4; or

7. The user has been found by the Department to be in violation of State laws or regulations, or local ordinances concerning environmental issues; or

8. The discharge consists of landfill leachate, either pure, treated or diluted by ground water or surface runoff; or

9. The discharge consists of significant quantities of polluted groundwater which is pumped from the ground in order to decontaminate an aquifer; or

10. The department determines it would be consistent with the intent of the Pretreatment Act or State Act to require a permit for the indirect discharger.

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1. A serious violation for the same pollutant, at the same discharge point source, in any two months of any consecutive six month period;

2. Exceedance of an effluent limitation expressed as a monthly average, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the

effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

4. Any exceedance of an effluent limitation for pH by any amount, excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring, at the same discharge point source in any four months of any consecutive six month period; or

5. Failure to submit a completed discharge monitoring report in any two months of any consecutive six month period.

"Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

"SIU" means, solely for the purposes of this chapter, "Significant Indirect User".

"SIU pretreatment works" means any treatment works serving exclusively a SIU facility and treating the facility's industrial process wastewater, or a combination of its process and domestic wastewater, prior to the discharge thereof into a domestic treatment works.

"Sludge" means the solid residue and associated liquid resulting from the physical, chemical or biological treatment of wastewater.

"Sole or principal source aquifer" means an aquifer which has been designated by the Administrator pursuant to Section 1424(a) or (e) of the SDWA.

"Solid Waste Administration" means the Solid Waste Administration in the New Jersey Department of Environmental Protection.

"Solid waste facility" means a facility which is so designated and regulated under the "Solid Waste Management Act", N.J.S.A. 13:1E-1 et seq.

"Source" means any facility, from which there is or may be a discharge of pollutants.

"Spray irrigation" means a system for land application of wastewater, using sprinkler heads or nozzles as a method of application where the application rate is less than four inches per week. Where the application rate is greater than four inches per week the applicant should comply with N.J.A.C. 7:14A-10.11.

"State" means the State of New Jersey.

"State Act" means the New Jersey "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq. and any amendments thereto.

“State/EPA agreement” means an agreement between the Regional Administrator and the State which integrates and coordinates EPA and State activities, responsibilities and programs under the Federal Act, RCRA and SDWA.

“Storage” means the holding of “waste” for a temporary period; at the end of which the waste is treated, disposed, or stored elsewhere.

“Stormwater” means stormwater runoff, snow melt runoff, and surface runoff and drainage.

“Stormwater discharge associated with industrial activity” means a “stormwater discharge associated with industrial activity” as defined at 40 CFR 122.26(b)(14).

“Stratum (plural strata)” means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

“Subsidence” means the lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in solids; or added load on the land surface.

“Surface casing” means the first string of well casing to be installed in the well.

“Surface impoundment” or “impoundment” means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid or solid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling and aeration pits, and ponds and lagoons.

“Surface waters” means water at or above the land’s surface which is neither groundwater nor contained within the unsaturated zone, including, but not limited to, the ocean and its tributaries, all springs, streams, rivers, lakes, ponds, wetlands, and artificial waterbodies.

“Suspended solids” means the total nonfilterable residue as determined by analytical procedures set forth in the “Manual of Methods for Chemical Analysis of Water and Wastes” (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

“Synoptic well data” for purposes of these regulations, means a set of ground-water related measurements sufficiently simultaneous that the piezometric surface and ground-water flow direction can be inferred accurately and important fluctuations will not affect interpretation.

“Thermal discharge” means that component of any discharge which is comprised of heat, and which shall be limited in accordance with Sections 301, 306, 316 of the Federal Act, Section 6 of the State Act or when determined necessary by the Department.

“Total dissolved solids” means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

“Toxic pollutant” means any pollutant identified pursuant to the Federal Act or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.

“Trade secret” means the whole or any portion or phase of any scientific, technical or otherwise “proprietary information”, design, process, procedure, formula, or improvement which is used in one’s business and is secret and of value; and a trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. A “Trade Secret” shall not apply to “effluent data” as provided in Section 9(c) of the State Act and as defined in this section.

“Treatment of hazardous waste” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any “hazardous waste” so as to neutralize such wastes or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduce in volume.

“Treatment works” means any device or system whether public or private, used in the storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment. Additionally, “treatment works” means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems.

“Treatment works approval” means an approval issued pursuant to N.J.S.A. 58:10A-6 and 7:14A-12.3, or pursuant to former N.J.S.A. 58:12-3.

“201 Facilities Plans” means plans for wastewater treatment facilities adopted pursuant to Section 201 of the Federal Water Pollution Control Act, 33 U.S.C. 1281.

“UIC” means the Underground Injection Control program.

“Ultimate management” means final management of sludge at a facility or operation such that no additional permit or approval actions are required for further processing or movement.

“Uncontrolled sanitary landfill” means an “uncontrolled sanitary landfill” as defined at 40 CFR 122.26(b)(15).

“Underground injection” means a “well injection”.

“Underground source of drinking water” (“USDW”) means an “aquifer” or its portion:

1. Which supplies drinking water for human consumption; or
2. In which the ground water contains fewer than 10,000 mg/l “total dissolved solids”; and
3. Which is not an “exempted aquifer”.

“Unsaturated zone” means the subsurface volume between the land’s surface and the top of the saturated zone (water table), where moisture does not fill all the pore spaces in the formation or soil.

“Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. “Upset” also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

“User” means any person, individual, firm, company, partnership, corporation, association, group or society, mobile source, and includes political subdivisions of this State and any Federal, State or interstate agency.

“U.S.D.A.” means United States Department of Agriculture.

“USDW” means “underground source of drinking water”.

“U.S.G.S.” means United States Geological Survey.

“Valid final draft NJPDES permit or valid final DAC” means that such authorization has not expired pursuant to N.J.A.C. 7:14A-3.3(f) or 7.2(a)8 and 9.

“Variance” means any mechanism or provision under Sections 301 or 316 or under 40 CFR Part 125, or in the applicable “effluent limitations guidelines” which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Federal Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Section 301(c), 301(g), 301(h), 301(i), or 316(a) of the Federal Act.

“Waste load” means the amount of chemical, physical, or biological matter contained within a waste discharge.

“Waste load allocation” means the assignment of maximum waste loads to point-source discharges so as to maintain water quality standards.

“Water quality criteria” means a designated concentration of a constituent that, when not exceeded, will protect an organism, an organismic community or a prescribed water use or quality.

“Water quality standards” means the physical, chemical, biological and esthetic characteristics of a water body as described by State water quality criteria or the water quality which would result from existing discharges under design conditions, whichever is more stringent as determined by the Department.

“Waters of the State” means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

“Well” means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

“Well injection” means the subsurface emplacement of “fluids” through a bored, drilled or driven “well”; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

“Well log” means a log obtained from a well showing such information as relative location and depth of soils horizons and geologic units indicating textural and other petrologic characteristics. “Well logs” may also show geophysical properties such as resistivity, radioactivity, spontaneous potential and acoustic velocity as in function of depth.

“Well plug” means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

"Well record" means a concise statement of the available data regarding a well, such as a scout ticket: a full history or day-by-day account of a well, from the day the well was surveyed to the day production ceased.

"Well stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes surging, jetting, blasting, acidizing, or hydraulic fracturing.

"Well monitoring" means the measurement by on-site instruments or laboratory methods of quality of water in a well.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The Department shall evaluate the parameters of hydrology, soils, and vegetation to determine the presence and extent of wetlands.

"Zone of saturation" means "saturated zone".

Amended by R.1982 d.495, effective January 17, 1983.
See: 14 N.J.R. 684(a), 15 N.J.R. 85(a).

"Community onsite subsurface disposal system" and "Section 316 variance request" defined.

Amended by R.1983 d.9, effective February 7, 1983.
See: 14 N.J.R. 1136(a), 15 N.J.R. 145(a).

"Packer", "Permit", and "Permit by rule" amended.
As amended, R.1984 d.133, effective April 16, 1984.

See: 15 N.J.R. 1059(b), 16 N.J.R. 882(a).

"Indirect discharge" defined; "Indirect discharger" and "Leachate" redefined; "Significant Indirect User" was "Significant Industrial User", 5 through 9 added.

Amended by R.1987 d.445, effective November 2, 1987.
See: 19 N.J.R. 2163(a), 19 N.J.R. 2000(b).

Definitions substantially amended.

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Added "BOD", "COD", "Domestic pollutant", "Domestic wastewater", "Grab sample", "Individual IWMP permit", "Permitted flow", "Pretreatment", "Residuals", "SIU pretreatment works", "Suspended solids" and "Ultimate management"; amended "Applicant", "Domestic treatment works", "Industrial treatment works" and "Publicly owned treatment works".

Amended by R.1989 d.517, effective October 2, 1989.
See: 20 N.J.R. 2198(a), 21 N.J.R. 3099(a).

Definitions added, "Commercial unit", "Governmental entity", "Joint meeting", "Municipal authority", "Passaic Valley Sewerage Commissioners", "Sewerage agency" and "Sewerage authority".

Amended by R.1991 d.378, effective August 5, 1991.
See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

Added definitions for "Delegated local agency", "Hazardous pollutant", "LC50", "Local agency", "NOEC", "Serious violation", "Significant noncomplier".

Substantial revision to other definitions.

Amended by R.1992 d.145, April 6, 1992.
See: 23 N.J.R. 2238(a), 24 N.J.R. 1334(a).

Added "Lawful entry" and "No Measurable Acute Toxicity"; revised "Discharge", "Discharge monitoring report" and added pH effluent ranges to "Serious violation".

Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Changes to include the requirements of the Clean Water Enforcement Act, P.L. 1990, c.28.

Administrative Correction to "Municipal separate storm sewer"; realphabetize.

25 N.J.R. 687(a).

Amended by R.1993 d.610, effective December 6, 1993.

See: 24 N.J.R. 3983(a), 25 N.J.R. 404(a), 25 N.J.R. 5569(a).

Amended by R.1994 d.278, effective June 6, 1994.

See: 25 N.J.R. 3282(a), 26 N.J.R. 2413(b).

Case Notes

Citation to upset definition; pollutant discharger not entitled to upset defense to permit limit exceedances which occurred prior to inclusion of upset provision in discharge permit; burden of proof of upset on discharger. Student Public Interest Research Group of New Jersey v. P.D. Oil & Chemical Storage, Inc., 627 F.Supp. 1074 (D.N.J. 1986).

Citation to definitions of thermal, municipal and industrial discharges. Public Service Electric and Gas Co. v. Dept. of Environmental Protection, 101 N.J. 95, 501 A.2d 125 (1985).

7:14A-1.10 Incorporation by reference

The requirements applicable to the NJPDES program of the Federal Act, the State Act, and all Federal regulations cited in this chapter, including, but not limited to, 40 CFR Parts 122, 123, and 124, and including all future amendments and supplements, are incorporated into this chapter by reference unless the context clearly indicates otherwise. A copy of the Federal Act, the State Act, or any Federal regulation cited in this chapter may be obtained at the State Library. Wherever the requirements of this chapter are more stringent than the requirements of the Federal Act or a federal regulation, the requirements of this chapter shall apply.

New Rule, R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR THE NJPDES PERMIT

7:14A-2.1 Application for NJPDES permit

(a) All applications for a NJPDES permit shall be submitted to the appropriate Department office as identified on either the application form or other appropriate Department instructions.

(b) The following persons shall obtain a NJPDES permit:

1. A person who currently owns any part of a facility which includes a discharge or activity regulated pursuant to this chapter;

2. A person who currently operates any part of a facility which includes a discharge or activity regulated pursuant to this chapter.

(c) Whenever, pursuant to (b)1 and/or (b)2 above, more than one person is required to obtain a NJPDES permit for one or more discharges or activities at a specific site, the Department may issue a single permit and may list all of these persons as permittees.

(d) The Department shall not issue a permit before receiving a complete application, with the exception of an emergency permit issued pursuant to N.J.A.C. 7:14A-2.2 or a general permit issued pursuant to N.J.A.C. 7:14A-3.9, or when the Department issues an interim NJPDES permit based on information the Department possesses, which may include applications previously filed with State, Federal or local agencies. An application for a permit is complete when the Department receives all of the information required on the application form and any information substantially related to the permit and determines the application has been satisfactorily completed. The completeness of each application for any type of discharge permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. An applicant is required to submit the applicable information in N.J.A.C. 7:14A-1.7(b), 2.1, 3.2, 4.4, 5.8, and subchapters 6 and 10. The Department shall not make a final determination on any application until such time as the applicant has supplied any missing information and corrected any deficiencies.

(e) A person whose facility is the cause of, or whose activity results in, more than one discharge at a single site, shall separately describe each discharge in the application.

(f) Any person whose facility is the cause of, or whose activity results in, a discharge which is the subject of any of the applications required by these regulations and which threatens public health, or causes or contributes to any contravention of applicable water quality standards or effluent limitations, may be required, notwithstanding the filing of an application or pending filing requirement, to abate such pollution.

(g) The schedule for submission of applications is as follows:

1. Any person planning to undertake any activity which shall result in a discharge to surface water (DSW) shall apply for a discharge allocation certificate (DAC) in accordance with N.J.A.C. 7:14A-3.3 unless the discharge is listed in (g)1i, ii, or iii below. This provision does not exempt any person from obtaining a NJPDES permit in accordance with this chapter.

i. Discharges authorized by a general permit;

ii. Discharges from separate storm sewers; however, a DAC is required for discharges into storm sewers of domestic wastewater, non contact cooling water, or process waste water other than stormwater;

iii. Discharges included in facilities plans approved prior to March 6, 1981 pursuant to Section 201 of the Federal Act.

2. Any person planning to undertake any activity which shall result in a discharge covered by this chapter (except for a discharge to surface water (DSW)) shall apply for a NJPDES permit in accordance with N.J.A.C. 7:14A-7.2 at least 180 days prior to building, installing, or substantially modifying any facility for the collection or treatment of any pollutant.

3. Any person planning to undertake any activity which shall result in a discharge covered by this chapter (except for a discharge to surface water (DSW)) which does not require a facility for the collection or treatment of waste (such as land application of sludge) shall apply for a NJPDES permit at least 180 days prior to planned discharge.

4. Any person who had a NJPDES permit prior to the effective date of these regulations shall apply for a NJPDES permit in accordance with N.J.A.C. 7:14A-10.1.

5. Any person planning to continue discharging after the expiration date of an existing NJPDES permit shall file an application for renewal at least 180 days prior to expiration of the existing permit.

6. All other applicants for a NJPDES permit(s) shall apply in accordance with N.J.A.C. 7:14A-10.1.

(h) All applicants for NJPDES permits shall provide the following information to the Department using the application form provided by the Department:

1. The activities conducted by the applicant which require it to obtain a NJPDES permit;

2. The name, mailing address, and location of the facility for which the application is submitted;

3. The SIC codes which best reflect the principal products or services provided by the facility;

4. The name, address, and telephone number of all current owners and operators, as well as the ownership status, and status as Federal, State, private, public or other entity;

5. The name of the applicant's parent corporation;

6. A listing of all permits or construction approvals received or applied for by the applicant or its parent corporation at the site under any of the following programs:

i. Hazardous Waste Management program under RCRA;

ii. NJPDES permits or treatment works approvals under the State Act or construct and operate permits;

iii. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

iv. Nonattainment program under the Clean Air Act;

v. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

vi. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

vii. Dredge or fill permits under Section 404 of the Federal Act;

viii. Other relevant environmental permits, including Federal permits.

7. Identification of administrative orders, administrative consent orders, notices of violations, complaints filed, or other corrective or enforcement action(s) required by any governmental agency(ies) with regard to the operation of the applicant at that site concerning pollution within the previous five years;

8. To the extent practicable, the location of all sites involved in the storage of solid or liquid waste at the facility for which the NJPDES application is being made and the ultimate disposal sites of solid or liquid waste generated by any facility with a discharge;

9. A topographic map (U.S. Geological Survey Topographic Map. 7.5 minute Quadrangle Series) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area;

10. A brief description of the nature of the business.

(i) The Department may require that an applicant for an NJPDES permit provide additional data, reports, specifications, plans or other information concerning the existing or proposed pollution control program. For new discharges to groundwater permits and all discharges to surface water permits, the Department shall not make a final determination on any application until such time as the applicant has supplied the requested information and corrected any deficiencies therein.

(j) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under N.J.A.C. 7:14A-2.1, 3.2(DSW), 4.4(IWWMF), 5.8(UIC) and N.J.A.C. 7:14A-6 and 7:14A-10 for a period of at least five years from the date the application is signed.

(k) Applicants for NJPDES permits (other than those applying for the renewal of SIU permits where there is to be no change in the discharge identified in the existing permit), DACs, treatment works approvals, or sewer connection approvals shall provide written statements of consent and comments as follows:

1. Prior to the submission of an application, the applicant shall submit (return receipt requested) a copy of the application and the applicable information required pursuant to this chapter to the affected sewage authority(ies) and to the municipality in which the discharge(s) will be located, with a request that they provide a written statement of consent to the application.

i. Applications submitted to the Department shall include a written statement of consent from both the affected sewage authority(ies) and municipality in which the discharge(s) will be located. Applications which are submitted without a written statement of consent shall be reviewed by the Department in accordance with (k)4iv and v below.

ii. This subsection does not apply to NJPDES permits that are solely for discharges from separate storm sewers; however, this subsection does apply to NJPDES permits for discharges into storm sewers of domestic wastewater, non contact cooling water, or process wastewater other than stormwater.

2. A written statement of consent by a municipality shall be as follows:

i. A written statement of consent by a municipality concerning a proposed discharge or treatment works shall include the following:

(1) The project as proposed is in conformance with the requirements of all municipal ordinances; and

(2) The governing body of the municipality accepts and approves of the project as proposed by the applicant.

ii. A statement of consent shall be in the form of a resolution by the governing body, or it may be a written statement, in a form approved by the Department, signed by a person who has been delegated the authority to sign such a statement by a governing body resolution. In the latter case, the delegation resolution shall be provided to the Department.

3. A written statement of consent by an affected sewage authority shall be as follows:

i. For purposes of this section, "affected sewerage authority" means the sewerage authority whose service area includes the site where the discharge requiring a NJPDES permit is located.

ii. A written statement of consent by an affected sewerage authority concerning a proposed discharge of pollutants or a treatment works shall include the following:

(1) The project as proposed is in conformance with all ordinances, rules, or regulations of the authority.

(2) The governing body of the authority accepts and approves of the project as proposed by the applicant.

iii. A statement of consent must be in the form of a resolution by the governing body, or it may be a written statement, in a form approved by the Department, signed by a person who has been delegated the authority to sign such a statement by a governing body resolution. In the latter case, the delegation resolution shall be provided to the Department.

4. An applicant's request for a written statement of consent from an affected sewerage authority or municipality shall be processed as follows:

i. The affected sewerage authority or municipality must consent to the application or submit comments to the Department within 60 days of the request for consent. Prior to the expiration of the 60-day period to respond to a request for a written statement of consent, the municipality or sewerage authority may request a 30-day extension for review of a request for consent.

ii. Any document issued by a sewerage authority or a municipality which is tentative, preliminary, or conditional approval shall not be considered a statement of consent.

iii. When the affected sewerage authority or municipality does not consent to a project, it shall state all reasons for rejection or disapproval in a resolution and send a certified copy of the resolution to the Department.

iv. When the affected sewerage authority or municipality expressly denies a request for a written statement of consent for a project, the permit application may be determined by the Department to be incomplete for processing; or in the alternative, the Department may review the reasons for denial. Any such reasons shall be considered by the Department in determining whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6, or a Treatment Works Approval or sewer connection approval in accordance with N.J.A.C. 7:14A-12.

v. When the affected municipality or sewerage authority does not issue a written statement of consent in accordance with (k)4i above, or a denial in accordance with (k)4iv above, the Department, upon receipt of proof that the applicant has delivered to the affected agency a written request for a written statement of consent, shall review the reasons therefor, if known on the basis of reasonably reliable information. Any such reasons shall be considered by the Department in determining whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6, or a Treatment Works Approval or sewer connection approval in accordance with N.J.A.C. 7:14A-12. The Department may, in its discretion, deem the application to be incomplete pending the expiration of the time period set forth in (k)4i above.

Amended by R.1982 d.495, effective January 17, 1983.
See: 15 N.J.R. 85(a).

(c): "interim NJPDES permit" exception added.
Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.
Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (a), office name changed from "Water Quality Management".
Amended by R.1989 d.517, effective October 2, 1989.
See: 20 N.J.R. 2198(a), 21 N.J.R. 3099(a).

Added new (l) through (o), rules pertaining to new or expanded DTW.

Administrative Correction to (m) and (n).
See: 22 N.J.R. 2001(b).

Amended by R.1992 d.434, effective November 2, 1992.
See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

Amended by R.1993 d.59, effective February 1, 1993.
See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Repealed (l)-(o) based on invalidation of co-permittee requirements pursuant to *New Jersey Builders Association v. Fenske*, 249 N.J. Super. 60 (App.Div.1991).

Case Notes

Regulation of Department of Environmental Protection (DEP) is invalid, since it exceeds statutory authority delegated agency in Water Quality Planning and Water Pollution Acts. *New Jersey Builders Ass'n v. Fenske*, 249 N.J. Super. 60, 591 A.2d 1362 (A.D.1991).

DEP could issue discharge permit to owner of closed landfill, only if Department had substantial evidential basis for believing that landfill actually was discharging pollutants that might flow or drain into State's waters. *V. Concrete Co. v. Department of Environmental Protection*, 115 N.J. 1, 556 A.2d 761 (1989).

7:14A-2.2 Emergency permits

(a) The Department may issue an emergency permit to allow the activities listed in (b) below only after making a finding that:

1. An imminent and substantial endangerment to human health will result unless an emergency permit is granted; or

2. Except with regard to an injection under the UIC program, an imminent and substantial endangerment to

the environment will result unless an emergency permit is granted; or

3. A substantial and irretrievable loss of oil or gas resources will occur unless an emergency permit is granted to a Class II well under the UIC program; and

i. Timely application for a permit could not practicably have been made; and

ii. The injection will not result in the movement of fluids into underground sources of drinking water; or

4. A substantial delay in production of oil or gas resources will occur unless an emergency permit is granted to a new Class II well under the UIC program, and the authorization will not result in the movement of fluids into an underground source of drinking water.

(b) Notwithstanding any other provision of this chapter, the Department may issue an emergency permit, except for a DSW, to an owner and/or operator of a facility to allow:

1. Discharge of pollutants, where such discharge is unpermitted or the discharge consists of pollutants not covered by an effective permit; or

2. Treatment and storage or disposal of hazardous waste for a nonpermitted IWMF or of hazardous waste not covered by the permit for an IWMF with an effective permit; or

3. A specific underground injection which has not otherwise been authorized by permit.

(c) The requirements for issuance of an emergency permit are as follows:

1. The Department may issue an emergency permit by either oral or written permission. Oral permission may only be given by the Director, Division of Water Resources, or his/her designee and shall be followed within five days by a written emergency permit.

2. The Department may issue an emergency permit for any duration not to exceed 180 days, except:

i. That underground injections temporarily permitted in order to prevent an imminent and substantial endangerment to the health of persons shall be for no longer term than required to prevent the hazard, or 90 days, whichever is less.

ii. That land application of municipal or nonhazardous sludge temporarily permitted in order to prevent an imminent and substantial endangerment to the health of persons shall be for a term no longer than that required to prevent the hazard, or 180 days, whichever is less.

iii. That storage of municipal or nonhazardous sludge temporarily permitted in order to prevent an imminent and substantial endangerment to the health of persons shall be for a term no longer than that required to prevent the hazard, or one year, whichever is less.

3. The Department shall clearly specify in the emergency permit the hazardous wastes to be received, and the manner and location of their treatment, storage, disposal, or injection.

4. The Department shall clearly specify in the emergency permit the rate, quantity, and quality of pollutants to be discharged and the monitoring which is required.

5. The Department may immediately terminate the emergency permit at any time following a determination that termination is appropriate to protect human health and the environment.

6. The Department shall publish, along with the emergency permit, a public notice of the emergency permit pursuant to N.J.A.C. 7:14A-8.1, including:

i. Name and address of the office granting the emergency authorization;

ii. Name and location of the permitted facility;

iii. A brief description of the wastes involved;

iv. A brief description of the action authorized and reasons for authorizing it; and

v. Duration of the emergency permit.

7. The Department shall issue an emergency permit regarding injections only after a complete NJPDES permit application has been submitted, and shall only be effective until final action on the application.

8. The Department may condition the emergency permit regarding injection under the UIC program in any manner that the Department determines is necessary to ensure that the injection shall not result in the movement of fluids into an underground source of drinking water; and

9. The Department shall incorporate in the emergency permit, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and 40 CFR Parts 264 and 266.

Amended by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

The word "facility" deleted after IWMF.

7:14A-2.3 Continuation of expired permits

(a) The conditions of an expired permit are continued in force pursuant to the "Administrative Procedure Act", N.J.S.A. 52:14B-11, until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application for renewal as provided in N.J.A.C. 7:14A-2.1, 3.2 (DSW), 4.4 (IWMF), 5.8 (UIC), and 10; and
2. The Department, without fault on the part of the permittee, fails to issue a new permit with an effective date on or before the expiration date of the previous permit (e.g., when issuance is impracticable due to constraints of time or resources).

(b) Permits continued under this section remain fully effective and enforceable.

(c) When the permittee is not in compliance with the conditions of the expired or continued permit, the Department, in its discretion, may choose to do one or more of the following:

1. Initiate enforcement action based upon the permit which has been continued;
2. Issue a notice of intent to deny the new permit under N.J.A.C. 7:14A-8.1. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
3. Issue a new permit under subchapters 7 and 8 with appropriate conditions; or
4. Take other actions authorized by these regulations or the State Act.

(d) In the event that the permittee fails to submit a timely and complete application for renewal, all discharges of pollutants from the permittee's facility shall cease unless the Department, in its discretion, grants approval in writing to the permittee to continue to discharge in conformance with the terms and conditions of the expired permit. Such approval shall terminate upon the effective date of the renewed permit.

Amended by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Case Notes

Federal EPA discharge permit which expired remained in effect by operation of law until effective date of state permit. Student Public Interest Research Group of New Jersey v. Georgia-Pacific Corp., 615 F.Supp. 1419 (D.N.J.1985).

7:14A-2.4 Signatories

(a) All permit applicants shall submit to the Department the following two-part certification:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (a)1 shall be signed by the highest ranking corporate, partnership, or governmental officer or official at the facility to which the information pertains.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that this application and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fine and/or imprisonment."

i. The certification required by (a)2 shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

(b) Except as provided in a general DSW permit, all reports required by permits except Discharge Monitoring Reports, other information requested by the Department and all permit applications submitted for Class II wells under N.J.A.C. 7:14A-5.8 shall be signed by a person described in (a)2i above, who shall make the certifications set forth in (a)2 above, or by a duly authorized representative of that person. A general DSW permit shall not specify signature requirements less stringent than those applicable under 40.CFR 122.22(b). A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (a) above;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as a position of plant manager, operator of a well or well field, superin-

tendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

3. The written authorization is submitted to the Department;

4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any report, information, or applications to be signed by an authorized representative;

5. A duly authorized person shall make the following certification:

i. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(c) All discharge monitoring reports shall be signed by the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility, which responsibilities usually include authorizing capital expenditures and/or hiring personnel. For private entities this will usually be a person identified in (a)2i above, and for public entities it will usually be a plant manager, an executive director of a public authority, or a ranking elected official. The above described official may, in his or her absence, authorize another responsible high ranking official to sign the report. Authorizations for other individuals to sign in accordance with this subsection shall be made in accordance with (b) above. The following requirements shall also apply to the signing of discharge monitoring reports:

1. The highest ranking official shall be liable in all instances for the accuracy of all of the information provided in the monitoring report. However, the highest ranking official may file within seven days of his or her return, amendments to the monitoring report to which he or she was not a signatory.

i. The filing of amendments to a monitoring report in accordance with (c)1 above shall not be considered a late filing of a report for the purposes of N.J.A.C. 7:14-8.9(e), or for the purposes of determining a significant noncomplier.

(d) All signatures required by this section shall be notarized.

Amended by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Changes to include the requirements of the Clean Water Enforcement Act, P.L. 1990, c.28.

Administrative change to (b).

See: 25 N.J.R. 687(a).

7:14A-2.5 Requirements applicable to all permittees

(a) Permittees shall comply with the following:

1. The permittee shall comply with all the conditions of its permit including, but not limited to, effluent limitations based upon guidelines or standards established pursuant to the Federal Act or the State Act together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements. All discharges shall be consistent at all times with the terms and conditions of the permit and no pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically regulated in the NJPDES permit or listed and quantified in the NJPDES application shall constitute a violation of the permit, unless the permittee can prove by clear and convincing evidence that the discharge of the unauthorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters, or unless the NJPDES permit is a general NJPDES permit for stormwater point sources or separate storm sewers that expressly exempts permittees from this provision, in which case the exemption shall apply only to the discharge authorized by the permit. Any permit noncompliance constitutes a violation of the State Act or other authority of this chapter and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Department shall not issue a NJPDES permit when the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations.

2. A permittee shall not attain any effluent concentration by dilution. Nor shall a permittee increase the use of process water or cooling water or otherwise attempt to dilute a discharge as a partial or complete substitute for adequate treatment to attain permit limitations or water quality standards.

3. The permittee shall comply with applicable effluent standards or prohibitions established under Section 307(a) of the Federal and Section 4 of the State Acts for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. The permittee may only continue an activity regulated by a NJPDES permit after the expiration of the permit if it has complied with the provisions of N.J.A.C. 7:14A-2.3.

5. Duty to halt or reduce activity:

i. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

ii. Upon the reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost.

6. The permittee shall take such corrective actions as are required under the Federal Act and State Act, and other relevant provisions of law, including, at a minimum, accelerated and/or additional types of monitoring, temporary repairs, ceasing discharge or other measures to mitigate the effects of violating its NJPDES permit.

7. The permittee shall at all times maintain in good working order and operate as effectively as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes, at a minimum, effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls including appropriate quality assurance procedures as described in 40 CFR 136 and applicable State law and regulations. All permittees who operate a treatment works shall satisfy the licensing requirements of the "Water Supply and Wastewater Operators Licensing Act", N.J.S.A. 58:11-64 et seq., or other applicable law. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit or where required by applicable law or regulation.

8. A permit may be modified, revoked and reissued, or terminated for cause by the Department. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance shall not stay any permit condition. A permit condition may be administratively stayed by the Department in accordance with N.J.A.C. 7:14A-8.10.

9. A permit shall not convey any property rights of any sort or any exclusive privilege.

10. The permittee shall furnish to the Department within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating its permit, or to determine compliance with its permit. The permittee shall also furnish, upon request of the Department, copies of records required to be kept by its permit.

11. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:

i. Enter upon the permittee's premises where a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing. Photography shall only be allowed as related to the discharge;

ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

iii. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

iv. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

12. The permittee shall install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the Department reports of monitoring results as may be stipulated in the permit, or required by the Department pursuant to (a)14 below. The permittee shall provide for monitoring, reporting and records as follows:

i. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

ii. The permittee shall perform all analyses in accordance with the analytical test procedures approved under 40 CFR Part 136. Where no approved test procedure is available, the permittee shall indicate a suitable analytical procedure and shall provide the Department with literature references or a detailed description of the procedure. The Department shall determine the appropriate procedure and so require in the NJPDES permit. The laboratory performing the analyses for compliance with this regulation shall previously have been Approved and/or Certified by the Department for the analysis of those specific parameters in accordance with N.J.A.C. 7:18-1 et seq. Infor-

mation concerning laboratory approval and/or certification may be obtained from:

New Jersey Department of Environmental Protection
 Division of Financial Management, Planning and General Services
 Bureau of Revenue
 CN 402
 Trenton, New Jersey 08625
 (609) 530-5760

iii. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by its permit, and records of all data used to complete the application for its permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by written request of the Department at any time.

iv. Records of monitoring information shall include:

- (1) The date, exact place, and time of sampling or measurements;
- (2) The individual(s) who performed the sampling or measurements;
- (3) The date(s) analyses were performed;
- (4) The individual(s) who performed the analyses;
- (5) The analytical techniques or methods used; and
- (6) The results of such analyses.

v. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) and the Department's Monitoring Report Form (MRF).

vi. If the permittee monitors any pollutant more frequently than required by its permit, using test procedures approved under 40 CFR 136 or as specified in its permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or MRF.

vii. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

viii. Wastewater monitoring frequency and sample type shall, at a minimum, be in accordance with Appendix H for the parameters listed therein.

ix. All permittees with effluent limits expressed as daily maximums or minimums without a monthly average for that particular parameter shall also report, in addition to all other applicable reporting requirements, the average of all daily maximum or minimum values obtained during the reporting month. The Department will use this average of all daily maximum or minimum values to determine whether or not a violation of a daily maximum or minimum is a serious violation. The violation of a daily maximum or minimum shall be a serious violation if the average of all daily maximum or minimum values reported varies from the effluent limit as follows:

- (1) By 20 percent or more for a hazardous pollutant; and
- (2) By 40 percent or more for a nonhazardous pollutant.

x. All permittees with a point source discharge required to submit discharge monitoring reports to the Department shall submit the required reporting forms to the Department on a monthly basis for all those parameters that are required to be monitored during that particular month.

xi. Any permittee who either reports effluent values that would make the permittee a serious violator or otherwise becomes a serious violator for one or more specific parameters for which the permittee is required to monitor and report less frequently than monthly, or fails to submit a completed discharge monitoring report, shall automatically adjust its monitoring and reporting frequency for that parameter at that discharge point to monthly, beginning the first month after the month in which the permittee was required to submit the completed discharge monitoring report or the discharge monitoring report to the Department which results in the permittee becoming a serious violator, whether or not the permittee has raised or intends to raise any affirmative defense to, or otherwise contest, the failure to submit the completed discharge monitoring report or any of the violations that would otherwise make the permittee a serious violator. The permittee shall continue this monthly schedule until the permittee has submitted six consecutive monthly discharge monitoring reports which show compliance with the particular parameter at the particular discharge point, at which time the permittee may resume the original schedule in its permit.

13. The permittee shall conform with the signatory provisions pursuant to N.J.A.C. 7:14A-2.4.

14. The permittee shall conform to the reporting requirements as follows:

i. The permittee shall give notice to the Department, as soon as possible, of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of pollutants discharged.

ii. The permittee shall give reasonable advance notice to the Department of any planned changes in the permitted facility or activity which may result in non-compliance with permit requirements.

iii. The permittee shall not transfer its permit to any person except after notice to the Department. The Department may require information, revocation, or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the appropriate Act. (See N.J.A.C. 7:14A-2.12; in some cases, modification or revocation and reissuance is mandatory.)

iv. The permittee shall report monitoring results at the intervals specified in the permit.

v. Where applicable, the permittee shall meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance. Reports of compliance or noncompliance with, or any progress reports on, the interim and final requirements contained in any compliance schedule of a permit shall be submitted no later than 14 days following each schedule date.

vi. The permittee shall include the following in each report:

(1) The permittee shall report to the Department any noncompliance including, but not limited to, exceedances of effluent limitations that cause, or have the potential to cause, injury to persons or damage to the environment, or poses a threat to human health or the environment. The permittee shall provide the Department with the following information:

vi. The permittee shall include the following in each report:

(1) The permittee shall report any noncompliance which may endanger health or the environment. The permittee shall provide the Department with the following information:

(A) A description of the discharge;

(B) Steps being taken to determine the cause of noncompliance;

(C) Steps being taken to reduce, remediate and eliminate the noncomplying discharge and any damage to the environment, and the anticipated

time frame to initiate and complete the steps to be taken;

(D) The period of noncompliance, including exact dates and times and if the noncompliance has not been corrected, and the anticipated time when the discharge will return to compliance;

(E) The cause of the noncompliance;

(F) Steps being taken to reduce, eliminate, and prevent reoccurrence of the noncomplying discharge; and

(G) An estimate of any danger to human health or the environment posed by the discharge.

(2) For the types of discharges identified in N.J.A.C. 7:14A-3.10(b)5, the permittee shall orally provide the information in (a)14vi(1)(A) through (C) above to the DEPE Hotline (609) 292-7172 within two hours of the occurrence, or of the permittee becoming aware of the occurrence, whichever occurs later.

(3) For the types of discharges identified in N.J.A.C. 7:14A-3.10(b), the permittee shall orally provide the information in (a)14vi(1)(D) through (G) above to the DEPE Hotline within 24 hours of the occurrence or of the permittee becoming aware of the occurrence, whichever occurs later.

(4) For the discharges identified in N.J.A.C. 7:14A-3.10(b), a written submission shall also be provided within five days of the occurrence or of the permittee becoming aware of the occurrence, whichever comes later. The written submission shall contain the information in (a)14vi(1)(A) through (G).

vii. The permittee shall submit a written report to the Department of any serious violation within 30 days of the violation, together with the information specified in (a)14vi(1)(A) through (G) above, and a statement indicating that the permittee understands the civil administrative penalties required to be assessed for serious violations, and explaining the nature of the serious violation and the measures taken to remedy the cause or prevent a recurrence of the serious violation.

viii. The permittee shall report all instances of non-compliance not reported under (a)12i, iv, v, and vi above, at the time monitoring reports are submitted. The reports shall contain the information required in the written submission listed in (a)14vi(1) above.

ix. Where the permittee becomes aware that it has failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, the permittee shall promptly submit such facts or information within 10 days of the time the permittee becomes aware of the correct information.

15. Where applicable, the permittee shall limit the concentrations of heavy metals, pesticides, organic chemicals, and other contaminants in the sludge and shall conform with the requirements for the management of residuals under:

- i. Section 405 of the Federal Act governing the disposal of sewage sludge from publicly owned treatment works and with Sections 4 and 6 of the State Act;
- ii. (Reserved)
- iii. The "Sludge Quality Assurance Regulations," N.J.A.C. 7:14-4;
- iv. The Statewide Sludge Management Plan promulgated pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and
- v. The provisions concerning disposal of sewage sludge and septage in sanitary landfills set forth at N.J.A.C. 7:14A-1.3, N.J.S.A. 13:1E-42 and the Statewide Sludge Management Plan.

16. No permit may be issued, renewed or modified so as to relax any water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to the State Act or has entered into an agreement with the Department establishing a payment schedule therefore. However, if a penalty or fine is contested, the applicant or permit holder shall satisfy the above requirement by posting financial security as required pursuant to N.J.A.C. 7:14-8.4(a)9. The provisions of this paragraph with respect to penalties or fines shall not apply to a local agency contesting a penalty or fine.

Amended by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

(a)12viii added; at (a)15 old language deleted "management of residuals" added and (a)15iv and v added.

Amended by R.1991 d.378, effective August 5, 1991.

See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

Added (a)12ix, x and xi.

Administrative correction to (a)14.

See: 24 N.J.R. 1493(b).

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Changes to include the requirements of the Clean Water Enforcement Act, P.L. 1990, c.28.

Administrative correction.

See: 25 N.J.R. 4791(a).

Case Notes

Defendant, owner of smelting and metal recycling facility, failed to establish bypass defense to action for violation of permit due to discharge of untreated water following heavy rainfall; owner's failure to notify DEP within 24 hours of violation precluded it from asserting upset defense. Public Interest Research Group v. U.S. Metals Refining Co., 681 F.Supp. 237 (D.N.J.1987).

Entry by Department of Environmental Protection inspectors was reasonable and fell within open fields exception to warrant requirement. State v. Bonaccorso, 227 N.J.Super. 159, 545 A.2d 853 (L.1988).

Before warrantless inspection of pervasively regulated business will be deemed reasonable, there must be constitutionally adequate substitute for warrant. State v. Bonaccorso, 227 N.J.Super. 159, 545 A.2d 853 (L.1988).

Department of Environmental Protection inspectors' warrantless inspections were reasonable. State v. Bonaccorso, 227 N.J.Super. 159, 545 A.2d 853 (L.1988).

Requirement that entry be reasonable in terms of its time, place and manner was implicit in statute empowering Department of Environmental Protection to enter any premises in which discharge source was or might be located. State v. Bonaccorso, 227 N.J.Super. 159, 545 A.2d 853 (L.1988).

7:14A-2.6 Establishing permit conditions

(a) In addition to conditions required in all permits for all programs (N.J.A.C. 7:14A-2.5), the Department shall establish conditions, as required on a case-by-case basis, in permits for all programs under N.J.A.C. 7:14A-2.7 (Duration of permits), N.J.A.C. 7:14A-2.8(a) (Schedules of compliance), and N.J.A.C. 7:14A-2.9 (Monitoring).

(b) In addition to conditions required in all permits for a particular program, N.J.A.C. 7:14A-3.10 and 3.11 (DSW), N.J.A.C. 7:14A-4.4 (IWMF), N.J.A.C. 7:14A-5.9 (UIC), and N.J.A.C. 7:14A-6 (DGW), the Department shall establish conditions in permits for the individual programs, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the State and Federal Acts, other applicable authority and the regulations promulgated thereunder.

1. All NJPDES permits shall include any applicable State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. N.J.A.C. 7:14A-8.5 (Reopening of comment period) provides a means for reopening Department permit proceedings at the discretion of the Department where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in N.J.A.C. 7:14A-2.12.

2. New or reissued permits, and to the extent allowed under N.J.A.C. 7:14A-2.12 (DGW) referenced in N.J.A.C. 7:14A-3.13 and 3.14 (DSW), 4.4 (IWMF), 5.10 (UIC), and subchapter 6 (DGW).

(c) Incorporation: All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

1. The Department may establish conditions for financial assurance in any NJPDES permit. Instruments that the Department may approve include, at a minimum, letters of credit, insurance, surety bonds, and trust funds.

(d) The Department shall incorporate all permit conditions either expressly or by reference in the permit. If incorporated by reference, the Department shall provide in the permit a specific citation to the applicable regulations or requirements.

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).
Substantially amended.

Cross References

Discharge allocation certificates, see N.J.A.C. § 7:14A-3.3.

7:14A-2.7 Duration of permits

(a) NJPDES permits shall be effective for a fixed term not to exceed five years except as provided in N.J.A.C. 7:14A-2.3.

(b) The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Department may issue any permit for a duration that is less than the full allowable term under this section.

7:14A-2.8 Schedules of compliance

(a) The Department may, when appropriate, specify in the permit a schedule of compliance, including interim deadlines for progress or reports of progress towards compliance with the State and Federal Acts and all other applicable authority for this chapter.

1. The Department shall establish schedules of compliance under this section as follows:

i. For discharges to surface water (DSW), schedules of compliance shall require compliance not later than the applicable statutory deadline under the State and Federal Acts.

ii. Where the initial NPDES permit was issued to a new source, which commenced discharge after August 13, 1979, or the initial NJPDES permit is issued to a new source, or to a recommencing discharger, the permit shall not contain a schedule of compliance under this section except as provided in N.J.A.C. 7:14A-2.12(b)3. Within the shortest feasible time of issuance of the new source recommencing discharge permit (not to exceed 90 days) the owner or operator must meet all permit conditions.

iii. For discharges into wells under the UIC program, schedules of compliance shall require compliance not later than three years after the effective date of the permit.

iv. Compliance schedules may be issued when it is demonstrated by a discharger that new or revised water quality based effluent limitations, based on ambient criteria adopted or revised after July 1, 1977, cannot be consistently met with the facility's existing treatment

process. No schedule of compliance may be allowed for parameter specific water quality based effluent limitations where the parameter specific ambient water quality criterion, which was the basis for developing that limitation, was adopted prior to July 1, 1977 and has not been revised since adoption.

2. Except as provided in (b)1ii below, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

i. The time between interim dates shall not exceed one year.

ii. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. Examples of interim requirements include:

(1) Submit a complete New Jersey Wastewater Treatment Trust Fund Loan Application (for POTWs);

(2) Let a contract for construction of required facilities;

(3) Commence construction of required facilities; and

(4) Complete construction of required facilities.

3. The Department shall require in the permit that the permittee shall, no later than 14 days following each interim date or the final date of compliance, notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if (a)1iii above is applicable.

(b) A NJPDES permit applicant or permittee may cease conducting activities regulated by the State Act rather than continue to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

i. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

ii. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term shall

include the termination date, the permit shall contain a schedule leading to termination which shall ensure timely compliance with applicable requirements, or for a DSW discharge, compliance no later than the statutory deadline in the Federal Act.

3. If the permittee is undecided as to whether it shall cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules:

i. One schedule shall lead to timely compliance with all applicable requirements, compliance for DSW permits shall be no later than the statutory deadline in the Federal Act;

ii. The second schedule shall lead to cessation of regulated activities by a date which shall ensure timely compliance with all applicable requirements, compliance for DSW permits shall be no later than the statutory deadline in the Federal Act;

iii. Both schedules shall contain an identical interim deadline requiring a final decision as to whether the permittee shall cease conducting regulated activities. A decision by the permittee to continue conducting regulated activities shall be made by a date which ensures sufficient time to comply in a timely manner with all applicable requirements.

iv. Each permit containing two schedules shall include a requirement that the permittee, after making a final decision under (b)3iii above, shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and shall follow the schedule leading to termination if the decision is to cease conducting regulated activities.

4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a solemn public commitment satisfactory to the Department, such as a resolution of the board of directors of a corporation.

(c) A publicly owned treatment works (POTW) required to develop a pretreatment program shall have a pretreatment program compliance schedule incorporated into the NJPDES/DSW permit at the time of issuance, reissuance or modification of the permit. The compliance schedule shall require the development of an approvable POTW pretreatment program no later than the time prescribed by 40 CFR Part 403.8, whichever is more stringent.

(d) New sources or sources which recommence discharging after terminating operations, and those sources which had been indirect dischargers which commence discharging into surface waters of the State, do not qualify for compliance schedules under this section except as provided in N.J.A.C. 7:14A-2.12(b)3. In addition, new sources requiring a discharge to surface water (DSW) permit are also subject to the requirements of N.J.A.C. 7:14A-3.3 (DAC).

(e) All permittees shall provide a report indicating the status of compliance in accordance with N.J.A.C. 7:14A-2.5.

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (a)1, ii(1), Step 1 construction grant changed to New Jersey Wastewater Treatment Trust Fund Loan Application.

Amended by R.1993 d.59, effective February 1, 1993.
See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Classification based on the stayed order of USEPA Administrator *In the matter of StarKist Caribe* (April 16, 1990).

7:14A-2.9 Requirements for recording and reporting of monitoring results

(a) All permits shall specify:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in N.J.A.C. 7:14A-3.13 (DSW), 4.4 (IWMF), 5.13 through 5.17 (UIC) and subchapter 6 (DGW).

(b) The Department may, upon written notification, require any facility which possesses or is required to possess a NJPDES DSW, DAC, DGW, SIU or UIC permit to annually have one of its permit-required periodic sampling analyses performed by an independent laboratory which is not owned or controlled by the permittee. This shall be broadly construed to include all the sample analyses that are to be performed during the course of routine hourly, daily, monthly, quarterly, semi-annual, or annual sampling.

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

(b) added.

Amended by R.1993 d.59, effective February 1, 1993.
See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Reference to reporting frequency deleted.

7:14A-2.10 Effect of a permit

(a) Except for Class II and Class III wells under UIC and for any toxic effluent standards and prohibitions imposed under Section 307 of the Federal Act or Section 4 or 7 of the State Act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA, with Sections 301, 302, 306, 307, 318, 403 and 405 of the Federal Act and Section 6 of the State Act, and Part C of the Federal Safe Drinking Water Act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in N.J.A.C. 7:14A-2.12 and 2.13.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Federal, State or local law or regulations.

7:14A-2.11 Transfer of permits

(a) Except as provided in (b) below, to reflect changes in ownership and identify the new permittee and incorporate such other requirements as may be necessary under the State and Federal Acts, a permit may be modified under N.J.A.C. 7:14A-2.12(b)5 or a minor modification may be made under N.J.A.C. 7:14A-2.14(a)4.

(b) As an alternative to transfers under (a) above, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee if:

1. The current permittee notifies the Department in writing by certified mail of the proposed transfer as follows:

i. Where production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged, the following information shall be submitted at least 90 days prior to a proposed "transfer date":

- (1) Name and address of current facility;
- (2) Name and address of new owners;
- (3) NJPDES permit number;
- (4) Names of the new principal persons responsible;
- (5) Names of persons upon whom legal process can be served; and

(6) A notarized statement signed by the new principal officer stating that he or she has read the NJPDES permit and certifies (pursuant to N.J.A.C. 7:14A-2.4(b)5i) to abide by all the conditions of the permit and that the production levels, products produced, rates of discharge and wastewater characteristics shall remain unchanged.

ii. Where there will be a change in production levels, products produced, rates of discharge, or wastewater characteristics, the information required in (b)1i above shall be submitted at least 180 days prior to a proposed transfer date.

2. The current permittee includes in the notice of proposed transfer a written agreement between the existing and new permittees which includes a specific date for transfer of permit responsibility, coverage, and liability between the parties. In the case of a UIC permit, the notice shall demonstrate that the financial responsibility

requirements of N.J.A.C. 7:14A-5.10(a)7 shall be met by the new permittee; and

3. The Department does not notify the existing permittee and the proposed new permittee, within 30 days of receipt of notice of proposed transfer, of an intent to modify, revoke or reissue the permit or, for a discharge to surface water (DSW), require a DAC. A modification number under (b)3 of this section may also be a minor modification under N.J.A.C. 7:14A-2.14. If such notice is not received, the transfer is effective on the date specified in the agreement mentioned in (b)2 above.

4. Whenever the regulated discharge has ceased prior to the proposed permit transfer, any compliance schedule shall not be automatically reinstated but shall be subject to revision or complete withdrawal if circumstances leading to its imposition have changed.

Amended by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (b)1, i(6), citation corrected.

7:14A-2.12 Modification, suspension or revocation of permits

(a) When the Department receives any information as, for example, from inspection of the facility or from information submitted by the permittee as required in the permit (for example, see N.J.A.C. 7:14A-2.5, 3.10 and 3.11 (DSW), 4.4 (IWMF), 5.9 (UIC), 7:14A-6), receives a request for modification or revocation under N.J.A.C. 7:14A-7.5, or conducts a review of the permit file, a determination may be made by the Department as to whether cause exists including, but not limited to, causes as provided under this subsection and (b) below, for modification, suspension or revocation of the permit. If cause exists, the Department may modify, suspend or revoke the permit accordingly, subject to the limitations of (c) below, and may request an updated application if necessary. When a permit is modified, only those conditions subject to modification shall be reopened. If a permit is revoked, the entire permit shall be reopened and subject to revision. The permit may be reissued for a new term (see N.J.A.C. 7:14A-7.5(c)2). If a permit modification satisfies the criteria in N.J.A.C. 7:14A-2.14 for "minor modifications", the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in N.J.A.C. 7:14A-7 and 8 shall apply.

(b) The following are causes for modification, suspension, or revocation of a permit:

1. Material and substantial alterations or additions to the permitted facility, activity, or discharge which occurred after permit issuance which justify the application of permit conditions that are different or absent from those in the existing permit.

2. New information has been received by the Department. Permits other than for UIC Class II and III wells may be modified, suspended, or revoked during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For DSW general permits (N.J.A.C. 7:14A-3.9) this cause shall include any information indicating that the cumulative effects on the environment are unacceptable.

3. Promulgation of any applicable water quality standard, effluent standard, other standard or by judicial decision after the permit is issued. The Department may provide for a schedule of compliance in accordance with N.J.A.C. 7:14A-2.8 in order for the permittee to meet such standards.

4. For a modification of a compliance schedule, good cause as determined by the Department, and including an act of God, strike, flood, or other events over which the permittee has little or no control, for which the Department determines there is no control, and for which there is no reasonably available remedy. However, in no case shall a NJPDES compliance schedule be modified to extend beyond an applicable statutory deadline. (See also N.J.A.C. 7:14A-2.14 (minor modifications) and (c)11 below (DSW) innovative technology). This does not preclude the Department from the revocation or suspension of a compliance schedule for good cause shown.

5. Notification has been received by the Department (pursuant to N.J.A.C. 7:14A-2.5(a)14iii) of a proposed transfer of the permit. A permit may also be modified to reflect a transfer after the effective date of an automatic transfer (N.J.A.C. 7:14A-2.11(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

6. Where the Department classifies a facility with an existing NJPDES permit as an IWMF (see N.J.A.C. 7:14A-4).

7. For an individual NJPDES/SIU permit the wastewater unit has actual or potential discharge only into a delegated local agency or information has been received by the Department that a permittee has ceased to meet all criteria under which an individual NJPDES/SIU permit is required pursuant to N.J.A.C. 7:14A-10.5(a).

(c) The Department may only modify, suspend or revoke a permit for discharges to surface water (DSW):

1. When the permittee has filed a request for a variance under Section 6 of the State Act (N.J.S.A. 58:10A-6) or Sections 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a), or for "fundamentally different factors" under the Federal Act within the time specified in N.J.A.C. 7:14A-3.2 and the Department processes the request under the applicable provision of N.J.A.C. 7:14A-9.7;

2. When required to incorporate an applicable toxic effluent standard or prohibition under 307(a) of the Federal Act or Sections 6 and 7 of the State Act (see N.J.A.C. 7:14A-3.13(a));

3. When required by the "reopener" conditions in a permit, which are established in the permit under N.J.A.C. 7:14A-3.13(a) (for toxic effluent limitations) or 40 CFR Section 403.10(e) (pretreatment program);

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under N.J.A.C. 7:14A-3.14(h);

5. When a permittee is no longer eligible for net limitations, as provided in N.J.A.C. 7:14A-3.14(h);

6. As necessary under 40 CFR Section 403.8(e) (compliance schedule for development of pretreatment program) and N.J.A.C. 7:14A-13.1 et seq.;

7. Upon failure of the State to notify, as required by Section 402(b)(3) of the Federal Act, another state whose waters may be affected by a discharge from the State;

8. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR Part 125.3(c);

9. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application under N.J.A.C. 7:14A-10.3(a)11 or in the request for authorization under N.J.A.C. 7:14A-3.9(b)2 (unless the general permit expressly refers to a "request for authorization" and does not require the request for authorization to include a listing of toxic pollutants);

10. To establish a "notification level" as provided in N.J.A.C. 7:14A-3.13(a)6;

11. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under Section 202(a)(3) of the Federal Act for 100 percent of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under Section 202(a)(2) of the Federal Act. In no case shall the compliance schedule be modified to extend beyond an applicable Federal Act statutory deadline for compliance;

12. To include a plan or compliance schedule for the management of septage or sludge in accordance with the Statewide Sludge Management Plan.

13. To incorporate new information and/or applicable water quality standards, effluent standards, other standards or judicial decisions.

(d) Suitability of the facility location for UIC and IWMF shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Subsection (a) deleted and replaced; at (b), 6 added and at (c), 13 added.

Amended by R.1992 d.434, effective November 2, 1992.
See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

Amended by R.1993 d.59, effective February 1, 1993.
See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Allowing for revocation of certain NJPDES/SIU permits while allowing the discharge activity to continue.

Cross References

Application for an individual IWMF permit, see N.J.A.C. § 7:14A-4.4.

7:14A-2.13 Termination of permits

(a) The following are causes for terminating a permit during its terms, or for denying a permit renewal application:

1. Noncompliance by the permittee with any condition of the permit;
2. Failure to pay applicable fees;
3. The permittee's failure in the application or during the permit issuance process of a NPDES, DAC, NJPDES, treatment works approval or Construct and Operate permit to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;
5. Permits may be modified or terminated when there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a DTW);
6. The nonconformance of the discharge with any applicable facility, basin or areawide plans; or
7. If such permit is inconsistent with any duly promulgated effluent limitation, permit, regulation, statute, or other applicable State or Federal law.

(b) The Department shall follow the applicable procedures in terminating any NJPDES permit in accordance with subchapter 7 of this chapter.

(c) The Department may terminate a permittee's authorization to discharge under a general permit for causes specified in (a) above. Such termination of authorization is a type of permit termination under this section. With the consent of the permittee, however, the Department may terminate authorization under a general permit without following the procedures set forth in N.J.A.C. 7:14A-7 and 8, if the authorized discharge has been eliminated. A requirement that a permittee apply for an individual permit or seek authorization under another general permit in accordance with N.J.A.C. 7:14A-3.9 is not a termination within the meaning of this section N.J.A.C. 7:14A-2.13, even if the permittee's authorization is eventually terminated in favor of an individual permit or another general permit, or is automatically terminated as a result of the permittee's failure to submit in a timely manner an application form or request for authorization form.

Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

7:14A-2.14 Minor modification of permits

(a) The Department, with the consent of the permittee, may modify a permit to make corrections or allowances for changes in the permitted activity listed in this section. Such changes shall be made without following the procedures set forth in N.J.A.C. 7:14A-7 and 8. A permit modification not processed as a minor modification under this section shall be made for cause and shall conform with the draft permit and public notice requirements of N.J.A.C. 7:14A-7 and 8 as required in N.J.A.C. 7:14A-2.12. Minor modification may only:

1. Correct typographical errors (and language changes that have no legal or substantial effect);
2. Require more frequent monitoring or reporting by the permittee;
3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
4. Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Department;
5. Change the construction schedule for a discharger which is a new source. No such change shall affect a

discharger's obligation to have all pollution control equipment installed and in operation prior to discharge pursuant to N.J.A.C. 7:14A-3.3;

6. Change, for IWMF and DSW permits, the lists of facility emergency coordinators or equipment in the permit's contingency or emergency plan;

7. Change, for UIC permits:

i. The types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Department after reviewing information required under N.J.A.C. 7:14A-10.13, would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change its classification;

ii. The construction requirements approved by the Department pursuant to N.J.A.C. 7:14A-5.10 (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this chapter;

8. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

9. List sewer extensions to a domestic treatment works which are approved by the Department pursuant to N.J.A.C. 7:14A-12. Public notice of approved sewer extensions shall be published in the DEP Bulletin; or

10. Incorporate IWMF permit-by-rule conditions (N.J.A.C. 7:14A-4.6) into the existing NJPDES permits of IWMFs.

Amended by R. 1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Substantially amended.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Cite corrected at (a)9, at (a), 10 added.

7:14A-2.15 Permit-by-rule authorization for ground water discharges necessary for remediation of contaminated sites

(a) When the Department is remediating a contaminated site as defined at N.J.A.C. 7:26C-1.3, or an owner or operator of a contaminated site is conducting remediation under Department oversight pursuant to the rules at N.J.A.C. 7:14B implementing the Underground Storage of Hazardous Substances Act, the requirements of the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq., as amended), the requirements of the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11), or the Procedures for Department Oversight of the Remediation of Contaminated Sites at N.J.A.C. 7:26C, and is in receipt of a notification of authorization by the Department as specified in (b) below, the following ground water discharges are authorized by permit-by-rule:

1. Discharges from pilot treatment plants for the purpose of obtaining engineering design data where the discharge will not last more than 90 days from the first date of discharge, except for discharges related to in situ biotreatability studies where the discharge will not last more than 180 days from the first date of discharge;

2. Discharges from wells to test aquifers for the purpose of measuring aquifer characteristics where the discharge will not last more than 30 days from the first date of discharge;

3. Discharges from any other facility or equipment for monitoring, engineering, remedial alternatives analysis, or design studies necessary to evaluate a contaminated site where the discharge will not last more than 90 days from the first date of discharge; and

4. Discharges to ground water to remediate contamination resulting from any discharge of heating oil at a residential building of four units or less. "Heating oil" means any grade of petroleum product including, but not limited to, No. 1, 2, 4 (light and heavy), 5 (light and heavy), and 6 fuel oils, diesel and kerosene of any grade or type used to heat residential buildings.

(b) The permit-by-rule is effective upon receipt of written notification from the Department. This notification will include any limitations necessary to ensure compliance with applicable ground water quality, surface water quality or cleanup requirements.

Repealed by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Section was "Noncompliance and program reporting by the Department".

New Rule, R.1994 d.448, effective September 6, 1994.

See: 26 N.J.R. 158(a), 26 N.J.R. 3709(a).

Administrative correction to (a)1.

See: 26 N.J.R. 4182(b).

SUBCHAPTER 3. ADDITIONAL REQUIREMENTS APPLICABLE TO DISCHARGES TO SURFACE WATER (DSW)

Law Review and Journal Commentaries

Discharge Permit Rules Encourage Prevention. Robert J. Curley, Francis X. Journick, Jr., 135 N.J.L.J. No. 8, S14 (1993).

7:14A-3.1 Scope

(a) This subchapter contains specific requirements for the DSW permit program. The DSW program requires permits for the discharge of "pollutants" from any "point source" into surface waters of the State. The terms "discharge", "pollutants", "point source" and "waters of the State" are defined in N.J.A.C. 7:14A-1.9.

(b) The following discharges do not require DSW permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development;

2. Discharges of dredged or fill material into waters for which the State could not be authorized to administer the section 404 program under section 404(g) of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977" (33 U.S.C. § 1344) and implementing regulations;

i. In those waters for which the State could be authorized to administer the section 404 program under section 404(g) of the Federal Act, a person shall not discharge dredged or fill material except in conformity with a valid NJPDES permit, issued by the Division of Coastal Resources in the Department pursuant to the provisions of N.J.A.C. 7:7A, unless the discharge is specifically exempted therein. The NJPDES permit shall be a freshwater wetlands permit or an Open Water Fill permit, rather than a DSW permit.

3. Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances), and the State "Spill Compensation and Control Act", N.J.S.A. 58:10-23.11 et seq.;

4. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands but not discharges from concentrated animal feeding operations as defined in N.J.A.C. 7:14A-3.4, discharges from concentrated aquatic animal production facilities as defined in N.J.A.C. 7:14A-3.5, discharges to aquaculture projects as defined in N.J.A.C. 7:14A-3.6, and discharges from silvicultural point sources as defined in N.J.A.C. 7:14A-3.7;

5. Return flows from irrigated agriculture.

(c) A DSW permit shall not be issued:

1. When the Regional Administrator has objected to the issuance of the permit in accordance with the Memorandum of Agreement;

2. When, in the judgment of the United States Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

Amended by R.1988 d.588, effective December 19, 1988.

See: 20 N.J.R. 1328(a), 20 N.J.R. 3135(c).

Deleted text in (b)2 "of the United ... the Federal Act" and substituted "for which the ..."; added (b)2i.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

CFR cite in (a)3 corrected.

7:14A-3.2 Application for a permit

(a) Duty to apply:

1. Any person who discharges or proposes to discharge pollutants, as defined in N.J.A.C. 7:14A-3.1, and who does not have an effective permit, shall submit a complete application (which shall include a BMP program if necessary under 40 CFR Section 125.102) to the Department in accordance with N.J.A.C. 7:14A-2.1 or 3.3 and subchapters 7 and 8 of this chapter.

2. The following discharges are excluded from the requirements of this section:

i. Discharges to surface water excluded under N.J.A.C. 7:14A-3.1(b);

ii. Discharges of pollutants into a privately owned treatment works which are otherwise required to be permitted under N.J.A.C. 7:14A-3.13(a)13;

iii. Discharges covered by N.J.A.C. 7:14A-3.9 (General permits).

(b) Time to apply: Any person planning to undertake any activity which will result in a new source DSW shall submit an application for a discharge allocation certificate (DAC) at least 90 days prior to initiation of final engineering design, specifications and plans of the entire facility in accordance with N.J.A.C. 7:14A-3.3. A DAC is required prior to the issuance of a DSW permit for such discharge.

(c) Duty to reapply:

1. Any person who had a NPDES permit prior to the effective date of this chapter shall apply for a DSW permit in accordance with N.J.A.C. 7:14A-10.2.

2. Any person planning to continue discharging after the expiration of an existing DSW permit must file an application for renewal at least 180 days prior to expiration of the existing permit.

7:14A-3.3 Discharge allocation certificate (DAC)

(a) Purpose: The purpose of the DAC is to provide a person planning to undertake any activity which will result in a DSW discharge with notice by the Department of the applicable permit conditions required in N.J.A.C. 7:14A-2.6 and 3.13, including any waste load allocation which the Department requires. Such notice is intended to assist the applicant in planning and designing the treatment works for the DSW.

(b) When to apply: Any person planning to undertake any activity which will result in a DSW, except as exempted

pursuant to N.J.A.C. 7:14A-2.1(g)1, shall apply for a DAC at least 90 days prior to the initiation of final engineering designs, specifications and plans of a treatment works.

(c) Filing requirements: Any person planning to undertake any activity which will result in a DSW shall apply for a DAC in conformance with the requirements of N.J.A.C. 7:14A-2.1, 3.2, and 10.3.

(d) Environmental assessment: An applicant for a DAC shall submit an environmental assessment as described in N.J.A.C. 7:14A-10.4.

(e) Issuance: The Department shall issue a DAC in conformance with the requirements of subchapters 7 and 8 of this chapter.

(f) DAC duration is as follows:

1. A DAC shall be issued for a fixed term of 18 months for minor industrial facilities and non-POTWs and 30 months for major industrial and publicly owned facilities.

2. A DAC for minor industrial facilities and non-POTWs may be extended for one additional period of 18 months and 30 months for major industrial and publicly owned facilities provided:

i. The applicant has demonstrated completion of final engineering design, specifications and plans of the treatment works; and

ii. The applicant submits a copy of the final engineering design and a certification from a Licensed Professional Engineer that the treatment works has been designed to meet the applicable conditions in the DAC; and

iii. The applicant has submitted a written request for the extension 30 days prior to the expiration date of the DAC.

3. A 201 Facilities Plan shall not be approved unless the grantee has obtained a DAC.

4. A POTW may apply for a new DAC at least 180 days but not more than 360 days prior to the expiration of a DAC. The terms and conditions of a DAC for a POTW shall expire and shall not be stayed pending the issuance of a new DAC.

(g) Effect of DAC: Upon issuance of the DAC, the holder of the DAC may proceed to design and construct the facilities for which the DAC has been issued unless the Department determines that a Treatment Works Approval is also required in accordance with subchapter 12 of this chapter.

(h) Submission of application for DSW permit shall be as follows:

1. When a DAC expires an applicant must reapply for a draft DAC if the applicant intends to discharge.

2. No person shall discharge any pollutant prior to the issuance of a DSW permit.

3. A new source DSW shall only be issued when a person has a valid DAC and complies with (h)4 and 5 below.

4. All persons with a valid DAC shall submit a request for a DSW discharge permit at least 60 days prior to planned discharge.

5. Within 60 days of the planned discharge, the Department shall inspect the facility or site and shall issue a DSW discharge permit provided:

i. The applicant submits the certification described in N.J.A.C. 7:14A-3.3(f)2ii; and

ii. The applicant submits a certification from a Licensed Professional Engineer that the treatment works has been constructed in accordance with the original design specifications or with any modifications which were approved in writing by the Licensed Professional Engineer.

6. The DSW discharge permit shall contain the same terms and conditions as the valid DAC, unless the Department is required to modify said permit in accordance with N.J.A.C. 7:14A-2.12.

Amended by R.1987 d.458, effective November 16, 1987.

See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Reference changed from f to g.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Stylistic changes only.

7:14A-3.4 Concentrated animal feeding operations

(a) Permit requirement: Concentrated animal feeding operations are point sources subject to the DSW permit program.

(b) Definitions:

1. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

i. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

ii. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

3. "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in Appendix C, or which the Department designates under (c) below.

(c) Case-by-case designation of concentrated animal feeding operations:

1. The Department may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Department shall consider the following factors:

- i. The size of the animal feeding operation and the amount of wastes reaching waters of the State;
- ii. The location of the animal feeding operation relative to waters of the State;
- iii. The means of conveyance of animal wastes and process waste waters into waters of the State;
- iv. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the State; and
- v. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in Appendix C shall be designated as a concentrated animal feeding operation unless:

- i. Pollutants are discharged into waters of the State through a manmade ditch, flushing system, or other similar manmade device; or
- ii. Pollutants are discharged directly into waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

7:14A-3.5 Concentrated aquatic animal production facilities

(a) Permit requirements: Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the DSW permit program.

(b) Definition: "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix D, or which the Department designates under (c) below.

(c) Case-by-case designation of concentrated aquatic animal production facilities:

1. The Department may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the State. In making this designation the Department shall consider the following factors:

- i. The location and quality of the receiving waters of the State;
- ii. The holding, feeding, and production capacities of the facility;
- iii. The quantity and nature of the pollutants reaching waters of the State; and
- iv. Other relevant factors.

2. A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Department has conducted an on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

7:14A-3.6 Aquaculture projects

(a) Permit requirement: Discharges into aquaculture projects, as defined in this section, are subject to the DSW permit program under Section 6 of the State Act, Section 318 of the Federal Act, and in accordance with 40 CFR Part 125, Subpart B.

(b) Definitions:

1. "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants and animals.

2. "Designated project area" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation (including but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvestable within a defined geographic area.

7:14A-3.7 Silvicultural activities

(a) Permit requirements: Silvicultural point sources, as defined in this section, are point sources subject to the DSW permit program.

(b) Definitions:

1. "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a 404 permit pursuant to the Federal Act (see 33 CFR section 209.120 and Part 123, Subpart E).

2. "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, including the effluent limitations guidelines).

3. "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood; for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J including the effluent limitations guidelines).

7:14A-3.8 Stormwater discharges

Except as provided in N.J.A.C. 7:14A-10.3(a)20 and (a)22, 40 CFR 122.26, entitled "Storm water discharges," is incorporated into this chapter by reference as part of the DSW permit program (see N.J.A.C. 7:14A-1.10). Persons who discharge or propose to discharge stormwater shall comply with applicable requirements of this chapter, and shall comply with applicable provisions of 40 CFR 122.26 except as provided in N.J.A.C. 7:14A-10.3(a)20 and (a)22.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Spelling errors corrected; at (b) lead in language expanded. Repeal and New Rule, R.1992 d.434, effective November 2, 1992. See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

7:14A-3.9 General permits

(a) Coverage: The Department may issue a general permit in accordance with the following:

1. Area: The general permit shall be written to authorize a category of discharges described in the permit under (a)2 below, except those otherwise eligible for authorization under the permit but authorized by individual permits or other general permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

i. Designated planning areas under Sections 208 and 303 of the Federal Act and Section 5 of the "New Jersey Water Quality Planning Act", N.J.S.A. 58:11A-1 et seq.;

ii. Sewer districts or sewer authorities;

iii. City, county, or State political boundaries;

iv. State highway systems;

v. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

vi. Urbanized areas as designated by the Bureau of Census according to criteria in 39 FR 15202 (May 1, 1974); or

vii. Any other appropriate division or combination of boundaries.

2. Sources: The general permit shall be written to regulate, within the area described in (a)1 above, either:

i. Stormwater point sources; or

ii. A category of point sources other than stormwater point sources if the sources all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same type of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits.

(b) Administration:

1. In general: General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of subchapters 2, 7 and 8 of this chapter. Special procedures for issuance are found at 40 CFR Section 123.44.

2. Authorization to discharge:

i. Except as provided in (b)2vi and 2vii below, persons seeking authorization under a general permit shall submit to the Department a written request for authorization. A person who fails to submit a request for authorization in accordance with the terms of the permit is not authorized to discharge under the terms of the general permit unless the general permit, in accordance with (b)2vi below, contains a provision that a request for authorization is not required, or the Department notifies a person that it is authorized by a general permit in accordance with (b)2vii below.

ii. The contents of the request for authorization shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including, at a minimum, the legal name and address of the owner and operator, the facility name and address, type of facility or discharges, and the certification required under (b)2iii below. Unless the general permit specifies otherwise, the request for authorization shall include all of the forms, information, signatures, and certification that this chapter (including, but not limited to, N.J.A.C. 7:14A-2.1 and 10.3) requires to be included in an application for a DSW permit. The request for authorization shall also include any other certification specified in the general permit. The general permit shall not specify signature requirements less stringent than those applicable to permit applications under 40 CFR 122.22(a).

iii. In addition to other information required under (b)2ii above, the request for authorization shall include a certification that arrangements have been made for publication, in a daily or weekly newspaper within the area affected by the facility, of a notice which states that a request for authorization under a general permit to discharge pollutants to surface water has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the general permit under which authorization is sought, the legal name and address of the owner and operator, the facility name and address, and type of facility or discharges. Each general permit shall set forth the form of notice appropriate to that general permit.

iv. General permits shall specify the deadlines for submitting requests for authorization and the date(s) when a person is authorized to discharge under the permit.

v. General permits shall specify whether a person that has submitted a complete and timely request for authorization in accordance with the general permit, and that is eligible for authorization under the permit, is authorized to discharge in accordance with the permit either upon receipt of the request for authorization by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon the person's receipt of notification of authorization by the Department. Authorization may be terminated, revoked, or denied in accordance with (b)4 through (b)6 below. The Department shall publish in the DEPE Bulletin or other similar DEPE publication a quarterly report of each authorization issued under a general permit.

vi. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and stormwater discharges associated with industrial activity, may, at the discretion of the Department, be authorized under a general

permit without submission of a request for authorization where the Department finds that a request for authorization requirement would be inappropriate. In making such a finding, the Department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges authorized by the permit; and the estimated number of discharges to be authorized by the permit. The Department shall provide in the public notice of the general permit the reasons for not requiring a request for authorization.

vii. The Department may notify a person that it is authorized by a general permit, even if the person has not submitted a request for authorization. A person so notified may nonetheless request an individual permit under (b)3iii below.

3. Requiring an individual permit or another general permit:

i. The Department may require any permittee authorized by a general permit to apply for and obtain an individual DSW permit or seek and obtain authorization under another general permit. Any interested person may, in accordance with the procedures set forth at (b)5 below, petition the Department to take action under this subparagraph. Cases where an individual DSW permit or another general permit may be required include the following:

(1) There is evidence that the discharge(s) may be a significant contributor of pollutants. In making this determination, the Department may consider the location of the discharge with respect to the waters of the State, the size of the discharge, the quantity and nature of pollutants reaching the waters of the State, the quality of the receiving waters, and other relevant factors;

(2) The permittee is not in compliance with the conditions of the general DSW permit;

(3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point source authorized by the general DSW permit;

(5) A Water Quality Management Plan containing requirements applicable to such point sources is approved;

(6) Circumstances have changed since the time of authorization or the request to be authorized so that the permittee is no longer appropriately controlled under the general permit, or either a temporary or

permanent reduction or elimination of the authorized discharge is necessary; or

(7) The Department acquires new information indicating that the person otherwise is not eligible for the general permit according to its own terms.

ii. The Department may require any permittee authorized by a general permit to apply for an individual DSW permit or seek authorization under another general permit as provided in (b)3i above, only if that permittee has been notified of this requirement in writing.

(1) This notice shall include a brief statement of the reasons for this decision, an application form or, if applicable, a request for authorization form, a statement setting a time for the permittee to file the application or, if applicable, the request for authorization, and a statement that on the effective date of the individual DSW permit or on the date of the permittee's authorization under another general permit, the individual permittee's authorization under the general permit shall automatically terminate. The Department may grant additional time upon request of the permittee. If a permittee fails to submit in a timely manner an application form or request for authorization form required by the Department under this subparagraph, then that permittee's authorization under the general permit is automatically terminated at the end of the day specified for submitting the application form or request for authorization form.

iii. Any permittee authorized by a general permit may request to be excluded from authorization under the general permit by applying for an individual DSW permit. The permittee shall submit an application under N.J.A.C. 7:14A-3.2, with reasons supporting the request, to the Department no later than 90 days after the publication by the Department of the general permit in the DEPE Bulletin. The request shall be processed under subchapters 2, 7 and 8 of this chapter. The request shall be granted by the issuing of any individual permit if the reasons cited by the permittee are adequate to support the request.

iv. When a permittee authorized by a general DSW permit is issued an individual DSW permit for the authorized discharge, or obtains authorization for that discharge under another general permit, the permittee's authorization under the general permit is automatically terminated on the effective date of the individual permit or on the date of the permittee's authorization under another general permit, whichever the case may be. When an individual DSW permit is denied to a permittee authorized by a general permit, or the permittee is denied authorization under another general permit, the permittee's authorization under the general permit is automatically terminated on the date of such denial, unless otherwise specified by the Department.

v. If a permittee's discharge is excluded from a general permit solely because that discharge already is authorized by an individual permit or authorization under another general permit, the permittee may request that the individual permit or authorization be revoked or modified, as appropriate, and that the discharge be authorized by a general permit. The permittee shall submit a request for revocation or modification under N.J.A.C. 7:14A-7.5 and any request for authorization required under N.J.A.C. 7:14A-3.9, with reasons supporting the request, to the Department. In reviewing such requests, the Department may consider the location of the discharge with respect to the waters of the State; the size of the discharge; the quantity and nature of pollutants reaching the waters of the State; the quality of the receiving waters; antibacksliding requirements in N.J.A.C. 7:14A-3.13(a)12, 40 CFR 122.44(l), and section 402(o) of the Federal Act (33 U.S.C. § 1342(o)); and any other factors the Department considers relevant to determining whether the discharge is best regulated under one permit or the other. If the Department revokes or modifies the individual permit or authorization, and if authorization under a general permit is issued, the permittee shall be authorized under the general permit.

4. The Department may terminate a permittee's authorization under a general permit for causes specified in N.J.A.C. 7:14A-2.13(a). Such termination of authorization is a type of permit termination under N.J.A.C. 7:14A-2.13. A requirement pursuant to (b)3 above that a permittee apply for an individual permit or seek authorization under another general permit is not a termination within the meaning of N.J.A.C. 7:14A-2.13, even if the permittee's authorization is eventually terminated in favor of an individual permit or another general permit, or is automatically terminated under (b)3ii(1) above as a result of the permittee's failure to submit in a timely manner an application form or request for authorization form. If the Department directs the permittee to apply for an individual permit or seek authorization under another general permit, the only procedure available to the permittee is to ask the Department to reconsider its decision by sending a letter to the Commissioner within 30 days of the issuance of the initial decision. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF GENERAL PERMIT DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action the request shall be deemed denied. In no event shall an order from the Department directing a permittee to apply for an individual permit or seek authorization under another general permit (or a denial of a request to reconsider that order) be deemed final agency action.

5. Procedures regarding petitions brought under (b)3i above:

i. The petition shall state clearly and concisely:

(1) The name, address, and telephone number of the petitioner;

(2) The petitioner's interest in the petition (including any organizational affiliations and any economic interest);

(3) The name and address of the permittee whose authorization could be affected by the petition;

(4) The number of the permit under which that permittee is authorized; and

(5) The reasons why the petition should be granted (including any citations to any relevant legal authority).

ii. The petitioner shall serve the petition on both the Department and the permittees whose authorization could be affected by the petition.

iii. The permittees whose authorization could be affected shall have 30 days from the date the petition was served to respond to the petition. Any response shall be served on both the Department and the petitioner. The Department thereafter may in its discretion seek further information relevant to the petition.

iv. The Department shall determine whether to grant the petition based upon materials submitted in accordance with this paragraph and based upon the criteria set forth in (b)3i above. The Department shall notify both the petitioner and the permittees whose authorization is affected by the petition of the Department's determination.

v. Either party may ask the Department to reconsider its decision regarding a petition by sending a letter to the Commissioner within 30 days of the issuance of the initial decision. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF PETITION DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action the request shall be deemed denied. Only if the ultimate outcome of the agency proceedings is that the petition is denied by the Commissioner shall there be final agency action.

6. The Department shall deny a request for authorization if it determines that the subject discharge is not eligible for the general permit for which the person has requested authorization, and the Department may deny a request for authorization if it determines that the discharge is not appropriately regulated under the relevant general permit because of its location with respect to the waters of the State, the size of the discharge, the quantity and nature of pollutants reaching the waters of the State, the quality of the receiving waters, or other relevant factors. If the Department denies a request for authori-

zation, it shall notify the person of that denial in writing. The only procedure for challenging the denial that is available to a person whose request for authorization has been denied is to ask the Department to reconsider its decision by sending a letter to the Commissioner within 30 days of the issuance of the initial denial. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF GENERAL PERMIT DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action, the request shall be deemed denied. In no event shall a denial of a request for authorization, or a request to reconsider that denial, be deemed final agency action.

(c) Appendix A to this subchapter and Appendix B to this subchapter contain two final general permits that the Department has issued for stormwater discharges associated with industrial activity. The inclusion of these two general permits within this subchapter does not affect the status or requirements of other general permits that the Department issued prior to November 2, 1992.

Amended by R.1992 d.434, effective November 2, 1992.
See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.
Administrative change to (b)2i.
See: 25 N.J.R. 687(a).

7:14A-3.10 Additional conditions concerning reporting requirements applicable to all DSW permits

(a) All permittees, including all owners and operators which are required to obtain a treatment works approval, shall comply with the reporting requirements in this section.

(b) All permittees shall comply with the reporting requirements of (c) below for any of the following:

1. Any discharge that causes injury to persons, or damage to the environment;
2. Any discharge which could constitute a threat to human health or the environment;
3. Any discharge in violation of an effluent limitation for a toxic pollutant;
4. Any discharge in violation of the effluent limitation upstream of a potable water intake or well field; and
5. Any discharge of a hazardous pollutant without a permit.

(c) Any permittee discharging pollutants as identified in (b) above shall comply with the reporting requirements in this subsection.

1. The permittee shall, within two hours after the commencement of the discharge or of the permittee becoming aware of the discharge, verbally communicate

the following information to the Department via the DEP Hotline at (609) 292-7172:

- i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;
 - ii. Steps the permittee will take to determine the cause of the permit noncompliance; and
 - iii. Steps the permittee will take to reduce and eliminate the noncomplying discharge;
2. The permittee shall, within 24 hours after the commencement of the discharge or of the permittee becoming aware of the discharge, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:
- i. The duration of the discharge, including the exact dates and times, and if the noncompliance has not been corrected, the anticipated time when the permittee will return the discharge to compliance;
 - ii. The cause of the noncompliance;
 - iii. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the noncomplying discharge;
 - iv. An estimate of the threat to human health or the environment posed by the discharge;
 - v. The measures the permittee has taken or is taking to remediate the problem and any damage or injury to human health or the environment, and to avoid a repetition of the problem; and
 - vi. Any revisions to the information required by (c)1 above.
3. The permittee shall, within five days after the commencement of the discharge or of the permittee becoming aware of the discharge, submit in writing to the person identified in (c)4 below all of the information required in (c)1 and 2 above if the permittee had not previously submitted the information in writing to the Department. The Department must receive the information required by the preceding paragraph within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (c)1 or (2) above, or submitted incorrect information required in (c)1 or (2) above, the permittee shall immediately submit such facts or information to the Department.
4. The permittee shall submit the written notice required pursuant to (c)3 above to:

Assistant Director of Enforcement
 Division of Water Resources
 New Jersey Department of Environmental Protection
 401 East State Street
 CN 029
 Trenton, New Jersey 08625

(d) The permittee shall comply with the notice requirements in this subchapter.

1. Any permittee who discharges any pollutant in violation of its maximum daily discharge limitation not otherwise covered in (b) above shall, within 24 hours after the permittee knew or should have known of the violation, verbally communicate the violation to the Department via the DEP Hotline at (609) 292-7172.

2. Any permittee who discharges any nonhazardous pollutant without a permit shall, within 24 hours after the permittee knew or should have known of the violation mail or deliver a written report of the discharge, including the information required in (c)1 and 2 above, to the Department to the attention of the person identified in (c)4 above.

(e) A permittee shall not allow an anticipated bypass to occur unless the permittee demonstrates, to the satisfaction of the Department, that:

1. The anticipated bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the anticipated bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime;

3. The anticipated bypass will not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment can be installed to avoid the anticipated bypass;

4. The permittee complied with the reporting requirements in (f) below; and

5. The permittee received the Department's written prior approval for the anticipated bypass.

(f) All permittees shall comply with the reporting requirements for anticipated bypasses in this subsection.

1. The permittee shall, if possible, at least 10 days prior to the date of the anticipated bypass, provide prior written notice of the anticipated bypass to the Department, including:

i. The exact dates and times of the anticipated commencement and end of the anticipated bypass;

ii. The permittee's rationale as to why the anticipated bypass has to occur;

iii. That the permittee will be properly operating the facility at the time of the anticipated bypass;

iv. That the anticipated bypass is unavoidable to prevent loss of life, personal injury, or severe property damage, including the name, title, address and telephone number of the individual that made the determination for the permittee, the data and information upon which that individual made the determination and any other information the Department requests;

v. That there is no feasible alternative to the anticipated bypass, including but not limited to the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime; and

vi. That the anticipated bypass will not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment can be installed to avoid the anticipated bypass.

(g) Any permittee who has an unanticipated bypass not otherwise covered in (b) above shall comply with the reporting requirements for unanticipated bypasses in this subsection.

1. The permittee shall, within 24 hours after the commencement of the unanticipated bypass or of the permittee becoming aware of the unanticipated bypass, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172.

i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

ii. The duration of the unanticipated bypass, including the dates and times of the commencement and end, or anticipated end of the unanticipated bypass, and if the reason for the unanticipated bypass has not been corrected, the anticipated time when the permittee will correct the situation to remove the need for the unanticipated bypass;

iii. The cause of the unanticipated bypass;

iv. Steps the permittee will take to determine the cause of the unanticipated bypass;

v. Steps the permittee will take to reduce and eliminate the noncomplying discharge; and

vi. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the unanticipated bypass.

2. The permittee shall, within five days after the commencement of the unanticipated bypass or of the permittee becoming aware of the unanticipated bypass, submit written documentation, to the person identified in (g)3 below, including all of the information listed below. The Department must receive the information required by

(g)2; through ix below within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (g)1 above, or submitted incorrect information required in (g)1 above, the permittee shall immediately submit such facts or information to the Department.

i. All of the information required by (g)1 above;

ii. All properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation;

iii. The reasons that the unanticipated bypass occurred, including the circumstances leading to the unanticipated bypass;

iv. Evidence that the permittee was properly operating the facility at the time of the bypass;

v. Evidence that the permittee submitted notice of the unanticipated bypass as required pursuant to (g)1 above, including the name, title, address and telephone number of the individual who satisfied this requirement, the date and specific time the individual notified the Department for the permittee, the specific method that the individual used to notify the Department, and the name and title of the individual within the Department to which the permittee gave such notice;

vi. Evidence that the permittee complied with all remedial measures the Department required;

vii. The violator's rationale for and all supporting documentation that the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, including the name, title, address and telephone number of the individual that made the determination for the permittee, the data and information upon which that individual made the determination and any other information the Department requests;

viii. Evidence that there was no feasible alternative to the unanticipated bypass, including but not limited to the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime; and

ix. Evidence that the unanticipated bypass did not occur during normal periods of equipment downtime or preventive maintenance when back-up equipment should have been installed to avoid the unanticipated bypass.

3. The permittee shall submit the written notice required pursuant to (g)2 above to:

Assistant Director of Enforcement
 Division of Water Resources
 New Jersey Department of Environmental Protection
 401 East State Street
 CN 029
 Trenton, New Jersey 08625

(h) Any permittee who has an upset not otherwise covered in (b) above shall comply with the reporting requirements for upsets in this subsection.

1. The permittee shall, within 24 hours after the commencement of the upset or of the permittee becoming aware of the upset, verbally communicate the following information to the Department via the DEP Hotline at (609) 292-7172:

i. A description of the discharge, including the time of the discharge, the location of discharge, the volume of the discharge, the concentration of pollutants discharged, and the receiving water of the discharge;

ii. The duration of the discharge, including the dates and times, and if the reason for the upset has not been corrected, the anticipated time when the permittee will return the discharge to compliance;

iii. The cause of the update;

iv. Steps the permittee will take to determine the cause of the upset;

v. Steps the permittee will take to reduce and eliminate the noncomplying discharge; and

vi. Steps the permittee is taking to reduce, eliminate, and prevent reoccurrence of the upset.

2. The permittee shall, within five days after the commencement of an upset or of the permittee becoming aware of an upset, submit written documentation, to the person identified in (h)3 below, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and including all of the information listed below. The Department must receive the information required by (h)2 through vi below within the five-day period in order for the violator to meet this requirement. If the permittee becomes aware that it has failed to submit any relevant facts required in (h)1 above, or submitted incorrect information required in (h)1 above, the permittee shall immediately submit such facts or information to the Department.

i. All of the information required by (h)1 above;

ii. All properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the upset;

iii. Reasons that the upset occurred, including the cause of the upset and the identity of the person causing the upset; except that, in the case of a treatment works, the local agency may certify that despite a good faith effort it was unable to identify the cause of the upset, or the person causing the upset;

iv. Evidence that the permittee was properly operating the facility at the time of the upset;

v. Evidence that the permittee submitted notice of the upset as required pursuant to (h)1 above, or, in the case of an upset resulting from the performance by the permittee of maintenance operations, the permittee provided prior notice and received prior written approval therefor from the Department, including the name, title, address and telephone number of the individual who satisfied this requirement, the date and specific time the individual notified the Department for the permittee, the specific method that the individual used to notify the Department, and the name and title of the individual within the Department to which the permittee gave such notice; and

vi. Evidence that the permittee complied with all remedial measures the Department required.

3. The permittee shall submit the written notice required pursuant to (h)2 above to:

Assistant Director of Enforcement
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN 029
Trenton, New Jersey 08625

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Lead in language at subsections (b) and (c) expanded; also at paragraph (b)3.

Repeal and New Rule, R.1991 d.378, effective August 5, 1991.

See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

Added "reporting requirements" to heading.

Amended by R.1992 d.145, April 6, 1992.

See: 23 N.J.R. 2238(a), 24 N.J.R. 1334(a).

Added requirement, (d)2, reporting nonhazardous pollutant discharge.

Case Notes

Pollutant discharger not entitled to upset defense to permit limit exceedences which occurred prior to inclusion of upset provision in discharge permit; burden of proof of upset on discharger. Student Public Interest Research Group of New Jersey v. P.D. Oil & Chemical Storage, Inc., 627 F.Supp. 1074 (D.N.J.1986).

"Upset" regulation allowing exceedence of discharge permit limit concerns only isolated and unusual occurrences, and does not call for examination of facts behind a series of exceedences over an extended period of time. Student Public Interest Research Group of New Jersey v. Georgia-Pacific Corp., 615 F.Supp. 1419 (D.N.J.1985).

7:14A-3.11 Additional conditions applicable to specified categories of DSW permits

(a) The following conditions, in addition to those set forth in N.J.A.C. 7:14A-2.5, 3.10 and 3.12, apply to all DSW permits within the categories specified below:

1. Existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities: In addition to the reporting requirements under N.J.A.C. 7:14A-2.5(a)12 and N.J.A.C. 7:14A-3.10, all existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities must notify the Department as soon as they know or have reason to believe:

i. That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels".

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2 methyl-4, 6 dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for the pollutant in the permit application in accordance with N.J.A.C. 7:14A-10.3(a)9 or N.J.A.C. 7:14A-10.3(a)12; or

(4) The level established by the Department in accordance with N.J.A.C. 7:14A-3.13(a)6.

ii. That they (except for research facilities) have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under N.J.A.C. 7:14A-3.2 and 10.3(a)11 or in the request for authorization under N.J.A.C. 7:14A-3.9(b)2 (unless the general permit expressly refers to a "request for authorization" and does not require the request for authorization to include a listing of toxic pollutants).

2. All DTWs shall:

i. Identify, in terms of character and volume of pollutants, any significant indirect user discharging into the local agency subject to pretreatment standards under Section 307(b) of the Federal Act or Sections 4 or 6 of the State Act, 40 CFR Part 403, and the Pretreatment Act and regulations promulgated thereunder;

ii. Notify the Department in advance of the quality and quantity of all new introductions of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility. For introductions of nonindustrial pollutants not requiring a treatment works approval pursuant to N.J.A.C. 7:14A-12, the Department may exempt this notification requirement when ample capacity remains in the facility to accommodate new inflows. Such notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

iii. Establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with user charge and cost recovery requirements of the Federal Act or State Act and toxicity standards adopted pursuant to the State Act and adopted pretreatment standards;

iv. Comply with the capacity assurance program provisions of N.J.A.C. 7:14A-12.20; and

v. Prescribe terms and conditions, consistent with applicable State and Federal law, or requirements adopted pursuant thereto by the Department, upon which pollutants may be introduced into treatment works. Terms and conditions shall include limits for heavy metals, pesticides, organic chemicals and other contaminants in industrial wastewater discharges based upon the attainment of land-based sludge management criteria established by the Department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or established pursuant to the Federal Act or any regulations adopted pursuant thereto.

3. Municipal separate storm sewer systems: The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department or the Regional Administrator under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include the information required under 40 CFR 122.42(c).

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

(a)2iii(1) and (2) recodified as 3i and ii.

Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Changes to include the requirements of the Clean Water Enforcement Act, P.L. 1990, c.28.

7:14A-3.12 Emergency plans

(a) Except as provided in (i) below, all applicants and holders of a DSW permit shall submit an emergency plan report prepared pursuant to (b) below or file for an exemption as provided in (e) below.

1. When a person has prepared an emergency plan required by other regulations, such plans or plan and any amendments necessary to meet the requirements of this section may be submitted and deemed to satisfy the requirements of this section provided:

i. The plan meets the requirements of this section; and

ii. The plan indicates where it satisfies each requirement of this section.

2. All persons requiring a DAC must submit an emergency plan at the time of application for a DSW.

3. The Department shall review the emergency plan at the time of DSW renewal to determine the adequacy of such plan based upon:

i. Modification of the facility;

ii. Any other conditions related to the plan which have changed.

4. All persons with DSW permits as of the effective date of this chapter shall submit emergency plans according to the following schedule:

i. Existing treatment works:

(1) Industrial treatment works which discharge upstream from a potable water intake shall file a complete emergency plan within 24 months of the effective date of this chapter;

(2) All other industrial treatment works shall file a complete emergency plan within 36 months of the effective date of this chapter;

(3) All domestic treatment works with an average daily flow which is less than 0.1 MGD shall file a complete emergency plan within 24 months of the effective date of this chapter; and

(4) All domestic treatment works with an average daily flow which is equal to, or greater than 0.1 MGD shall file a complete emergency plan within 36 months of the effective date of this chapter.

5. Within three months of notice of deficiency the permittee shall correct any deficiencies in the Emergency Plan and resubmit the Plan for incorporation in the DSW permit.

(b) The emergency plan report shall be designed to insure effective operation of the facility under emergency conditions, and shall consist, as a minimum, of the following elements:

1. A vulnerability analysis which shall estimate the degree to which the facility would be adversely affected by each type of emergency situation which could reasonably be expected to occur, including but not limited to those emergencies caused by natural disaster, civil disorder, strike, sabotage, faulty maintenance, negligent operation or accident.

2. The analysis shall include, but is not limited to, an estimate of the effects of the emergency upon the following:

- i. Power supply;
- ii. Communication;
- iii. Equipment;
- iv. Supplies;
- v. Personnel;
- vi. Security; and
- vii. Emergency procedures.

3. An evaluation of the possible adverse effects on public health and the environment due to this emergency.

4. An emergency operating plan and a manual of procedures for the implementation of such plan, including procedures for the notification of any relevant regulatory agency, affected water supply purveyors, and any other municipal authority or agency. The plan and manual shall address each of the emergency situations described in the vulnerability analysis.

(c) Any domestic treatment works which meets the following criteria is eligible for an exemption from the requirements of this section:

1. A DTW which has an average daily flow of 0.1 MGD or less and which receives and treats domestic wastes only; or

2. A DTW which has an average daily flow which exceeds 0.1 MGD but which is less than 1.0 MGD and which satisfies all of the following conditions:

i. Does not receive or treat industrial pollutants from an indirect discharger which belongs to one or more of the Industrial Categories listed in Appendix E;

ii. Does not discharge any effluent upstream from a potable water intake;

iii. Does not discharge any effluent into a shellfish area; and

iv. Does not discharge any effluent which may affect shellfish areas.

(d) Any industrial treatment works which meets the following criteria is eligible for an exemption from the requirements of this section:

1. A treatment works which discharges less than 1.0 MGD of non-contact cooling water; or

2. A treatment works which has an average daily flow less than 50,000 GPD and which satisfies all of the following conditions:

i. Has no effluent limitations in its discharge permit for any of the toxic pollutants listed in Appendix B; and

ii. Satisfies all of the conditions listed in (c)2ii., iii, and iv above.

(e) The requirements for filing for an exemption are as follows:

1. Any permittee whose treatment works is eligible for an exemption pursuant to (c) or (d) above shall file for an exemption according to the schedule in (a) above.

2. The permittee shall submit an affidavit affirming that the discharge(s) from that facility satisfies all of the applicable criteria in (c) or (d) above.

3. The signatory of the affidavit shall satisfy the requirements of N.J.A.C. 7:14A-2.4.

4. If the quality and/or quantity of the discharge from the facility changes in such a manner that the facility no longer qualifies for an exemption, the permittee shall notify the Department of the changes, in writing, within 30 days of such change.

5. The permittee shall submit an emergency plan report as described in (b) above to the Department within six months of the initial notification required in (e)4 above.

(f) Implementation of the emergency plan:

1. After receipt and review of the emergency plan, the Department shall notify the permittee in writing whether the emergency plan is acceptable and complete. Plans should, to the extent practicable, conform to the EPA document entitled, "Emergency Planning for Municipal Wastewater Treatment Facilities", (EPA-430/9-74-013).

2. Existing facilities shall comply with the following schedule for implementation of the emergency plan:

i. Within 60 days of acceptance of the plan by the Department:

(1) The permittee shall complete implementation of the procedural portions of the plan; and

(2) The Department shall incorporate the procedural elements of the plan into the DSW permit for that facility.

ii. As soon as possible, but within 36 months of acceptance of the plan by the Department at the latest:

(1) The permittee shall complete the implementation of the structural portions of the plan (such as acquisition of spare parts, pumps, etc.); and

(2) The Department shall incorporate the structural elements and the emergency manual into the DSW permit for that facility.

3. An emergency plan for a new facility which has been accepted by the Department shall become a condition of that applicant's DSW permit.

(g) Liability:

1. Submission of an emergency plan pursuant to this section shall not exempt a permittee from liability for violations arising from an emergency situation. A permittee shall take all necessary actions to mitigate the damage to the waters of the State arising from an emergency situations. Such actions shall not be limited by the emergency operating plan and the manual of procedures.

2. Exemption from developing an emergency plan under this section does not exempt the permittee from liability for violations arising from an emergency situation. Such permittee shall take all necessary actions to mitigate the damage to the waters of the State arising from an emergency situation.

(h) Violations: Failure to submit an emergency plan in compliance with (a) above and failure to implement the emergency plan pursuant to (f) above shall each constitute a violation of this chapter.

(i) Persons who request or obtain authorization under a general DSW permit for stormwater point sources or separate storm sewers are exempt from developing an emergency plan under this section, unless such persons are applicants for or holders of another DSW permit for which an emergency plan is required under this section. However, a general DSW permit may stipulate its own requirements for development of emergency plans.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Subsection (e), lead in language expanded.

Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

7:14A-3.13 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each DSW permit shall include conditions meeting the following requirements when applicable.

1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under Section 301 of the Federal Act or Sections 4 or 6 of the State Act or new source performance standards promulgated under Section 306 of the Federal Act or Sections 4 or 6 of the State Act, or case-by-case effluent limitations determined under Section 402(a)(1) of the Federal Act or Sections 4, 6, or 8 of the State Act, or on a combination of the two, in accordance with 40 CFR Section 125.3;

2. Other effluent limitations and standards under Sections 301, 302, 303, 307, 318, and 405 of the Federal Act or Sections 4 or 6 of the State Act. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Federal Act or Sections 4 or 6 of the State Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition (see also N.J.A.C. 7:14A-3.10(a));

3. The requirements under Section 307(a)(2) of the Federal Act or Sections 4 or 6 of the State Act for the inclusion of a reopener clause in permits. The provisions are as follows:

i. On or before June 30, 1981, for any discharger within a primary industry category (See Appendix E):

(1) If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard limitation is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Federal Act or Sections 4 or 6 of the State Act and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

(2) If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations. If EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the Federal Register that the limitations are "approved" for the purpose of this chapter.

ii. After June 30, 1981, any permit issued shall include effluent limitations and a compliance schedule to meet the requirements of Sections 301(b)(2)(A), (C), (D), (E) and (F) of the Federal Act and Sections 4 or 6 of the State Act whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by (a)3i above.

iii. The Department shall promptly modify or revoke and reissue any permit, including any permit containing the clause required under (a)3i above to incorporate an applicable effluent standard or limitation under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Federal Act or Sections 4 or 6 of the State Act which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

iv. The Department may modify or revoke and reissue any permit to incorporate limitations or requirements to control the discharge of toxic pollutants, including whole effluent, chronic and acute toxicity requirements, chemical specific limitations or toxicity reduction requirements, as applicable.

4. Water quality standards and State requirements: Any requirement in addition to or more stringent than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318, and 405 of the Federal Act or Sections 4 or 6 of the State Act necessary to:

i. Achieve water quality standards established under Section 303 of the Federal Act or Sections 4 or 6 of the State Act;

ii. Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of the Federal Act or Sections 6 or 8 of the State Act;

iii. Conform to applicable water quality requirements under Section 401(a)(2) of the Federal Act when the discharge affects a state other than the certifying state;

iv. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with Section 301(b)(1)(C) of the Federal Act or Section 4, 6, or 8 of the State Act;

v. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under Section 208(b) of the Federal Act, the New Jersey Water Quality Planning Act; N.J.S.A. 58:11A-1 et seq. or Section 6 of the State Act;

vi. Incorporate Section 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges;

vii. Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors", under 40 CFR Part 125, Subpart D;

5. Toxic pollutants: Limitations established under (a)1, 2 or 4 above, to control pollutants meeting the criteria listed in (a)5i below, shall be established in accordance with (a)5ii below. An explanation of the development of these limitations shall be included in the fact sheet under N.J.A.C. 7:14A-9.2(b)1i.

i. Limitations must control all toxic pollutants which:

(1) The Department determines (based on information reported in a permit application under N.J.A.C. 7:14A-10.3(a)9 or 12 or in a notification under N.J.A.C. 7:14A-3.11(a)1i or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR Section 125.3(c); or

(2) The discharger does or may use or manufacture as an intermediate or final product or byproduct.

ii. The requirement that the limitations control the pollutants meeting the criteria of (a)5i above will be satisfied by:

(1) Limitations on those pollutants; or

(2) Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under (a)5i above to the levels required by 40 CFR Section 125.3(c).

6. Notification level: A "notification level" which exceeds the notification level of N.J.A.C. 7:14A-3.11(a)1i(1), (2), (3), upon a petition from the permittee or on the Department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR Section 125.3(c) or the level which is based on the requirements of N.J.A.C. 7:14A-3.14(1), whichever is more stringent.

7. Reporting: Pollutants for which the permittee must report violations of maximum daily discharge limitations under N.J.A.C. 7:14A-3.10(a)6 shall be listed as such in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

8. Durations for permits, as set forth in N.J.A.C. 7:14A-2.7(a) and 3.15.

9. Monitoring requirements: In addition to N.J.A.C. 7:14A-2.9 the following monitoring requirements:

i. To assure compliance with permit limitations, requirements to monitor:

(1) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

(2) The volume of effluent discharged from each outfall;

(3) Other measurements as appropriate; including pollutants in internal waste streams under N.J.A.C. 7:14A-3.14(i); pollutants in intake water for net limitations under N.J.A.C. 7:14A-3.14(h); frequency, rate of discharge, etc., for noncontinuous discharges N.J.A.C. 7:14A-3.11(a)1. N.J.A.C. 7:14A-3.11(a)i.

(4) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that Part, and according to a test procedure specified in the permit for pollutants with no approved methods. (See N.J.A.C. 7:14A-2.5(a)12ii.) If more than one approved method exists for a pollutant the Department may specify a particular method in the permit.

ii. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are not subject to an effluent limitation guideline shall be established on a case-by-case basis depending upon the nature and effect of the discharge. A permit for such a discharge must require either sampling in accordance with (a)9i above, or:

(1) The permittee to conduct an annual inspection of the facility to identify areas contributing to a stormwater discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a stormwater pollution prevention plan are adequate and properly implemented in

accordance with the terms of the permit or whether additional control measures are needed;

(2) The permittee to prepare a report summarizing the result of the inspection. This report shall be accompanied by an annual certification that the facility is in compliance with its stormwater pollution prevention plan and the permit, except that if there are any incidents of non-compliance, those incidents shall be identified in the certification. If there are incidents of non-compliance, the report shall identify the steps being taken to remedy the non-compliance and to prevent such incidents from recurring. The permittee shall maintain this report and certification for a period of at least five years from the date of the report. This period may be extended by written request from the Department at any time; and

(3) Such report and certification to be signed by a person described in N.J.A.C. 7:14A-2.4(a)2i.

iii. Permits that, pursuant to (a)9ii above, do not require the submittal of monitoring reports at least annually shall require that the permittee report to the Department all instances of noncompliance not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 at least annually.

10. Pretreatment program requirements for delegated local agencies shall comply with the requirements set forth at N.J.A.C. 7:14A-3.11(a)2.

i. A local agency shall submit a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under Section 307(b) of the Federal Act. The local program shall be incorporated into the permit as described in 40 CFR Part 403. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403, N.J.A.C. 7:14A-13, the Pretreatment Act and the State Act.

ii. A permit for a delegated local agency shall include effluent limits for all pollutants listed under the USEPA Categorical Pretreatment Standards, adopted pursuant to 33 U.S.C. 1317, and such other pollutants for which effluent limits have been established for a permittee discharging into the municipal treatment works of the delegated local agency, except those categorical or other pollutants that the delegated local agency demonstrates to the Department are not discharged above detectable levels by the municipal treatment works. The Department by permit may authorize the use by a delegated local agency of surrogate parameters for categorical and other pollutants discharged from a municipal treatment works, except that if a surrogate parameter is exceeded, the permit shall include effluent limits for each categorical or other pollutant for which the surrogate parameter was used, for such period of time as may be specified in the permit.

11. Best management practices to control or abate the discharge of pollutants when:

- i. Authorized under Section 304(e) of the Federal Act for the control of toxic pollutants and hazardous substances from ancillary activities;
- ii. Numeric effluent limitations are infeasible; or
- iii. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the State and Federal Acts.

12. Reissued permits:

i. Except as provided in (a)12ii below, when a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as the final limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under N.J.A.C. 7:14A-2.12) shall be included in such permit.

ii. When effluent limitations were imposed under Section 402(a)(1) of the Federal Act or Section 4 of the State Act in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, (a)12ii of this section shall apply unless:

(1) The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);

(2) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (Section 301(b)(2)(E) of the Federal Act);

(3) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under N.J.A.C. 7:14A-2.12; or

(4) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

13. Privately owned treatment works: For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary, in the permit issued to the treatment works to ensure compliance with applicable requirements under this section. Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. (See N.J.A.C. 7:14A-10.5) The Department's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

14. Grants: Any conditions imposed in grants made by the Administrator to POTWs under Sections 201 and 204 of the Federal Act or by the Department under Section 5 of the State Act which are reasonably necessary for the achievement of effluent limitations under Section 301 of the Federal Act or Section 6 of the State Act.

15. Residuals: Any requirements under:

i. Section 405 of the Federal Act governing the disposal of sewage sludge from publicly owned treatment works and with Section 6 of the State Act;

ii. The "Solid Waste Management Act", N.J.S.A. 13:1E-1 et seq.

iii. The "Sludge Quality Assurance Regulations", N.J.A.C. 7:14-4; and

iv. The Statewide Sludge Management Plan adopted November 4, 1987 under the authority of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

16. Coast Guard: When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

17. Navigation: Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with N.J.A.C. 7:14A-9.4.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (a)3, iv added, minor language changes and at (a)15iv, new language re: Statewide Sludge Management Plan and v and vi deleted. Amended by R.1992 d.434, effective November 2, 1992.

See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

Administrative correction to (a)9iii(3).

See: 24 N.J.R. 4522(a).

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Changes to include the requirements of the Clean Water Enforcement Act, P.L. 1990, c.28.

Administrative correction to (a)9.

See: 25 N.J.R. 687(a).

Cross References

Discharge allocation certificates, see N.J.A.C. § 7:14A-3.3.

7:14A-3.14 Calculating NJPDES permit conditions

(a) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under N.J.A.C. 7:14A-3.13(a)11ii (BMPs where limitations are infeasible) and (i) below (limitations on internal waste streams).

(b) Production-based limitations:

1. In the case of POTWs permit limitations, standards or prohibitions shall be calculated based on design flow.

2. Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of previous year, or the monthly average for the highest of the previous five years. For new sources actual production shall be estimated using projected production. The time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(c) Metals: All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless:

1. An applicable effluent standard or limitation has been promulgated under the Federal or State Acts and specified the limitation for the metal in the dissolved or valent form; or

2. In establishing permit limitations on a case-by-case basis under 40 CFR Section 125.3, or Section 6 of the State Act, it is necessary to express the limitation on the metal in dissolved or valent form in order to carry out the provisions of the State and Federal Acts.

(d) Continuous discharges: For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

1. Maximum daily and average monthly discharge limitations for all discharges other than publicly owned treatment works; and

2. Average weekly and average monthly discharge limitations for POTWs, except that effluent limitations for any toxic substance listed in N.J.A.C. 7:9-4.14 or in accordance with section 307(a) of the Federal Act shall be stated as a daily maximum and average monthly concentration. Limitations may be calculated using applicable scientific or statistical procedures including "Technical Support Document for Water Quality Based Toxics Control" (EPA publication number, EPA-505/2-90-001, March 1991), and subsequent revisions.

(e) Non-continuous discharges: Discharges which are not continuous, as defined in N.J.A.C. 7:14A-1.10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequently (for example, a batch discharge shall not occur more than once every three weeks);

2. Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

3. Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute); and

4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(f) Mass limitations:

1. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

i. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

ii. When applicable standards and limitations are expressed in terms of other units of measurement; or

iii. If in establishing permit limitations on a case-by-case basis under 40 CFR Section 125.3 or Section 6 of the State Act, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass may additionally be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) Pollutants in intake water: Except as provided in (h) below, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(h) Net limitations:

1. Upon request of the discharger, effluent limitations or standards imposed in a permit shall be calculated on a "net" basis; that is, adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

i. The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or

ii. The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and

iii. The permit conditions requiring:

(1) The permittee to conduct additional monitoring (for example, for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments; and

(2) The permittee to notify the Department if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified accordingly under N.J.A.C. 7:14A-2.12.

2. Permit effluent limitations or standards adjusted under (h) of this section shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the discharger. Adjustments under (h) of this section shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards shall not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor shall effluent limitations or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

3. Subsection (h) shall apply to discharges to surface or ground water only if the discharger demonstrates to the satisfaction of the Department that the discharger is not responsible for the background pollutants present in the intake water.

(i) Internal waste streams:

1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by N.J.A.C. 7:14A-3.13(a)9 shall also be applied to the internal waste streams.

2. Limits on internal waste streams will be imposed only when the fact sheet under N.J.A.C. 7:14A-9.2 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(j) Disposal of pollutants into wells, into DTWs, or by land application: Permit limitations and standards shall be calculated as provided in N.J.A.C. 7:14A-3.16.

(k) Water quality based effluent limitations applicable to discharge into the surface waters of the State shall be developed in accordance with "Wastewater Discharge Requirements", N.J.A.C. 7:9-5 and/or "Surface Water Quality Standards", N.J.A.C. 7:9-4.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (d)2, exceptions and further criteria added and cites corrected throughout.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Changes to include the requirements of the Clean Water Enforcement Act, P.L. 1990, c.28.

Amended by R.1993 d.610, effective December 6, 1993.

See: 24 N.J.R. 3983(a), 25 N.J.R. 404(a), 25 N.J.R. 5569(a).

7:14A-3.15 Duration of certain DSW permits

(a) On or before June 30, 1981, any permit issued to a discharger in a primary industry category (see Appendix E):

1. Shall meet one of the following conditions:

i. Expire on June 30, 1981;

ii. Incorporate effluent standards and limitations applicable to the discharger which have been promulgated or approved under Sections 301(b)(2)(C), and (D), 304(b)(2), and 307(a)(2) of the Federal Act or Section 4 of the State Act; or

iii. Incorporate the "reopener clause" required by N.J.A.C. 7:14A-3.13(c)1 and Sections 301(b)(2)(A), (C), (D), (E), and (F) of the Federal Act and Section 6 of the State Act.

2. Shall not be written to expire after June 30, 1981 unless the discharger has submitted to the Department the information required by N.J.A.C. 7:14A-3.2 and 10.3.

(b) After June 30, 1981 a permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of Sections 301(b)(2)(A), (C), (D), (E), and (F) of the Federal Act and Section 6 of the State Act whether or not applicable effluent limitations guidelines have been promulgated or approved.

(c) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under (b) above is not conclusive in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

7:14A-3.16 Disposal of pollutants into wells, into DTWs or by land application

(a) When part of a discharger's process wastewater is not being discharged into surface waters of the State or contiguous zone because it is disposed into a well, into a DTW, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters of the State, applicable effluent standards and limitations for the discharge in a DSW permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

1. If none of the waste from a particular process is discharged into surface waters of the State, and effluent limitations guidelines provide separate allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

2. In all cases other than those described in (a)1 above, effluent limitations shall be adjusted by multiplying the effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125, Subpart D to make them more stringent if discharges to wells, DTWs or by land application change the character or treatability of the pollutants being discharged to receiving waters.

i. This method may be algebraically expressed as:

$P = E \times N/T$ (where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to surface waters of the State, and T is the total wastewater flow).

(b) Subsection (a) above shall not apply to the extent that promulgated effluent limitations guidelines:

1. Control concentrations of pollutants discharged but not mass; or

2. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into DTWs.

(c) Subsection (a) above does not alter a discharger's obligation to meet any more stringent requirements established under N.J.A.C. 7:14A-2.5, 2.6, 3.10, 3.11 and 3.13.

7:14A-3.17 Criteria and standards for the New Jersey Pollutant Discharge Elimination System

(a) Criteria and standards for technology-based treatment requirements in permits: The criteria and standards for the imposition of technology-based treatment requirements in DSW permits shall be as set forth in 40 CFR Subpart A, under the authority of Sections 4 and 6(f) of the State Act.

(b) Criteria for issuance of permits to aquaculture projects: Under the authority of Sections 4 and 6(f) of the State Act, the criteria for issuance of permit to aquaculture projects shall be as set forth in 40 CFR Part 125, Subpart B.

(c) Criteria for extending compliance data for facilities installing innovative technology: Under the authority of Sections 4 and 6(f) of the State Act, the criteria for extending compliance dates for facilities installing innovative technology shall be as set forth in 40 CFR Part 125, Subpart C.

(d) Criteria and standards for determining fundamentally different factors: Under the authority of Sections 4 and 6(f) of the State Act, the criteria and standards for determining fundamentally different factors shall be as set forth in 40 CFR Part 125, Subpart D.

(e) Criteria for determining alternative effluent limitations for the thermal component of a discharge: Under the authority of Sections 4 and 6(f) of the State Act, the criteria for determining alternative effluent limitations for the thermal component of a discharge shall be as set forth in 40 CFR Part 125, Subpart H.

(f) Criteria applicable to cooling water intake structures: Under the authority of Sections 4 and 6(f) of the State Act the criteria applicable to cooling water intake structure shall be as set forth in 40 CFR Part 125, Subpart 1.

(g) Criteria for extending compliance dates: Under the authority of Sections 4, 6, and 7 of the State Act, extensions of the 1977 deadline in Section 301(i)(1) and (2) of the Federal Act for compliance with certain treatment requirements may be granted as described in 40 CFR 125, Subpart J.

(h) Criteria and standards for best management practices: Under the authority of Sections 4 and 6(f) of the State Act the criteria and standards for best management practices for ancillary industrial activities shall be set forth in 40 CFR 125, Subpart K.

(i) Criteria and standards for imposing conditions for the disposal of sewage sludge: Under the authority of Sections 4 and 6(f) of the State Act, the criteria and standards for imposing conditions for the disposal of sewage sludge shall be as set forth in 40 CFR 125, Subpart L.

(j) Wherever the provisions of other sections of N.J.A.C. 7:14A are more stringent than the criteria and standards in

this section, the more stringent provisions of those other sections of N.J.A.C. 7:14A shall apply.

Amended by R.1992 d.434, effective November 2, 1992.
See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

APPENDIX A

PERMIT NUMBER NJ0088315 NJPDES/DSW GENERAL INDUSTRIAL STORMWATER PERMIT (ROUND 2)

<p>Permittee GENERAL PERMIT— CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION</p>	<p>Co-Permittee</p>						
<p>Property Owner GENERAL PERMIT— CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION</p>	<p>Location of Activity GENERAL PERMIT— CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION</p>						
<p>Current Authorization Covered by this Approval and Previous Authorization 5G2: GEN INDUST STRMWTR ROUND 2</p>	<table border="0"> <tr> <td style="text-align: center;">Issuance Date</td> <td style="text-align: center;">Effective Date</td> <td style="text-align: center;">Expiration Date</td> </tr> <tr> <td style="text-align: center;">10/01/1992</td> <td style="text-align: center;">11/02/1992</td> <td style="text-align: center;">11/01/1997</td> </tr> </table>	Issuance Date	Effective Date	Expiration Date	10/01/1992	11/02/1992	11/01/1997
Issuance Date	Effective Date	Expiration Date					
10/01/1992	11/02/1992	11/01/1997					

By Authority of: **SCOTT A. WEINER, COMMISSIONER**

PART I. AUTHORIZATION UNDER THIS PERMIT

A. Permit Area

This permit applies to all areas of the State of New Jersey.

B. Eligibility

1. This permit may authorize all new and existing stormwater discharges associated with industrial activity that are subject to the Federal stormwater permitting requirements at 40 CFR 122.26, except for the following:

a. Stormwater discharges from facilities with any stormwater discharges subject to any of the following effluent guideline limitations for stormwater: cement manufacturing, materials storage piles (40 CFR 411, Subpart C); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric, coal pile runoff (40 CFR 423); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443, Subpart A).

b. Stormwater discharges from facilities with any stormwater discharges authorized under another NJPDES Discharge to Surface Water (DSW) permit (including an expired permit).

c. Stormwater discharges that may be fully authorized under NJPDES Permit No. NJ0088323 (a separate general permit for stormwater discharges from certain construction and mining activities).

d. Stormwater discharges from facilities with "sanitary landfills" or "hazardous waste landfills", as defined in N.J.A.C. 7:26-1.4, unless those landfills have been closed in compliance with N.J.A.C. 7:26-2A.9 or 7:26-9.8 (the Solid Waste rules), the appropriate certifications have been submitted in accordance with N.J.A.C. 7:26, and the landfills are not disrupted. Such closed landfills are eligible for authorization under this permit.

e. Stormwater discharges from the following facilities where the stormwater has come into contact with petroleum-based oil and grease in raw materials, intermediate products, finished products, byproducts, or waste products located on the facility site:

i. Facilities classified as Standard Industrial Classification (SIC) Code 29 (Petroleum Refining and Related Industries); and

ii. Facilities that are defined as "major facilities", at N.J.S.A. 58:10-23.11b.1 and N.J.A.C. 7:1E-1.6 and that also have a total combined storage capacity of 200,000 gallons or more for petroleum or petroleum products.

2. Other discharges are not authorized by this permit, even if such discharges are combined with stormwater discharges that are authorized by this permit.

C. Requiring an Individual Permit or Another General Permit

1. The Department may require any permittee authorized under this permit to apply for and obtain an individual DSW permit, or seek and obtain authorization under another general permit. Conversely, any permittee authorized under this permit may request to be excluded from authorization under this permit by applying for an individual DSW permit. Termination of existing permits under such circumstances is governed by N.J.A.C. 7:14A-3.9.

2. If, after receiving authorization under this permit, a facility is required by the Department to obtain another NJPDES DSW permit that would also cover the authorized stormwater discharge, then authorization under this permit shall remain in effect only until either:

- a. The date such other permit becomes effective; or
- b. The date the application for such other permit (or request for authorization under another general permit) is denied.

If such a facility fails to submit an application or request for authorization by the date specified by the Department, then the general permit authorization remains in effect only until that date.

D. Authorization

1. In order to obtain authorization under this permit, a complete Request for Authorization (RFA) and the \$500.00 fee required under N.J.A.C. 7:14A-1.8(i) shall be submitted in accordance with the requirements of part II of this permit. Upon review of the RFA, the Department may, in accordance with N.J.A.C. 7:14A-3.9, either:

- a. Issue notification of authorization under this permit, in which case, authorization is deemed effective as of the date the complete RFA is received by the Department;
- b. Deny authorization under this permit and require submittal of an application for an individual DSW permit; or
- c. Deny authorization under this permit and require submittal of an RFA for another general permit.

2. The Department shall issue or deny authorization within a period of 90 days after submission of a complete RFA. In the event that the Department fails to issue or deny authorization within such period, the authorization shall be deemed to have been issued.

3. For a stormwater discharge authorized by this permit, the permittee is exempt from the provision in N.J.A.C. 7:14A-2.5(a)1 which declares that the discharge of any pollutant not specifically regulated in the NJPDES permit or listed in the NJPDES application shall constitute a violation of the permit.

PART II. REQUEST FOR AUTHORIZATION REQUIREMENTS

A. Deadlines for Requesting Authorization

1. A Request for Authorization (RFA) for an existing stormwater discharge associated with industrial activity must be submitted within 180 days after the effective date of this permit.

2. An RFA for a new stormwater discharge associated with industrial activity must be submitted at least 30 days prior to the date upon which there may be such a discharge.

3. The Department may, in its discretion, accept an RFA submitted after the foregoing deadlines; however, the discharger may still be held liable for any violations that occurred prior to the submission of the RFA.

B. Persons Requesting Authorization

The RFA must be jointly submitted by all persons who currently own or operate any part of the facility requiring a NJPDES permit for the stormwater discharge associated with industrial activity at that facility. For example, if the facility is owned by one person but operated by another, both the owner and the operator must jointly submit a single RFA for the facility.

C. Contents of the Request for Authorization

A completed RFA shall include all of the following information regarding the regulated facility, using the Department's RFA form:

1. The name, mailing address, location, and EPA identification number (if assigned) of the facility.

2. The 4-digit Standard Industrial Classification (SIC) code and corresponding short title assigned to the facility by the New Jersey Department of Labor. If the facility is exempt from Department of Labor SIC code assignment procedures, the RFA shall provide the 4-digit SIC code and short title that best represents the principal products or activities provided by the facility.

3. The legal name, address, and business telephone number of all current owners and operators, and, if applicable, their agents and engineers. The RFA shall also identify whether each person named is an owner or operator, and whether the owner is a Federal, State, or other public agency, or is a private entity.

4. The Federal tax identification number of the owner.

5. An 8.5" x 11" copy of a portion of the U.S. Geological Survey Topographic Map, 7.5 minute quadrangle series, showing the boundaries of the facility and the name of the quadrangle(s).

6. A brief description of the facility and its current and proposed uses.

7. Proposed date upon which there may be a new stormwater discharge associated with industrial activity, where applicable.

8. A list of any individual NJPDES permits for discharges to surface water issued for the facility.

9. The RFA certification contained in Attachment A.

10. Other certifications submitted in accordance with Part III.B.2 and the following:

a. For existing stormwater discharges, the certifications contained in Attachments C and D *may* also be submitted concurrently with the RFA, where appropriate.

b. For new stormwater discharges, the RFA must also include the certifications contained in Attachments C and D, if the RFA is submitted more than 24 months after the effective date of this permit. (If the RFA is submitted within 24 months after this permit's effective date, these certifications *may* be included in the RFA).

11. Additional information may be required by the Department to be included as part of the RFA if the Department determines that such additional information (including other data, reports, specifications, plans, permits, or other information) is reasonably necessary to determine whether to authorize the discharge under this permit.

The RFA shall be submitted along with payment of \$500.00, in accordance with N.J.A.C. 7:14A-1.8(i), unless this amount has already been submitted within the same billing year for an annual recertification under part III.D.

D. *Where to Submit*

A completed and signed RFA shall be submitted to the Department at the address specified on the Department's RFA form.

E. *Additional Notification*

1. Facilities that discharge stormwater associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit a copy of the RFA to the owner and operator of that system.

2. The permittee is responsible for publishing a notice in a daily or weekly newspaper within the area affected by the permitted facility stating that a request for authorization under general permit no. NJ0088315 to discharge stormwater to surface water has been submitted in accordance with N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the legal name and address of the owner and operator, the facility name and address, and type of facility and discharges. A certification stating that arrangements for such notification have been made is contained in Attachment A and shall be signed and submitted as part of the RFA.

F. *Reauthorization*

As stated on the cover page, this permit expires in five years. If the Department reissues this permit, and if a stormwater discharge authorized by this permit will continue after the expiration of this permit, the permittee is required to submit an RFA within 180 days after the effective date of the reissued permit in order to be reauthorized.

PART III. *EFFLUENT LIMITATIONS*

A. *Hazardous Substances*

The permittee shall comply with the applicable provisions of N.J.A.C. 7:1E (Department rules entitled "Discharges of Petroleum and other Hazardous Substances") relevant to the stormwater discharges authorized by this permit. No discharge of hazardous substances (as defined in N.J.A.C. 7:1E-1.6) shall be deemed to be "pursuant to and in compliance with [this] permit" within the meaning of the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11c.

B. *Preparation and Implementation of the Stormwater Pollution Prevention Plan*

1. *General Requirements*

a. A stormwater pollution prevention plan (SPPP) shall be prepared and implemented, in accordance with

the deadlines specified in 2. below, for each of the permittee's facilities that generates stormwater discharges authorized by this permit. The SPPP shall be prepared and implemented in accordance with good engineering practices and shall include, at a minimum, all of the information and items identified in Attachment B. The SPPP shall be signed by the permittee and retained at the facility.

b. The SPPP shall demonstrate that once it has been implemented, there will be no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters. (The term "source materials" is defined in Attachment B.)

2. *Deadlines and Certifications*

a. *Existing discharges:*

i. Within six months after the effective date of the general permit authorization, the permittee shall prepare an SPPP for the authorized facility; and shall submit to the Department the "Stormwater Pollution Prevention Plan Preparation Certification" contained in Attachment C (except if this certification was already included in the RFA submitted to the Department under Part II).

ii. Except as provided in iii. below, within 18 months after the effective date of the general permit authorization, the permittee shall implement the SPPP prepared for the facility; and shall submit to the Department the "Stormwater Pollution Prevention Plan Implementation and Inspection Certification" contained in Attachment D (except if this certification was already included in the RFA submitted to the Department under Part II).

iii. The Department may grant a six-month extension to the deadline in ii. above, if the permittee submits a written request for such extension, at least 30 days prior to the deadline, establishing to the Department's satisfaction that the Federal, State and local permits and approvals necessary for the construction of best management practices identified in the SPPP could not with due diligence be obtained within the time period set forth in ii. above.

b. New discharges for which RFA's are submitted within 24 months of the effective date of this permit:

i. Within six months after the effective date of the general permit authorization for the new discharge, but no later than 24 months after the effective date of this permit, the permittee shall prepare an SPPP for the authorized facility; and shall submit to the Department the "Stormwater Pollution Prevention Plan Preparation Certification" contained in Attachment C (except if this certification was already included in the RFA submitted to the Department under Part II).

ii. Within 24 months after the effective date of this permit, the permittee shall implement the SPPP prepared for the facility; and shall submit to the Department the "Stormwater Pollution Prevention Plan Implementation and Inspection Certification" contained in Attachment D (except if this certification was included in the RFA submitted to the Department under Part II).

c. New discharges for which RFAs are submitted after 24 months from the effective date of this permit:

The SPPP shall be prepared and implemented prior to submission of the RFA under Part II; and the RFA shall contain the "Stormwater Pollution Prevention Plan Preparation Certification" contained in Attachment C, and the "Stormwater Pollution Prevention Plan Implementation and Inspection Certification" contained in Attachment D.

3. Additional Requirements

a. Agency Review

i. The permittee shall make the SPPP available upon request to an authorized representative of the Department and to the owner and operator of any municipal separate storm sewer system through which the stormwater discharge associated with industrial activity is discharged.

ii. Upon review by an authorized representative, the Department may notify the permittee at any time that the SPPP does not meet one or more of the minimum requirements of this part. Within 30 days after receiving such notification (unless otherwise specified by the Department), the SPPP shall be amended to adequately address all deficiencies and written certification of such amendments shall be submitted to the Department.

b. Public Review

All SPPPs prepared under this permit are considered reports that shall be available to the public for inspection and duplication under N.J.S.A. 58:10A-9.c. The permittee shall make SPPPs available to members of the public upon request. However, the permittee may claim any portion of a SPPP as confidential in accordance with N.J.A.C. 7:14A-11. The Department's decision on such claims shall be made in accordance with N.J.A.C. 7:14A-11.

c. Amendments to the Stormwater Pollution Prevention Plan

SPPPs may be amended so long as they continue to meet the requirements of part III.B of this permit. Any amended SPPPs shall be signed, certified, implemented, retained, and otherwise treated in the same manner as the original SPPP.

C. Annual Inspections

Once the SPPP has been implemented in accordance with III.B.1 and 2 above, the permittee shall conduct an annual inspection of the facility to identify areas contributing to the stormwater discharge authorized by this permit and to evaluate whether the SPPP complies with part III.B. and is being properly implemented, or whether additional measures are needed to meet the conditions of this permit. A report summarizing each inspection shall be included in the SPPP as required under Attachment B, Part H.

D. Annual Reports and Recertification

1. The permittee shall prepare an annual report summarizing each inspection performed under III.C. above. This report shall be accompanied by an annual certification that the facility is in compliance with its SPPP and this permit, except that if there are any incidents of noncompliance, those incidents shall be identified in the certification (see Attachment D to this permit for the form of these certifications). If there are incidents of noncompliance, the report shall identify the steps being taken to remedy the noncompliance and to prevent such incidents from recurring. The report and certification shall be signed by the permittee in accordance with Attachment D to this permit, and shall be maintained for a period of five years. This period may be extended by written request from the Department at any time. The certification should be submitted concurrently with the annual recertifications required under D.2. below.

2. After the certification contained in Attachment D has been received by the Department, the permittee must annually resubmit this certification (with new signatures each year). These annual recertifications shall be submitted in the same calendar month as the initial submission of these certifications. These recertifications shall be submitted to the Department at the address specified on the certification form provided by the Department, and shall be submitted with the \$500.00 fee required under N.J.A.C. 7:14A-1.8(i).

E. All instances of noncompliance not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 shall be reported to the Department annually.

F. Other Discharges

If, during or after the preparation of the SPPP, it is discovered that the facility generates and discharges, through storm sewers to surface waters, any unpermitted domestic wastewater, non-contact cooling water, or process waste water (including leachate and cooling water) other than stormwater, the permittee shall discontinue such discharges or apply for the appropriate NJPDES DSW permit in accordance with the NJPDES rules at N.J.A.C. 7:14A.

G. Other Permits or Regulatory Requirements

Compliance with the conditions of this permit does not exempt the permittee from any other applicable permit or other regulatory requirements including, but not limited to,

all other Department rules and the Pinelands rules (N.J.A.C. 7:50).

PART IV. CONDITIONS APPLICABLE TO GENERAL PERMITS AUTHORIZING STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

A. Duty to Comply

1. The permittee shall comply with all conditions of this New Jersey Pollutant Discharge Elimination System (NJPDES) permit. Any permit noncompliance constitutes a violation of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq., hereinafter referred to as the State Act) or other authority of the NJPDES regulations (N.J.A.C. 7:14A) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application (N.J.A.C. 7:14A-2.5(a)1).

2. The permittee shall comply with applicable effluent standards or prohibitions established under section 307(a) of the "Federal Water Pollution Control Act" (33 U.S.C. § 1251 et seq.) (hereinafter referred to as the Federal Act) and Section 4 of the State Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (N.J.A.C. 7:14A-2.5(a)3).

3. The permittee is required to comply with all other applicable Federal, State, and local laws, rules, regulations, or ordinances. The issuance of this permit shall not be considered a waiver of any requirements other than the requirement that any discharge of stormwater associated with industrial activity be authorized by a permit.

B. Permit Expiration

1. This permit and the authorization to discharge shall expire at 11:59 P.M. on the expiration date of the permit. The permittee may discharge after the above date of expiration of the permit only in conformance with N.J.A.C. 7:14A-2.1 ("Application for a NJPDES Permit") and 2.3 ("Continuation of Expired Permits").

2. The conditions of an expired permit are continued in force pursuant to N.J.A.C. 7:14A-2.3, and remain fully effective and enforceable.

3. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may, in accordance with N.J.A.C. 7:14A: 1) initiate enforcement action based upon the permit which has been continued, 2) issue a notice of intent to deny the new permit, 3) issue a new permit, or 4) take other actions authorized by the NJPDES regulations or the State Act.

C. Duty to Halt or Reduce Activity

It shall not be a defense in an enforcement action to assert that the only possible alternative to maintain compliance with the conditions of this permit would have been to cease or reduce the permitted discharge activity (see N.J.A.C. 7:14A-2.5(a)5i).

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit, including, but not limited to, halting or reducing the permitted activity and temporary repairs (N.J.A.C. 7:14A-2.5(a)6).

E. Proper Operation and Maintenance

The permittee referenced herein shall be responsible for supervising and managing the operation and maintenance of any facilities or systems which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements identified in the stormwater pollution prevention plan. Proper operation and maintenance also requires the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

F. Permit Actions

This permit may be modified, suspended, revoked and reissued, or terminated in accordance with the provisions set forth in N.J.A.C. 7:14A-2.

G. Property Rights, Liability, and Other Laws

1. This permit does not convey any property rights of any sort or any exclusive privileges (N.J.A.C. 7:14A-2.5(a)9).

2. Nothing in this permit shall be construed to exempt the permittee from complying with the rules, regulations, policies, and/or laws lodged in any agency or subdivision in this State having legal jurisdiction.

H. Duty to Provide Information

1. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, suspending, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit (N.J.A.C. 7:14A-2.5(a)10).

2. When the permittee becomes aware that he has failed to submit any relevant facts in a request for authorization, or has submitted incorrect information in a request for authorization or in any report to the Department, the permittee shall promptly submit such facts or the correct information.

I. *Inspection and Entry*

1. The permittee shall allow the Regional Administrator of the United States Environmental Protection Agency (USEPA), the Department, or any authorized representative(s), upon the presentation of credentials and other documents as may be required by law, to inspect the permittee's premises in accordance with N.J.A.C. 7:14A-2.5(a)11 et seq.

2. Any refusal by the permittee, facility land owner(s), facility lessee(s), their agents, or any other person(s) with legal authority, to allow entry to the authorized representatives of the NJDEPE and/or USEPA shall constitute grounds for suspension, revocation and/or termination of this permit, or other permit or enforcement action.

3. By acceptance of this permit, the permittee consents to any inspections by authorized representatives of the NJDEPE and/or USEPA to determine the extent of compliance with any and all conditions of this permit and agrees not to, in any manner, seek to charge said representatives with a civil or criminal act of trespass when they enter the premises occupied by the permittee for said inspection purposes.

J. *Signatory Requirements*

1. All permit applications, reports, certifications, or other information required by the Department, shall be signed in accordance with the requirements set forth at N.J.A.C. 7:14A-2.4 ("Signatories") and N.J.A.C. 7:14A-3.9 ("General Permits").

2. False Statements. Any person who purposely, knowingly, recklessly, or negligently makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the State Act shall upon conviction, be subject to a civil penalty, or by imprisonment, or by both (N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14-8 et seq.)

K. *Reporting Changes and Violations*

1. Planned Changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of the pollutants discharged (N.J.A.C. 7:14A-2.5(a)14i).

2. Anticipated Noncompliance. The permittee shall give reasonable advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with the permit requirements (N.J.A.C. 7:14A-2.5(a)14ii).

L. *Reporting Noncompliance*

The permittee shall report to the Department any non-compliance including, but not limited to, violations of effluent limitations that cause, or have the potential to cause, injury to persons or to the environment or poses a threat to human health or the environment. Reporting shall be as

stipulated in N.J.A.C. 7:14A-2.5(a)14vi and N.J.A.C. 7:14A-3.10(a).

M. *Bypass*

1. A bypass is the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

2. Bypasses shall be subject to the requirements and conditions set forth in N.J.A.C. 7:14A-3.10(e), (f), and (g).

N. *Upset*

1. An upset is an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. Upset also means noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

2. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

3. Upsets shall be subject to the requirements and conditions set forth in N.J.A.C. 7:14A-3.10(h).

O. *Emergency Plan*

Liability. The submission of an emergency plan or an exemption from the development of an emergency plan does not exempt the permittee from liability for violations arising from an emergency situation as per N.J.A.C. 7:14A-3.12(g) and (h).

P. *Discharge Permitted*

The permittee shall discharge to surface waters of the State only as authorized herein and consistent with the terms and conditions of this permit.

Q. *Reopener Clause for Toxic Effluent Limitations*

Notwithstanding any other condition of this permit, if any applicable toxic effluent standard, limitation, or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Federal Clean Water Act or Sections 4 or 6 of the State Act for a toxic pollutant and that effluent standard, limitation, or prohibition is more stringent than any limitation on the pollutant in the permit (or controls a pollutant not limited in the permit), this permit shall be promptly modified or revoked and reissued to conform to that effluent standard, limitation, or prohibition (N.J.A.C. 7:14A-3.13 et seq.).

R. *Availability of Information*

Public access and confidentiality requirements regarding NJPDES permits, effluent data, and information required by NJPDES application forms shall be as set forth in N.J.A.C. 7:14A-11 et seq.

S. *Effective Date of Permit*

1. This permit shall become effective in its entirety on the date indicated (Effective Date) on the first page of this permit unless a request for an adjudicatory hearing is granted and a stay is granted pursuant to the provisions of N.J.A.C. 7:14A-8 et seq. ("Public Comment and Notice Procedures").

2. For purposes of judicial review, final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under N.J.A.C. 7:14A-3 and 7:14A-8. Any party which neglects or fails to seek such review thereby waives its opportunity to exhaust available agency remedies.

T. *Transfer of Permit Authorizations*

1. An authorization issued pursuant to this permit may not be transferred to any person except in compliance with 2 and 3 below and after notice to the Department. The Department may require modification, or revocation and reissuance of the authorization to change the name of the entity authorized and incorporate such other requirements as may be necessary under the Act.

2. *Transfer by Modification.* Except as provided in paragraph (3) of this section, an authorization issued under this permit may be transferred by the entity authorized to a new owner or operator only if the authorization has been modified or revoked and reissued (N.J.A.C. 7:14A-2.12) or a minor modification is made (pursuant to N.J.A.C. 7:14A-2.14(a)4) to identify the new entity authorized and incorporate such other requirements as may be necessary under the State and Federal Acts.

3. *Automatic Transfers.* As an alternative to the authorization transfers under paragraph (2) of this section, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee provided that the conditions set forth in N.J.A.C. 7:14A-2.11 et seq. are met.

U. *Severability*

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby (N.J.A.C. 7:14A-1.5).

V. *Stay of Conditions, N.J.A.C. 7:14A-8.10*

A request for an adjudicatory hearing, or any other review or hearing, shall not automatically result in a stay of the conditions of this permit.

W. *Annual Permit Fee, N.J.A.C. 7:14A-1.8*

The permittee shall pay the annual NJPDES permit fee which has been assessed by the Department.

X. *Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers and Research Facilities*

All existing manufacturing, commercial, mining, silvicultural dischargers and research facilities shall comply with the notification requirements specified in N.J.A.C. 7:14A-3.11(a)1i.

Y. *Definitions*

The definitions set forth at N.J.A.C. 7:14A-1.9 are incorporated into this permit.

Z. *Reopener Clause Regarding Stormwater Pollution Prevention Plan Certification*

Notwithstanding any other condition of this permit, if the Department promulgates rules prescribing the minimum qualifications of persons qualified to review Stormwater Pollution Prevention Plans, conduct annual inspections, and/or prepare annual reports under Part III, this permit may be modified upon the Department's initiative to require the use of such persons in the development of stormwater pollution prevention plans, the conduct of annual inspections, and/or the preparation of annual reports under Part III. The procedures in N.J.A.C. 7:14A-7 and 14A-8 and in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., shall apply to such a modification.

ATTACHMENT A: *RFA Certification*

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized by an authorized Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B of NJPDES Permit No. NJ0088315.

“I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088315 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and operator, the facility name and address, and type of facility or discharges.

“I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment.”

The RFA certification shall be signed as follows:

- (1) For a corporation, by a principal executive officer of at least the level of vice president;
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

ATTACHMENT B: Contents of the Stormwater Pollution Prevention Plan

A. Inventory Requirements

The SPPP shall contain an inventory that includes the following:

1. A list of general categories of all “source materials” used, stored, or otherwise located at the facility. As used in this permit, the term “source materials” means any materials or machinery, located at the facility and directly or indirectly related to process or other industrial activities, which could be a source of pollutants in a stormwater discharge associated with industrial activity that is subject to 40 CFR 122.26. Source materials include, but are not limited to: raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels; and lubricants, solvents, and detergents that are related to the process or other industrial activities. Materials or machinery that are not exposed to stormwater or that are not located at the facility are not “source materials”.
2. A list of any domestic wastewater, non-contact cooling water, or process waste water (including leachate and contact cooling water) other than stormwater, that is generated at the facility and discharged through separate storm sewers to surface waters.

3. For discharges identified in A.2. above, a list of any final or draft NJPDES permits, pending NJPDES permit applications, or pending requests for authorization under another general NJPDES permit (including the NJPDES permit number where available).

B. Mapping Requirements

The SPPP shall include a map of the entire facility that depicts the approximate location of all the items listed below. All of the information specified below should be shown on one map unless, for the sake of clarity, additional maps are needed.

1. Existing buildings and other permanent structures;
2. All paved areas, including roads;
3. Generalized stormwater flow and drainage patterns;
4. Location of each of the facility’s stormwater discharges associated with industrial activity that is subject to 40 CFR 122.26, including longitude and latitude to the nearest 15 seconds.
5. All surface drainage, inlet and discharge structures, including swales and ditches, but excluding rooftop drainage.
6. Location of each point or sewer segment, if any, where domestic wastewater, non-contact cooling water, or process waste water (other than stormwater) generated by the facility enters storm sewers that discharge to surface waters.
7. All locations where source materials are reasonably likely to be present. In doing so, the map shall at a minimum depict the location(s) of any of the following activities that occur at the facility and address all materials and machinery listed under the definition of “source materials” in A.1. above.
 - a. Outdoor handling, treatment, storage, or disposal activities;
 - b. Loading and unloading areas;
 - c. Outdoor manufacturing, processing, or cleaning activities; and other activities that disturb the land surface, except for construction or mining authorized under NJPDES Permit No. NJ0088323;
 - d. Significant dust or particulate generating processes, except those where dust or particulates are transmitted entirely off-site through the air or are regulated under an effective permit to construct, install or alter control apparatus or equipment pursuant to N.J.A.C. 7:27-8.1;
 - e. Hazardous waste storage or disposal facilities;
 - f. On-site waste management, storage and disposal practices, including wastes not associated with or derived from on-site industrial activities;

g. Access routes. As used in this permit, the term "Access routes" means any immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility.

C. Narrative Description of Existing Conditions

The SPPP shall include a narrative description concerning the management of all source materials at the facility which are handled, treated, stored, disposed, or which otherwise exist in a manner allowing contact with stormwater. The narrative description shall address the following:

1. Location and method of materials transport, loading and unloading;
2. Existing management practices employed to minimize contact of source materials with stormwater;
3. Existing structural and non-structural measures employed to reduce pollutants in stormwater;
4. Existing practices employed to divert stormwater to specific areas on or off-site, including diversion to containment areas, holding tanks, treatment facilities, or sanitary or combined sewers; and
5. A description of any treatment the stormwater already receives;
6. Any discharges of domestic wastewater, non-contact cooling water, or process waste water (other than stormwater) that the SPPP lists in accordance with B.6. above (unless such discharges have been authorized by other NJPDES permits or identified in applications or requests for authorization submitted for other NJPDES permits). The narrative description shall also discuss any existing practices to prevent or permit such discharges.

D. Description of Required Best Management Practices

The SPPP shall identify and discuss the best management practices (BMPs) that will be implemented at the facility to:

1. Ensure that the facility does not discharge, through separate storm sewers to surface waters, any stormwater that is exposed to source materials located at the facility; and
2. Ensure that the facility does not generate and discharge, through storm sewers to surface waters, any domestic wastewater, non-contact cooling water, or process waste water (other than stormwater), unless that discharge is authorized by another NJPDES permit or identified in an application or request for authorization submitted for another NJPDES permit.

E. Implementation Schedule

The SPPP shall include a schedule for full implementation of the BMPs identified in accordance with D, above. This schedule must provide for full implementation by the applicable deadlines specified in Part III of this permit.

F. Maintenance Schedule

The SPPP shall include a schedule for providing regular and appropriate maintenance and repairs of all structural BMPs identified in accordance with D, above.

G. Inspection Schedule

The SPPP shall include a schedule for regular inspection by facility personnel of designated areas, operations, and equipment. An annual inspection of the entire facility shall also be conducted in accordance with part III.C. to identify areas contributing to the stormwater discharge authorized by this permit and to evaluate whether the SPPP complies with part III.B. and is being properly implemented, or whether additional measures are needed in order to meet the conditions of this permit.

H. Internal Reporting

The SPPP shall include a report summarizing, in accordance with III.D., each annual inspection performed under G. above. The report shall indicate whether the facility was found to be in compliance with the SPPP and the conditions of this permit. In the case of non-compliance, the report shall identify measures taken to remedy any non-compliance discovered during the inspection. All instances of non-compliance with the permit or the SPPP not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 shall be reported to the Department annually.

The SPPP shall record any incidents such as leaks or accidental discharges, and any failures or breakdowns of structural BMPs. The SPPP shall also ensure that, in such instances, corrective measures are implemented and inspected, and verify that full remediation is achieved.

I. Special Requirements

The following are special requirements for certain types of facilities with stormwater discharges associated with industrial activity. For such facilities, the SPPP must satisfy these special requirements as well as all the requirements provided above.

1. Facilities Discharging Through Municipal Separate Storm Sewer Systems

For any discharges of stormwater associated with industrial activity through a municipal separate storm sewer system that has a final NJPDES discharge permit, the SPPP shall also require compliance with all applicable requirements of the municipal stormwater management program developed under that permit.

2. Facilities Subject to SARA Title III, Section 313 Requirements

The SPPP shall include, or cite the location of, any spill reports prepared under section 313 in Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

3. Facilities With SPCC Plans, DPCC Plans, and DCR Plans

The SPPP shall include, or cite the location(s) of, any Spill Prevention Control and Countermeasure Plan (SPCC Plan) prepared under 40 CFR 112 and section 311 of the Clean Water Act, 33 U.S.C. § 1321; and any discharge prevention, containment and countermeasure plan (DPCC plan) and discharge cleanup and removal plan (DCR plan) prepared under N.J.A.C. 7:1E.

4. Facilities Undergoing Construction

Whenever construction activities are undertaken at the facility, the SPPP shall be amended, if necessary, so that the SPPP continues to be accurate and to meet the requirements of part III.B of this permit.

Additionally, for construction activities disturbing less than five acres of total land area which are not part of a larger common plan of development or sale, the SPPP shall include proof that any certification or municipal approval required under the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) has been obtained.

For construction activities disturbing five acres or more of total land area, authorization must be obtained under NJPDES Permit No. NJ0088323, or under an individual NJPDES permit, for stormwater from such construction activities that would be discharged to surface waters.

ATTACHMENT C: *Stormwater Pollution Prevention Plan Preparation Certification*

The following certification shall be signed and submitted by the owner/operator to the Department using the appropriate Department forms.

"I certify under penalty of law that I have personally examined and am familiar with the information in this Stormwater Pollution Prevention Plan Preparation Certification and all attached documents, and in the stormwater pollution prevention plan referred to in this certification. I further certify that I have signed this stormwater pollution prevention plan (SPPP), the implementation of which will ensure that there will be no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters.

"I further certify that this Stormwater Pollution Prevention Plan Preparation Certification, all attached documents, and stormwater pollution prevention plan were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in

this Stormwater Pollution Prevention Plan Preparation Certification, all attached documents, and stormwater pollution prevention plan is true, accurate and complete.

"I certify that the stormwater pollution prevention plan referred to in this Stormwater Pollution Prevention Plan Preparation Certification has been signed and is being retained at the facility in accordance with part III.B of NJPDES Permit No. NJ0088315, and that this stormwater pollution prevention plan will be fully implemented at the facility in accordance with the terms and conditions of that permit. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed as follows:

- (1) For a corporation, by a principal executive officer of at least the level of vice president;
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

This signature shall be notarized by an authorized Notary Public. Whenever there are two or more permittees for the facility, all of those permittees shall jointly submit this Stormwater Pollution Prevention Plan Preparation Certification.

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with this certification (with updated names, addresses and telephone numbers attached), unless the certification is submitted concurrently with the RFA.

ATTACHMENT D: *Stormwater Pollution Prevention Plan Implementation and Inspection Certification*

The following certification shall be signed and submitted by the owner/operator to the Department using the appropriate Department forms.

"I certify under penalty of law that I have personally examined and am familiar with the information in this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents, and in the stormwater pollution prevention plan referred to in this certification.

"I certify that this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents were prepared by personnel under my direction or supervision in accordance with a system de-

signed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in this Stormwater Pollution Prevention Plan Implementation and Inspection Certification and all attached documents is true, accurate and complete.

"I certify that the facility has been inspected to identify areas contributing to the stormwater discharge authorized under NJPDES permit No. NJ0088315 and to evaluate whether the stormwater pollution prevention plan (SPPP) prepared under that permit complies with part III.B. of that permit and is being properly implemented.

"I certify that the stormwater pollution prevention plan referred to in this Stormwater Pollution Prevention Plan Implementation and Inspection Certification has been and will continue to be fully implemented at this facility in accordance with the terms and conditions of part III of NJPDES Permit No. NJ0088315. I specifically certify that there is no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters (except for any incidents of non-compliance identified in the attached report). I also specifically certify that this facility does not generate and discharge, through storm sewers to surface waters, any domestic wastewater, non-contact cooling water, or process waste water (including leachate and contact cooling water) other than stormwater, unless that discharge is authorized by another NJPDES permit or identified in an application (or request for authorization) submitted for another NJPDES permit.

"I also certify that this facility is not in violation of any conditions of NJPDES Permit No. NJ0088315, including requirements in part III of that permit for preparation and implementation of a stormwater pollution prevention plan, except for any incidents of noncompliance (which are noted in the attached report). For any incidents of noncompliance identified in the annual inspection (or made known to me during the course of the past year), I have attached a report identifying these incidents, and identifying steps taken or being taken to remedy the noncompliance and to prevent such incidents from recurring. If the attached report identifies any incidents of noncompliance, I certify that any remedial or preventative steps identified therein were or will be taken in compliance with the schedule set forth in the attachment to this certification. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed as follows:

- (1) For a corporation, by a principal executive officer of at least the level of vice president;
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

This signature shall be notarized by an authorized Notary Public.

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with this certification (with updated names, addresses and telephone numbers attached), unless the certification is submitted concurrently with the RFA.

The permittee shall also identify the number of the NJPDES permit of any discharges through storm sewers to surface waters of domestic wastewater, non-contact cooling water, or process waste water other than stormwater generated by the facility. If no NJPDES permit number has been assigned yet, the permittee shall provide a copy of the cover page of the application or request for authorization in an attachment to this certification.

New Rule: R.1992 d.434, effective November 2, 1992.
 See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a), 24 N.J.R. 4364(a).
 Administrative correction to Attachment A.
 See: 25 N.J.R. 687(a).

APPENDIX B

**PERMIT NUMBER NJ0088323
 NJPDES/DSW GENERAL PERMIT
 CONSTRUCTION ACTIVITY STORMWATER**

<p>Permittee GENERAL PERMIT— CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION</p>	<p>Co-Permittee</p>						
<p>Property Owner GENERAL PERMIT— CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION</p>	<p>Location of Activity GENERAL PERMIT— CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION</p>						
<p>Current Authorization Covered by this Approval and Previous Authorization 5G3: GEN PERMIT CONSTRUCT ACTIVITY</p>	<table border="0"> <tr> <td style="text-align: center;">Issuance Date</td> <td style="text-align: center;">Effective Date</td> <td style="text-align: center;">Expiration Date</td> </tr> <tr> <td style="text-align: center;">10/01/1992</td> <td style="text-align: center;">11/02/1992</td> <td style="text-align: center;">11/01/1997</td> </tr> </table>	Issuance Date	Effective Date	Expiration Date	10/01/1992	11/02/1992	11/01/1997
Issuance Date	Effective Date	Expiration Date					
10/01/1992	11/02/1992	11/01/1997					

By Authority of: SCOTT A. WEINER, COMMISSIONER
 PART I. AUTHORIZATION UNDER THIS PERMIT
 A. Permit Area

This permit applies to all areas of the State of New Jersey.

B. Eligibility

1. Except as provided in B.2 below, this permit may authorize all new and existing stormwater discharges associated with industrial activity that are subject to Federal stormwater permitting requirements at 40 CFR 122.26 and that are from the following facilities:

a. Construction activities including clearing, grading and excavation activities, except for construction activities disturbing less than five acres of total land area which are not part of a larger common plan of development or sale.

b. Active or inactive operations for mining or quarrying of stone, gravel, sand, soil, shale, or clay; including crushing, grinding, pulverizing and washing activities at such mines or quarries, but excluding:

i. Facilities where mined or quarried material is treated with detergents, oils, acids, or other chemicals.

ii. Facilities that include active or inactive mining or quarrying for metallic minerals (ores).

2. The following stormwater discharges are not authorized by this permit:

a. Stormwater discharges subject to any of the following effluent guideline limitations for stormwater: cement manufacturing, materials storage piles (40 CFR 411, Subpart C); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric, coal pile runoff (40 CFR 423); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443, Subpart A).

b. Stormwater discharges from facilities with "sanitary landfills" or "hazardous waste landfills" as defined in N.J.A.C. 7:26-1.4, unless:

i. The landfill is under construction and has not received any solid waste (including hazardous waste) as defined at N.J.A.C. 7:1E-1.6; or

ii. The landfill has been closed in compliance with N.J.A.C. 7:26-2A.9 or 7:26-9.8 (the Solid Waste rules), the appropriate certifications have been submitted in accordance with N.J.A.C. 7:26, and the landfill is not disrupted.

If the landfill meets i or ii above, the discharge is eligible for authorization under this permit.

c. Stormwater discharges from the following facilities where the stormwater comes into contact with petroleum-based oil and grease in raw materials, intermediate products, finished products, byproducts, or waste products located on the facility site:

i. Facilities classified as Standard Industrial Classification (SIC) Code 29 (Petroleum Refining and Related Industries); and

ii. Facilities that are defined as "major facilities", at N.J.S.A. 58:10-23.11b.1 and N.J.A.C. 7:1E-1.6 and that also have a total combined storage capacity of 200,000 gallons or more for petroleum or petroleum products.

d. Stormwater discharges from construction, mining or quarrying activities that are not regulated under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., or that are not within the definition of "project" at N.J.S.A. 4:24-41.g.

e. A stormwater discharge from a mining or quarrying operation authorized by an effective individual DSW permit for that discharge.

f. Stormwater discharges that occur after the construction activities under 1.a above have been completed, unless such discharges are from mining or quarrying operations eligible for authorization under 1.b above. (If the facility being constructed is in one or more of the categories identified in 40 CFR 122.26(b)(14)(i) through (ix) or (xi), and is not such a mining or quarrying operation, then authorization for that stormwater discharge must be obtained under another NJPDES permit (such as NJPDES Permit No. NJ0088315, where applicable), even if authorization for the stormwater discharge from the construction activity has been obtained under this permit.)

3. Other discharges are not authorized by this permit, even if such discharges are combined with stormwater discharges, that are authorized by this permit.

C. Requiring an Individual Permit or Other General Permit

1. The Department may require any permittee authorized under this permit to apply for and obtain an individual DSW permit, or seek and obtain authorization under another general permit. Conversely, any permittee authorized under this permit may request to be excluded from authorization under this permit by applying to the Department for an individual DSW permit. Termination of existing permits under such circumstances is governed by N.J.A.C. 7:14A-3.9.

2. If, after receiving authorization under this permit, a facility is required by the Department to obtain another NJPDES DSW permit that would also cover the authorized stormwater discharge, then authorization under this permit shall remain in effect only until either:

a. The date such other permit becomes effective; or

b. The date the application for such other permit (or request for authorization under another general permit) is denied.

If such a facility fails to submit an application or request for authorization by the date specified by the Department, then the general permit authorization remains in effect only until that date.

D. *Authorization*

In order to obtain authorization under this permit, a complete Request for Authorization (RFA) and the \$200 fee required under N.J.A.C. 7:14A-1.8(j) shall be submitted in accordance with the requirements of part II of this permit.

1. For stormwater discharges that existed prior to the effective date of this permit, authorization becomes effective when the facility's soil erosion and sediment control plan is certified by the soil conservation district, the New Jersey Department of Transportation (DOT) or the State Soil Conservation Committee (pursuant to N.J.S.A. 4:24-43, and where applicable, N.J.S.A. 4:24-6.1); or when the facility has been approved under a municipal ordinance pursuant to N.J.S.A. 4:28-48. If certification or municipal approval was issued before the effective date of this permit, authorization under this permit shall be effective on the effective date of this permit.

2. For new stormwater discharges, authorization becomes effective when the soil conservation district or DOT certifies the RFA.

3. For new stormwater discharges commencing in the Pinelands Area (as defined by N.J.S.A. 13:18A-11) after the effective date of this permit, authorization under this permit becomes effective only if, pursuant to N.J.S.A. 13:18A-15, the Pinelands Commission has determined that:

a. The Pinelands Commission will not review the facility based upon the issuance of a certification of the facility's soil erosion and sediment control plan issued by the soil conservation district or the State Soil Conservation Committee, or the approval of the facility's soil erosion and sediment control requirements issued by the municipality (whichever is applicable);

b. The Pinelands Commission has reviewed and approved the facility following issuance of a certification of the facility's soil erosion and sediment control plan issued by the soil conservation district or the State Soil Conservation Committee, or the approval of the facility's soil erosion and sediment control requirements issued by the municipality (whichever is applicable); or

c. The Pinelands Commission has, pursuant to N.J.A.C. 7:50-4.51 et seq., reviewed and approved the development application of the DOT.

4. Authorizations under this general permit cease to be effective:

a. If a complete RFA and \$200 fee are not submitted in accordance with Part II of this permit (in which case the discharge shall be deemed never to have been authorized);

b. When the certification or municipal approval of the facility's soil erosion and sediment control plan expires without being renewed or extended; or

c. When the State Soil Conservation Committee rejects (pursuant to N.J.S.A. 4:24-6.1 and N.J.A.C. 2:90-1.6) a decision by the soil conservation district to certify the facility's soil erosion and sediment control plan.

5. For a stormwater discharge authorized under this permit, the permittee is exempt from the provision in N.J.A.C. 7:14A-2.5(a)1 which declares that the discharge of any pollutant not specifically regulated in the NJPDES permit or listed in the NJPDES application shall constitute a violation of the permit.

PART II. *REQUEST FOR AUTHORIZATION REQUIREMENTS*A. *Deadlines for Requesting Authorization*

1. A Request for Authorization (RFA) for an existing stormwater discharge must be submitted within 180 days after the effective date of this permit.

2. An RFA for a new stormwater discharge must be submitted at least 30 days prior to the commencement of the land disturbance that may result in that discharge.

3. The soil conservation district or DOT may, at its discretion, accept an RFA submitted after the foregoing deadlines; however, the discharger may still be held liable for any violations that occurred prior to the submission of the RFA.

B. *Persons Requesting Authorization*

The RFA must be jointly submitted by all persons who currently own or operate any part of the facility requiring a NJPDES permit for the stormwater discharge at the facility. For example, if the facility is owned by one person but operated by another, both the owner and the operator must jointly submit a single RFA for the facility.

C. *Contents of the Request for Authorization*

A completed RFA shall include all of the following information regarding the regulated facility, using the Department's RFA form. A fee of \$200, paid by check or money order payable to "Treasurer, State of New Jersey", shall be submitted along with the completed RFA.

1. The legal name and address of all current owners and operators.

2. The facility name and address.

3. A brief description of the facility and its current and proposed uses.

4. The RFA certification contained in Attachment A.

5. For stormwater discharges occurring in the Pinelands Area (as defined in N.J.S.A. 13:18A-11) prior to the effective date of this permit, a Pinelands Commission "no call up" letter or public development approval.

D. Where to Submit

1. For projects that the New Jersey Department of Transportation (DOT) is constructing or proposes to construct, a completed, signed, and certified RFA (see I.I.E.1 below) and the \$200 fee shall be submitted by DOT to the Department at the address specified on the Department's RFA form.

2. For all other projects, a completed and signed RFA and \$200 fee shall be submitted to the soil conservation district.

E. Certifying the Request for Authorization

1. For projects that the DOT is constructing or proposes to construct, the DOT shall certify the RFA if the requirements in II.C above have been satisfied, and if the DOT has certified the facility's plan for soil erosion and sediment control under N.J.S.A. 4:24-43.

2. For other projects, the soil conservation district shall certify the RFA if the requirements in II.C above have been satisfied, and if:

a. The soil conservation district has certified the facility's plan for soil erosion and sediment control under N.J.S.A. 4:24-43; or

b. The State Soil Conservation Committee has certified the facility's plan for soil erosion and sediment control under N.J.S.A. 4:24-6.1 and N.J.S.A. 4:24-43; or

c. The facility has been approved under a municipal ordinance for soil erosion and sediment control pursuant to N.J.S.A. 4:24-48.

3. The district shall grant or deny certification of the RFA within a period of 30 days after submission of a complete RFA unless, by mutual agreement in writing between the district and the persons requesting authorization, the period of 30 days shall be extended for an additional period of 30 days. Failure of the district to grant or deny certification within such time period shall constitute certification of the RFA.

4. RFAs certified by the soil conservation districts shall be submitted by those districts to the State Soil Conservation Committee, which shall submit them to the Department at the address specified on the Department's RFA form.

F. Additional Notification

1. Facilities that discharge stormwater associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit a copy of the RFA to the owner and operator of that system.

2. The permittee is responsible for publishing a notice in a daily or weekly newspaper within the area affected by the permitted facility stating that a request for authorization under general permit no. NJ0088323 to discharge stormwater to surface water has been submitted in accordance with N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the

legal name and address of the owner and operator, the facility name and address, and type of facility and discharges. A certification stating that arrangements for such notification have been made is contained in Attachment A and shall be signed and submitted as part of the RFA.

G. Reauthorization

This permit expires in five years. If the Department reissues this permit, and if a stormwater discharge authorized by this permit will continue after the expiration of this permit, the permittee is required to submit a RFA within 180 days after the effective date of the reissued permit in order to be reauthorized.

PART III. EFFLUENT LIMITATIONS**A. Hazardous Substances**

The permittee shall comply with the applicable provisions of N.J.A.C. 7:1E (Department rules entitled "Discharges of Petroleum and Other Hazardous Substances") relevant to the stormwater discharges authorized by this permit. No discharge of hazardous substances (as defined in N.J.A.C. 7:1E-1.6) shall be deemed to be "pursuant to and in compliance with [this] permit" within the meaning of the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11c.

B. Stormwater Pollution Prevention Plan

1. Land disturbances that may result in a stormwater discharge authorized by this permit shall be executed only in accordance with a soil erosion and sediment control plan certified pursuant to N.J.S.A. 4:24-43, or requirements for soil erosion and sediment control established in or pursuant to a municipal ordinance in accordance with N.J.S.A. 4:24-48, whichever is applicable. A copy of this plan shall be retained by the permittee for a period of at least five years after the completion of construction.

2. Land disturbances that may result in a stormwater discharge authorized by this permit shall not commence until authorization is effective under I.D. above.

3. For purposes of this permit, the soil erosion and sediment control plan or requirements implemented under B.2. above, and a Department-approved discharge prevention, containment and countermeasure (DPCC) plan and discharge cleanup and removal (DCR) plan, if any, prepared under N.J.A.C. 7:1E and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., constitute the facility's stormwater pollution prevention plan (except for any provisions that are not relevant to the stormwater discharge authorized by this permit).

C. Public Review

All SPPPs prepared under this permit are considered reports that shall be available to the public for inspection and duplication under N.J.S.A. 58:10A-9c. However, the permittee may claim any portion of a SPPP as confidential in accordance with N.J.A.C. 7:14A-11. The Department's decision on such claims shall be made in accordance with N.J.A.C. 7:14A-11.

PART IV. INSPECTION AND REPORTING REQUIREMENTS

A. Annual Inspections

The permittee shall conduct an annual inspection of the facility to identify areas contributing to the stormwater discharge authorized by this permit and evaluate whether the stormwater pollution prevention plan (SPPP) identified under III.B above is being properly implemented, or whether additional measures are needed to implement the SPPP.

B. Annual Reports and Certifications

The permittee shall prepare an annual report summarizing each inspection performed under IV.A above. This report shall be accompanied by an annual certification that the facility is in compliance with its SPPP and this permit, except that if there are any incidents of noncompliance, those incidents shall be identified in the certification. If there are incidents of noncompliance, the report shall identify the steps being taken to remedy the noncompliance and to prevent such incidents from recurring. The report and certification shall be signed by the permittee in accordance with N.J.A.C. 7:14A-2.4(a)2i, and shall be maintained for a period of five years. This period may be extended by written request from the Department at any time.

C. Reports of Noncompliance

All instances of noncompliance not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 shall be reported to the Department annually.

D. Other Permits and Regulatory Requirements

Compliance with the conditions of this permit does not exempt the permittee from any other applicable permit or other regulatory requirements including, but not limited to, all other Department rules and the Pinelands rules (N.J.A.C. 7:50).

PART V. CONDITIONS APPLICABLE TO GENERAL PERMITS AUTHORIZING STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

A. Duty to Comply

1. The permittee shall comply with all conditions of this New Jersey Pollutant Discharge Elimination System (NJPDES) permit. Any permit noncompliance constitutes a violation of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq., hereinafter referred to as the State Act) or other authority of the NJPDES regulations (N.J.A.C. 7:14A) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application (N.J.A.C. 7:14A-2.5(a)1).

2. The permittee shall comply with applicable effluent standards or prohibitions established under section 307(a) of the "Federal Water Pollution Control Act" (33 U.S.C. § 1251 et seq.); hereinafter referred to as the Federal Act) and Section 4 of the State Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (N.J.A.C. 7:14A-2.5(a)3).

3. The permittee is required to comply with all other applicable federal, state, and local laws, rules, regulations, or ordinances. The issuance of this permit shall not be considered a waiver of any requirements other than the requirement that any discharge of stormwater associated with industrial activity be authorized by a permit.

B. Permit Expiration

1. This permit and the authorization to discharge shall expire at 11:59 P.M. on the expiration date of the permit. The permittee may discharge after the above date of expiration of the permit only in conformance with N.J.A.C. 7:14A-2.1 ("Application for a NJPDES Permit") and 2.3 ("Continuation of Expired Permits").

2. The conditions of an expired permit are continued in force pursuant to N.J.A.C. 7:14A-2.3, and remain fully effective and enforceable.

3. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may, in accordance with N.J.A.C. 7:14A: (1) initiate enforcement action based upon the permit which has been continued, (2) issue a notice of intent to deny the new permit, (3) issue a new permit, or (4) take other actions authorized by the NJPDES regulations or the State Act.

C. Duty to Halt or Reduce Activity

It shall not be a defense in an enforcement action to assert that the only possible alternative to maintain compliance with the conditions of this permit would have been to cease or reduce the permitted discharge activity (see N.J.A.C. 7:14A-2.5(a)5i).

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit, including, but not limited to, halting or reducing the permitted activity and temporary repairs (N.J.A.C. 7:14A-2.5(a)6).

E. Proper Operation and Maintenance

The permittee referenced herein shall be responsible for supervising and managing the operation and maintenance of any facilities or systems which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements identified in the stormwater pollution prevention plan. Proper operation and maintenance also requires the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

F. *Permit Actions*

This permit may be modified, suspended, revoked and reissued, or terminated in accordance with the provisions set forth in N.J.A.C. 7:14A-2.

G. *Property Rights, Liability, and Other Laws*

1. This permit does not convey any property rights of any sort or any exclusive privileges (N.J.A.C. 7:14A-2.5(a)9).

2. Nothing in this permit shall be construed to exempt the permittee from complying with the rules, regulations, policies, and/or laws lodged in any agency or subdivision in this State having legal jurisdiction.

H. *Duty to Provide Information*

1. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, suspending, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit (N.J.A.C. 7:14A-2.5(a)10).

2. When the permittee becomes aware that he has failed to submit any relevant facts in a request for authorization, or has submitted incorrect information in a request for authorization or in any report to the Department, the permittee shall promptly submit such facts or the correct information.

I. *Inspection and Entry*

1. The permittee shall allow the Regional Administrator of the United States Environmental Protection Agency (USEPA), the Department, or any authorized representative(s), upon the presentation of credentials and other documents as may be required by law, to inspect the permittee's premises in accordance with N.J.A.C. 7:14A-2.5(a)11 et seq.

2. Any refusal by the permittee, facility land owner(s), facility lessee(s), their agents, or any other person(s) with legal authority, to allow entry to the authorized representatives of the NJDEPE and/or USEPA shall constitute grounds for suspension, revocation and/or termination of this permit, or other permit or enforcement action.

3. By acceptance of this permit, the permittee consents to any inspections by authorized representatives of the NJDEPE and/or USEPA to determine the extent of compliance with any and all conditions of this permit and agrees not to, in any manner, seek to charge said representatives with a civil or criminal act of trespass when they enter the premises occupied by the permittee for said inspection purposes.

J. *Signatory Requirements*

1. All permit applications, reports, certifications, or other information required by the Department shall be signed in accordance with the requirements set forth at N.J.A.C. 7:14A-2.4 ("Signatories") and N.J.A.C. 7:14A-3.9 ("General Permits").

2. False Statements. Any person who purposely, knowingly, recklessly, or negligently makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the State Act shall upon conviction, be subject to a civil penalty, or by imprisonment, or by both (N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14-8 et seq.).

K. *Reporting Changes and Violations*

1. Planned Changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of the pollutants discharged (N.J.A.C. 7:14A-2.5(a)14i).

2. Anticipated Noncompliance. The permittee shall give reasonable advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with the permit requirements (N.J.A.C. 7:14A-2.5(a)14ii).

L. *Reporting Noncompliance*

The permittee shall report to the Department any non-compliance including, but not limited to, violations of effluent limitations that cause, or have the potential to cause, injury to persons or to the environment or poses a threat to human health or the environment. Reporting shall be as stipulated in N.J.A.C. 7:14A-2.5(a)14vi and N.J.A.C. 7:14A-3.10(a).

M. *Bypass*

1. A bypass is the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

2. Bypasses shall be subject to the requirements and conditions set forth in N.J.A.C. 7:14A-3.10(e), (f), and (g).

N. *Upset*

1. An upset is an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. Upset also means noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

2. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

3. Upsets shall be subject to the requirements and conditions set forth in N.J.A.C. 7:14A-3.10(h).

O. *Emergency Plan*

Liability. The submission of an emergency plan or an exemption from the development of an emergency plan does not exempt the permittee from liability for violations arising from an emergency situation as per N.J.A.C. 7:14A-3.12(g) and (h).

P. *Discharge Permitted*

The permittee shall discharge to surface waters of the State only as authorized herein and consistent with the terms and conditions of this permit.

Q. *Reopener Clause for Toxic Effluent Limitations*

Notwithstanding any other condition of this permit, if any applicable toxic effluent standard, limitation, or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Federal Clean Water Act or Section 4 or 6 of the State Act for a toxic pollutant and that effluent standard, limitation, or prohibition is more stringent than any limitation on the pollutant in the permit (or controls a pollutant not limited in the permit), this permit shall be promptly modified or revoked and reissued to conform to that effluent standard, limitation, or prohibition (N.J.A.C. 7:14A-3.13 et seq.).

R. *Availability of Information*

Public access and confidentiality requirements regarding NJPDES permits, effluent data, and information required by NJPDES application forms shall be as set forth in N.J.A.C. 7:14A-11 et seq.

S. *Effective Date of Permit*

1. This permit shall become effective in its entirety on the date indicated (Effective Date) on the first page of this permit unless a request for an adjudicatory hearing is granted and a stay is granted pursuant to the provisions of N.J.A.C. 7:14A-8 et seq. ("Public Comment and Notice Procedures").

2. For purposes of judicial review, final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under N.J.A.C. 7:14A-3 and 7:14A-8. Any party which neglects or fails to seek such review thereby waives its opportunity to exhaust available agency remedies.

T. *Transfer of Permit Authorizations*

1. An authorization issued pursuant to this permit may not be transferred to any person except in compliance with 2 and 3 below and after notice to the Department. The Department may require modification, or revocation and reissuance of the authorization to change the name of the entity authorized and incorporate such other requirements as may be necessary under the Act.

2. *Transfer by Modification.* Except as provided in paragraph (3) of this section, an authorization issued under this permit may be transferred by the entity authorized to a new owner or operator only if the authorization has been modified or revoked and reissued (N.J.A.C. 7:14A-2.12) or a minor modification is made (pursuant to N.J.A.C. 7:14A-2.14(a)4) to identify the new entity authorized and incorporate such other requirements as may be necessary under the State and Federal Acts.

3. *Automatic Transfers.* As an alternative to the authorization transfers under paragraph (2) of this section, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee provided that the conditions set forth in N.J.A.C. 7:14A-2.11 et seq. are met.

U. *Severability*

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby (N.J.A.C. 7:14A-1.5).

V. *Stay of Conditions, N.J.A.C. 7:14A-8.10*

A request for an adjudicatory hearing, or any other review or hearing, shall not automatically result in a stay of the conditions of this permit.

W. *Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers and Research Facilities*

All existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities shall comply with the notification requirements specified in N.J.A.C. 7:14A-3.11(a)1i.

X. *Definitions*

The definitions set forth at N.J.A.C. 7:14A-1.9 are incorporated into this permit.

Y. Reopener Clause Regarding Stormwater Pollution Prevention Plan Certification

Notwithstanding any other condition of this permit, if the Department promulgates rules prescribing the minimum qualifications of persons qualified to review Stormwater Pollution Prevention Plans, conduct annual inspections, and/or prepare annual reports under Part III or Part IV, this permit may be modified upon the Department's initiative to require the use of such persons in the development of stormwater pollution prevention plans, the conduct of annual inspections, and/or the preparation of annual reports under Part III or Part IV. The procedures in N.J.A.C. 7:14A-7 and 14A-8 and in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., shall apply to such a modification.

ATTACHMENT A: RFA Certification

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized by an authorized Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B of NJPDES Permit No. NJ0088323.

"I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088323 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and operator, the facility name and address, and type of facility or discharges.

"I am aware that pursuant to the Water Pollution Control Act (see N.J.S.A. 58:10A-10f(2) and (3)), there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

The RFA certification shall be signed as follows:

- (1) For a corporation, by a principal executive officer of at least the level of vice president;
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

New Rule: R.1992 d.434, effective November 2, 1992.
 See: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a), 24 N.J.R. 4364(a).
 Administrative correction to Part 1B3.
 See: 25 N.J.R. 687(a).

SUBCHAPTER 4. ADDITIONAL REQUIREMENTS FOR AN INDUSTRIAL WASTE MANAGEMENT FACILITY

Source and Effective Date

R.1981 d.373, effective October 8, 1981.
 See: 12 N.J.R. 569(f), 13 N.J.R. 705(a).

7:14A-4.1 Purpose

This subchapter establishes the requirements for compliance with the State Act concerning hazardous waste as defined in Section 1.9 for owners and operators of an industrial waste management facility as described in N.J.A.C. 7:14A-4.2.

Case Notes

Precluding issuance of a New Jersey pollution discharge elimination system permit unless a governmental entity or sewage agency is the sole permittee or copermitee with a private utility exceeds statutory regulatory authority delegated to Department of Environmental Protection in the Water Quality Planning and Water Pollution Acts. *New Jersey Builders Ass'n v. Fenske*, 249 N.J.Super. 60, 591 A.2d 1362 (A.D.1991).

7:14A-4.2 Scope

(a) Specific inclusions: An industrial waste management facility (IWMF) which treats, stores, or disposes of hazardous waste which is received exclusively from intracompany and intrastate sources and includes the following:

- 1. Wastewater treatment units which are subject to regulation under Section 402 or 307(b) of the Federal Act and that:
 - i. Receive, and treat or store an influent wastewater which is a hazardous waste; or
 - ii. Generate, store, or treat a wastewater treatment sludge or residue which is a hazardous waste; and
 - iii. Meet the definition of "tank".

2. The treatment, storage or disposal of hazardous waste in a surface impoundment;

3. A land treatment facility for hazardous waste;

4. Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store or dispose of hazardous waste. However, the owner and operator with a UIC permit shall be deemed to have a IWMF permit for the injection well itself provided there is compliance with the requirements of N.J.A.C. 7:14A-4.5(a)1.

5. Notwithstanding the provisions of (a)1 above, an IWMF may receive hazardous waste from intrastate/inter-company sources provided that:

i. A modification of the NJPDES/DSW or SIU permit is obtained pursuant to N.J.A.C. 7:14A-2.12; and

ii. The hazardous waste is used for the sole purpose of substitution for a chemical agent which is normally used in the IWMF wastewater treatment unit; or

iii. The hazardous waste is received and used for the purpose of biologically seeding a wastewater treatment unit.

(b) Specific exclusions: The following exclusions to this subchapter are required to obtain a Hazardous Waste Facility (HWF) permit pursuant to N.J.A.C. 7:26-12.

1. Wastewater treatment unit which meet the requirements of (a)1 above where the hazardous wastewater is received from intercompany or interstate sources except as provided in (a)5 above;

2. A surface impoundment where hazardous wastes will remain at the facility site after closure is completed; and

3. The treatment, storage or disposal of hazardous waste sludges in sludge drying beds and landfills.

(c) General requirements are as follows:

1. The owner or operator of an IWMF as described in (a)1 above shall be deemed to possess a NJPDES/IWMF permit-by-rule provided there is compliance with the standards specified in N.J.A.C. 7:14A-4.6, unless the Department terminates eligibility for a permit-by-rule in accordance with N.J.A.C. 7:14A-4.5(a)3ii.

2. Where eligibility for an IWMF permit-by-rule has been terminated by the Department, the owner or operator of the IWMF shall apply for and is required to obtain an individual IWMF permit N.J.A.C. 7:14A-4.4.

3. The owner or operator of an IWMF as described in (a)2 and 3 above shall obtain an individual NJPDES/IWMF permit in accordance with N.J.A.C. 7:14A-4.4.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (a), "inter" changed to "intra" company; minor language changes at (b)1 and (c)2 and 3.

Case Notes

Precluding issuance of a New Jersey pollution discharge elimination system permit unless a governmental entity or sewage agency is the sole permittee or copermittee with a private utility exceeds statutory regulatory authority delegated to Department of Environmental Protection in the Water Quality Planning and Water Pollution Acts. *New Jersey Builders Ass'n v. Fenske*, 249 N.J.Super. 60, 591 A.2d 1362 (A.D.1991).

7:14A-4.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

"Chemical agent" means those elements, compounds, or mixtures that disperse, dissolve, emulsify, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, gel, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects of removal of the pollutant from the wastewater.

"Existing facility" means a facility which was in operation or for which construction has commenced, on or before November 19, 1980. Construction had commenced if the owner or operator has obtained all necessary Federal permits as well as any permit required by the Division of Solid Waste Management and either:

1. A continuous physical, on-site construction program has begun; or

2. The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss for the construction of the facility to be completed within a reasonable time.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Wastewater treatment unit" means a device which:

1. Is part of a wastewater treatment facility which is subject to regulations under either Section 402 or Section 307(b) of the Federal Act; and

2. Is designed to change the physical, chemical or biological character or composition of the wastewater so as to prepare it for further treatment or for reuse or disposal; and

3. Meets the criteria specified in N.J.A.C. 7:14A-4.2(a)1i through iii.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed of non-earthen structural material(s) (e.g., wood, steel, plastic, reinforced concrete, etc.) which provides the necessary structural strength to totally contain the waste.

As amended, R.1983 d.25, effective February 7, 1983.

See: 14 N.J.R. 1137(a), 15 N.J.R. 146(a).

(a): IWMF defined: (a)5 added.

As amended, R.1982 d.310, effective September 20, 1982.

See: 14 N.J.R. 506(b), 14 N.J.R. 1054(b).

“Wastewater treatment unit”; iii added.

As amended, R.1983 d.25, effective February 7, 1983.

See: 14 N.J.R. 1137(a), 15 N.J.R. 146(a).

“Chemical agent” added.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

“Wastewater treatment unit” amended at 2.

7:14A-4.4 Application for an individual IWMF permit

(a) Unless eligible for a permit-by-rule as provided at N.J.A.C. 7:14A-4.5, an IWMF shall apply for an individual IWMF permit in accordance with this section. Applicants shall refer to N.J.A.C. 7:26-12 (Permit Requirements for Hazardous Waste Facilities—Rules of the Division of Solid Waste Management) for requirements and procedures for submission of an application for an individual IWMF permit. Such IWMFs shall comply with all of the requirements set forth therein with the exception of the following:

1. An environmental and health impact statement (EHIS) is not required for an IWMF; and
2. A disclosure statement is not required for an IWMF.

(b) For land treatment facilities only, the following apply:

1. In addition to complying with the requirements of N.J.A.C. 7:26-12 an applicant for a hazardous waste land treatment facility shall comply with N.J.A.C. 7:14A-10.8 and shall provide a description of design and operating procedures which demonstrates compliance with the requirements of N.J.A.C. 7:14A-4.7.

2. The requirements for applications for land treatment demonstrates permits are as follows:

- i. For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of N.J.A.C. 7:14A-4.7(e) of this subchapter the Department may issue a NJPDES permit for a treatment demonstration project. In addition to the general requirements for all NJPDES permits, the permit must contain only those requirements necessary to meet the standards in N.J.A.C. 7:14A-4.7(e)2. The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

- (1) The Department may issue a two-phase facility permit if it finds that, based on information submitted in the land treatment permit application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

- (2) If the Department finds that not enough information exists upon which it can establish permit conditions to attempt to provide for compliance with

all of the requirements of N.J.A.C. 7:14A-4.7, the Department must issue a treatment demonstration permit covering only the field test or laboratory analyses.

- ii. If the Department finds that a phased permit may be issued, it will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the Department finds may be necessary under N.J.A.C. 7:14A-4.7(e)2. The Department will include conditions in the second phase of the facility permit to attempt to meet all N.J.A.C. 7:14A-4.7 requirements pertaining to unit design, construction, operation, and maintenance. The Department will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inclusive information contained in the land treatment permit application.

- (1) The first phase of the permit will be effective as provided in N.J.A.C. 7:14A-8.

- (2) The second phase of the permit will be effective as provided in (b)2iv below.

- iii. When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, the owner or operator shall submit to the Department a certification, signed by a person authorized to sign a permit application or report, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Department approves a later date.

- iv. If the Department determines that the results of the field tests or laboratory analyses meet the requirements of N.J.A.C. 7:14A-4.7, the Department will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with N.J.A.C. 7:14A-4.7, based upon the results of the field tests of laboratory analyses.

- (1) This permit modification may proceed as a minor modification under N.J.A.C. 7:14A-2.14, provided any such change is minor, or otherwise will proceed as a modification under N.J.A.C. 7:14A-2.12.

- (2) If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made, the Department will give notice of this final decision to the permit

applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in N.J.A.C. 7:14A-8.6.

(3) If modifications under N.J.A.C. 7:14A-2.12 are necessary, the second phase of the permit will become effective only after those modifications have been made.

3. For facilities that dispose of hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, and F027 in a land treatment unit, a waste management plan describing how a land treatment facility is or will be designed, constructed, operated and maintained to meet the requirements of N.J.A.C. 7:14A-4.7(a) is required. This submittal must address the following items as specified in 7:14A-4.7(a):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(c) For surface impoundments only: In addition to complying with the requirements of N.J.A.C. 7:26-12.1, applicants for an individual IWMF permit for a surface impoundment which treats or stores hazardous waste shall provide a description of design and operating procedures which demonstrates compliance with the requirements of N.J.A.C. 7:26-10.6.

(d) Existing IWMFs: Prior to final disposition of an individual IWMF permit application submitted in accordance with this section, an existing IWMF may continue to operate in accordance with the standards and procedures set forth at N.J.A.C. 7:26-12.3. In addition to the requirements set forth at N.J.A.C. 7:26-12.3(e) an owner or operator of an existing land treatment facility shall comply with the standards set forth at 40 CFR 265.270 through 282.

As amended, R.1984 d.198, eff. May 21, 1984.

See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a), 16 N.J.R. 2433(a).

(b)1: N.J.A.C. 7:14A-4.7 requirements for hazardous waste facility added.

(b)2 added.

(c): N.J.A.C. 7:26-10.6 requirement added.

Amended by R.1986 d.387, effective September 22, 1986.

See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).

(b)3 added.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Reference added in heading to IWMF and reference to the Division as well as minor language changes made throughout.

7:14A-4.5 IWMF permits-by-rule

(a) Notwithstanding any other provision of this subchapter or N.J.A.C. 7:14A-7 and 8 the following shall be deemed to have an individual IWMF permit if the conditions listed are met:

1. Injection wells: The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

i. Has a permit for underground injection issued under N.J.A.C. 7:14A-5;

ii. Complies with the conditions of that permit and the requirements of N.J.A.C. 7:14A-5.12 (requirements for wells injecting hazardous waste).

2. Publicly owned treatment works: A POTW which accepts for treatment hazardous waste, if the owner or operator:

i. Has a NJPDES permit as required by N.J.A.C. 7:14A-1.2;

ii. Complies with the conditions of that permit; and

iii. Complies with the following regulations:

(1) N.J.A.C. 7:26-7.6(a) (identification number);

(2) N.J.A.C. 7:26-7 (use of manifest system);

(3) N.J.A.C. 7:26-9.4(i) (operating record);

(4) N.J.A.C. 7:26-9.4(j) (annual report);

(5) N.J.A.C. 7:26-12.4(a)17i (manifest discrepancy report);

(6) 7:26-12.4(a)17 (unmanifested waste report).

iv. If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the DTW through a sewer, pipe, or similar conveyance.

3. Wastewater treatment units, as follows:

i. The owner or operator of a wastewater treatment unit if he or she complies with the requirements of N.J.A.C. 7:14A-4.6, unless required to have an individual IWMF permit under (a)3ii below. Additional NJPDES Permit requirements which may apply to wastewater treatment units that are industrial waste management facilities are contained in N.J.A.C. 7:14A-3, (DSW) 6 (DGW) and 13.2 (SIU). Compliance with N.J.A.C. 14A-4.6 does not waive these additional requirements.

ii. The Department may terminate eligibility for a permit-by-rule under this section and require an owner or operator of a wastewater treatment unit to apply for and obtain an individual IWMF permit in accordance with N.J.A.C. 7:14A-4.4(a), if:

(1) The owner or operator violates any condition of N.J.A.C. 7:14A-4.6;

(2) The owner or operator is conducting other activities which require an individual IWMF permit; or

(3) The Department determines that the requirements of N.J.A.C. 7:14A-4.6 are not sufficient to protect public human health or the environment and that additional requirements concerning hazardous waste facilities (Rules of the Solid Waste Administration) pursuant to N.J.A.C. 7:26-10 are required to provide such protection.

As amended, R.1983 d.610, eff. January 3, 1984.

See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).

(a)2iii (5) and (6) added.

As amended, R.1984 d.133, eff. April 16, 1984.

See: 15 N.J.R. 1059(b), 16 N.J.R. 882(a).

(a)3i: "Additional NJPDES Permit requirements ..." added.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Reference in heading to IWMF; cites corrected at (a)3i and ii.

7:14A-4.6 Standards for wastewater treatment units subject to a permit-by-rule

(a) Purpose, scope, and applicability are as follows:

1. The purpose of this part is to establish minimum standards which define the acceptable management of certain hazardous wastes and the acceptable practices for industrial waste management facilities as defined in N.J.A.C. 7:14A-4.2(a)1.

2. The standards in this part apply, in lieu of the requirements of N.J.A.C. 7:26-9 through 11 to owners and operators of eligible industrial waste management facilities.

(b) EPA identification number requirements are as follows:

1. The owner or operator must not treat or store a hazardous waste in a wastewater treatment unit without having received an EPA identification number.

2. An owner or operator who has not received an EPA identification number may obtain one by applying to the Department.

(c) Security requirements are as follows:

1. The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock into or onto the wastewater treatment unit, unless:

i. Physical contact with the waste contained in the unit will not injure unknowing or unauthorized persons or livestock which may enter the unit; and

ii. Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock into or onto the unit will not cause a violation of the requirements of this section.

(d) Inspections requirements are as follows:

1. The owner or operator must inspect the wastewater treatment unit for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to unauthorized release of hazardous waste to the environment or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they may pose a threat to or harm human health or the environment. For DSWs, such inspections and the basis for the inspection shall be addressed in an emergency plan as required by N.J.A.C. 7:14A-3.12.

2. The owner or operator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as tank walls and pumps) that are important to preventing environmental or human health hazards.

3. The owner or operator must keep this schedule at the facility.

4. The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative pump, leaking fitting, heavy corrosion).

5. The frequency of inspection may vary for the items on the schedule. It should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if any deterioration or malfunction or operator error goes undetected between inspections.

6. The owner or operator must remedy any deterioration or malfunction of equipment or structures detected in an inspection. This must be done on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

7. The owner or operator must record inspections in an inspection log. He or she must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of each inspection, the name of the inspector, a recording of the observations made, and the date and nature of any repairs or other remedial actions taken as a result of inspection observations.

(e) General operating requirements are as follows:

1. The emergency plan required N.J.A.C. 7:14A-3.12 for DSWs shall address the requirements of this subsection.

2. The owner or operator of a wastewater treatment unit must ensure that the treatment process conducted in the unit does not:

- i. Generate extreme heat or pressure, fire or explosion, or violent reaction;
- ii. Produce uncontrolled toxic mists, fumes, or gases in sufficient quantities which may pose a threat to human health;
- iii. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;
- iv. Damage the structural integrity of the tank or equipment containing the waste; or
- v. Through like means may pose a threat to human health or the environment.

3. Hazardous waste or treatment reagents must not be placed in a wastewater treatment unit if they could cause the unit or any of its equipment to rupture, leak, abnormally corrode, or otherwise fail before the end of its intended life.

4. Wastewater treatment unit must be designed, constructed and operated so as to prevent hazardous wastes from being discharged into or on any land or water during the operating life of the unit.

(f) Manifest system recordkeeping and reporting: The owner or operator must comply with the following requirements with respect to hazardous waste received from offsite sources:

1. N.J.A.C. 7:26-7 (use of manifest system);
2. N.J.A.C. 7:26-9.4(i) (operating record);
3. N.J.A.C. 7:26-9.4(j) (annual report);

(g) Closure: At closure, the owner or operator of the wastewater treatment unit must remove all hazardous waste and hazardous waste residues from the unit and comply with N.J.A.C. 7:26-7.

(h) Reporting: Any discharge of hazardous waste from a wastewater treatment unit must be reported to the Department in accordance with the "Spill Compensation and Control Act" N.J.S.A. 58:10-23.11(e), and the owner or operator of the unit must report to the Department the following information:

1. Name, address, and telephone number of the owner or operator;

2. Name, address, and telephone number of the facility;
3. Date, time, and nature of the incident;
4. Name and quantity of material(s) involved;
5. The extent of injuries, if any;
6. An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
7. Estimated quantity and disposition of recovered material that resulted from the incident.

Amended by R.1984 d.202, effective May 21, 1984.

See: 16 N.J.R. 306(a), 16 N.J.R. 1216(a).

(a)2: N.J.A.C. 7:26-7.6(f) reference inserted.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

(a)-(e) lead in language ... "as follows" added.

7:14A-4.7 Standards for hazardous waste land treatment units

(a) The following applies to this section:

1. The regulations in this section apply to owners or operators of facilities that treat or dispose of hazardous waste in land treatment units, except as otherwise provided in (b) below.

2. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

"Closure period" means the period described at N.J.A.C. 7:26-9.8(i).

"Ground water pollutant" means a hazardous waste or a hazardous waste constituent as defined at N.J.A.C. 7:26-8.16, those pollutants identified at N.J.A.C. 7:9-6, pollutants that may adversely affect ground water quality or pose a threat to human health or safety, or pollutants that may be limited in a NJPDES permit.

"Hazardous waste constituent" means constituents identified in N.J.A.C. 7:26-8.16 that reasonably expected to be in, or derived from, waste placed in or not in the treatment zone.

"Treatment zone" means the portion of the unsaturated zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents.

(b) An owner or operator who has fully complied with the requirements for existing facilities as defined in N.J.A.C. 7:26-1.4 and N.J.A.C. 7:26-12 shall comply with the following:

1. Hazardous wastes which are listed at N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accordance with all other applicable requirements of this subchapter. The factors to be considered are:

- i. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.
- ii. The attenuative properties of underlying and surrounding soils or other materials.
- iii. The mobilizing properties of other materials co-disposed with these wastes; and
- iv. The effectiveness of additional treatment, design, or monitoring techniques.

2. The Department may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

3. Comply with N.J.A.C. 7:26-9.4(b)1; and

4. Before placing a hazardous waste in or on a land treatment facility:

- i. Determine the concentrations in the waste of any substances which equal or exceed the maximum concentrations contained in Table I of N.J.A.C. 7:26-8.12(b) that cause a waste to exhibit the Toxicity Characteristic;
- ii. For any waste listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15, determine the concentration of any substances which caused the waste to be listed as a hazardous waste;
- iii. If food chain crops are grown, determine the concentrations in the waste of each of the following constituents: arsenic, cadmium, lead, and mercury, unless the owner or operator has written documented data that show that the constituent is not present; and
- iv. Place results from each waste analysis, or the documented information, in the operating record of the facility.

(c) All new hazardous waste land treatment facilities shall comply with the requirements of:

1. N.J.A.C. 7:26-10.3; and
2. N.J.A.C. 7:26-13, if applicable.

(d) The treatment program requirements are as follows:

1. An owner or operator subject to this section shall establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone (defined in (d)4, below) are degraded, transformed, or immobilized within the treatment zone and will create no discharge to the surface water or groundwater;

2. The permit will specify the elements of the treatment program and shall include:

- i. The wastes that are capable of being treated at the unit based on the demonstration required by (e) below;
- ii. Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with (f)1, below; and
- iii. Unsaturated zone monitoring provisions meeting the requirements of (k) below;

3. The permit will specify the hazardous constituents that shall be degraded, transformed, or immobilized under this section; and

4. The permit will specify the vertical and horizontal dimensions of the treatment zone. The maximum depth of the treatment zone shall be:

- i. No more than 1.5 meters (five feet) from the initial soil surface; and
- ii. More than one meter (three feet) above the seasonal high water table.

(e) The treatment demonstration requirements are as follows:

1. For each waste that will be applied to the treatment zone, the owner or operator shall demonstrate, prior to application of the waste, that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

- i. In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data.
- ii. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration, the owner or operator shall obtain a permit pursuant to N.J.A.C. 7:14A-4.

iii. The permit will specify the testing, analytical, design, and operating requirements (including the duration of the tests and analyses, and in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean-up activities) necessary to meet the requirements in (e)2, below.

2. Any field test or laboratory analyses conducted in order to make a demonstration under (e)1, above shall:

i. Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

(1) The characteristics of the waste including the presence of any hazardous waste constituents per N.J.A.C. 7:26-8.16;

(2) The climate in the area;

(3) The topography of the unit and of the surrounding area;

(4) The characteristics of the soil in the treatment zone including texture, pH, cation, exchange, capacity, bulk density, permeability, and depth; and

(5) The operating practices to be used at the unit:

ii. Be designed to show that hazardous constituents in the waste to be tested will be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and

iii. Be conducted in a manner that protects human health and the environment considering:

(1) The characteristics of the waste to be tested;

(2) The operating and monitoring measures taken during the course of the test;

(3) The duration of the test;

(4) The volume of waste used in the test; and

(5) In the case of the field tests, the potential for migration of hazardous constituents and other groundwater pollutants to groundwater or surface water.

(f) The permit will specify how the owner will design, construct, operate, and maintain the land treatment unit in compliance with this section.

1. The owner or operator shall design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents and other groundwater in the treatment zone. The owner or operator shall design, construct, operate and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration in (e) above. At minimum, the permit will specify the following:

i. The rate and method of waste application to the treatment zone;

ii. Measures to control soil pH;

iii. Measures to enhance microbial or chemical reactions (for example, utilization and tilling); and

iv. Measures to control the moisture content of the treatment zone.

2. The owner or operator shall design, construct, operate, and maintain the treatment zone to minimize run-off hazardous constituents and other groundwater pollutants during the active life of the land treatment unit.

3. The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 24-hour, 25-year storm.

4. The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control, at least, the water volume resulting from a 24-hour, 25-year storm.

5. Collection and holding devices (for example, tanks or basins) associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

6. If the treatment zone contains particular matter which may be subject to wind dispersal, the owner or operator shall manage the unit to control wind dispersal.

7. The owner or operator shall inspect the unit weekly and after storms detect evidence of:

i. Deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

ii. Improper functioning of wind dispersal control measures.

(g)-(h) (Reserved)

(i) The permit may allow the growth of food-chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this subsection. The permit will specify the specific food-chain crops which may be grown.

1. The demonstration requirements for hazardous constituents other than cadmium are as follows:

i. The owner or operator shall demonstrate that there is no substantial risk to human health caused by growth of such crops in or on the treatment zone demonstrating, prior to the planting of such crops, that hazardous constituents other than cadmium:

(1) Will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food-chain animals (for example, by grazing); or

(2) Will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region;

ii. The owner or operator shall make the demonstration required under (i)1 of this section prior to the planting of crops at the facility for all constituents identified in N.J.A.C. 7:26-8.16 that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone;

iii. In making a demonstration under (i)1 of this section, the Department may require the owner or operator to conduct field tests, greenhouse studies, use available data, or in the case of existing facilities, use operating data, and the owner or operator shall:

(1) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics (for example, pH and cation exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and

(2) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures; and

iv. Where field tests or greenhouse studies are conducted in order to make the demonstration required under (i)1 of this section, the owner or operator shall obtain a permit for conducting such activities.

2. The owner or operator shall comply with the following conditions if the only hazardous constituent in the wastes applied to the treatment zone cadmium.

i. If food chain crops are to be grown, the following criteria shall be complied with:

(1) The pH of the waste and soil mixture shall be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry-weight) or less;

(2) The annual application of cadmium from waste shall not exceed 0.5 kilograms per hectre (kg/ha) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food-chain crops, the annual cadmium application rate shall not exceed the limitations in the following chart:

<u>Time period</u>	<u>Annual Cd application rate (Kilograms per hectre)</u>
Present to June 30, 1984	2.0
July 1, 1984 to Dec. 31, 1986	0.5

(3) The cumulative application of cadmium from waste shall not exceed 5 kg/ha if the waste and soil mixture has a pH of less than 6.5; and

(4) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste shall not exceed 5 kg/ha if soil cation exchange capacity (CEC) is less than 5 meq/100g and 10kg/ha if soil CEC is 5-15 meq/100g; or

ii. If the cumulative application rate of cadmium exceeds those levels specified in (i)2i(3) and (4), above, then no food chain crops may be grown and future property owners shall be notified by a stipulation placed in the land record or property deed by the owner or operator which states that the property has received waste at high cadmium application rates and that food-chain crops shall not be grown.

3. If the wastes applied to the treatment zone contain cadmium and other hazardous constituents, the owner or operator shall comply with (i)1, above, for the non-cadmium constituents and also comply with (i)2 above, for the cadmium constituent.

(j) (Reserved)

(k) An owner or operator subject to this section shall establish an unsaturated zone monitoring program to discharge the following responsibilities:

1. The owner or operator shall monitor the soil and soil-pure liquid to determine whether hazardous constituents have migrated out of the treatment zone.

i. The permit will specify the hazardous constituents to be monitored. The hazardous constituents to be monitored are those specified under (d)3, above.

ii. The permit may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified in (d)3, above. PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The permit will establish PHCs if, based on waste analyses, treatment demonstrations, or other data, it is found that effective degradation, transformation, or immobilization of the PHCs will assure treatment at levels at least as equivalent for the other hazardous constituents in the wastes;

2. The owner or operator shall install an unsaturated zone monitoring system as follows:

i. The unsaturated zone monitoring shall include soil monitoring using soil cores and soil pure liquid monitoring devices such as lysimeters.

ii. The unsaturated zone monitoring system shall consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(1) Represent the quality of background soil-pure liquid quality and the chemical make-up of the soil that has not been affected by leakage from the treatment zone; and

(2) Indicate the quality of soil-pure liquid and the chemical make-up of the soil below the treatment zone;

3. The owner or operator shall establish a background value for each hazardous constituent to be monitored under (k)1, above. The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.

i. Background soil values may be used on a one-time sampling at a background plot having characteristics similar to those of the treatment zone.

ii. Background soil-pure liquid values shall be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

iii. The owner or operator shall express all background values in a form necessary for the determination of statistically significant increases under (k)6, below.

iv. In taking samples used in the determination of all background values, the owner or operator shall use an unsaturated zone monitoring system that complies with (k)2ii(1), above;

4. The owner or operator shall conduct soil monitoring and soil-pure liquid monitoring immediately below the treatment zone. The permit will specify the frequency and timing of soil and soil-pure liquid monitoring after considering the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator shall express the results of soil and soil-pure liquid monitoring in a form necessary for the determination of statistically significant increases under (k)6, below:

5. The owner or operator shall use consistent sampling and analysis procedures as follows:

i. The sampling and analysis procedures shall be designed to ensure sampling results that provide a reliable indication of soil-pure liquid quality and the chemical make-up of the soil below the treatment zone; and

ii. At a minimum, the owner or operator shall implement procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures; and
- (4) Chain of custody control;

6. The owner or operator shall determine whether there is a statistically significant change over background values for any hazardous constituents to be monitored under (k)1, above, below the treatment zone each time he conducts soil monitoring and soil-pure liquid monitoring under (k)4, above.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent, as determined under (k)4, above, to the background value for the constituent according to the statistical procedures specified in the facility permit under this paragraph.

ii. The owner or operator shall determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The permit will specify that time period after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil-pure liquid samples.

iii. The owner or operator shall determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The permit will specify a statistical procedure that:

(1) Is appropriate for the distribution of the data used to establish background values; and

(2) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

7. If owner or operator determines, pursuant to (k)6, above, that there is a statistically significant increase of hazardous constituents below the treatment zone, the owner or operator shall:

i. Submit written notification of this finding to the Department within seven days which indicates what constituents have shown statistically significant increases; and

ii. Within 90 days, submit to the Department an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

8. Where the owner or operator determines, pursuant to (k)6, above, that there is a statistically significant increase of hazardous constituents below the treatment zone, the following applies:

i. The owner or operator may demonstrate that a source other than the land treatment units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation;

ii. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under (k)7ii, above, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in (k)7ii, above, unless the demonstration made under this paragraph successfully shows that a source other than the land treatment unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation; and

iii. In making a demonstration under this paragraph, the owner or operator shall:

(1) Notify the Department in writing within seven days of determining a statistically significant increase below the treatment zone that s/he intends to make a determination under paragraph;

(2) Within 90 days, submit a report to the Department demonstrating that a source other than the land treatment unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Department an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

(4) Continue to monitor in accordance with the unsaturated zone monitoring program established under this section.

iv. The Department reserves the right to require the immediate cessation of land application of all wastes to the land treatment unit.

(l) The owner or operator shall include hazardous waste application dates and rates in the operating record required under N.J.A.C. 7:26-9.4(i) for each waste applied.

(m) Closure and post-closure care requirements for land treatment units include the following:

1. During the closure period, the owner or operator shall:

i. Continue all operations (including pH control) necessary to maximize degradation, transformation, immobilization of hazardous constituents and other groundwater pollutants with the treatment zone as required pursuant to (f)1, above, except to the extent such measures are inconsistent with (m)1viii, below;

ii. Continue all operations in the treatment zone to minimize run-off of hazardous constituents and other groundwater pollutants as required by (f)2, above;

iii. Maintain the run-on control system required under (f), above;

iv. Maintain the run-off management system required under (f)4, above;

v. Control wind dispersal of hazardous waste if required by (f)6, above;

vi. Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under subsection (i), above;

vii. Continue unsaturated zone monitoring in compliance with (k), above, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

viii. Establish a vegetative cover on the portion of the land treatment unit being closed at such time that:

(1) The cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents and other groundwater pollutants in the treatment zone;

(2) It is capable of maintaining growth without extensive maintenance;

2. For the purpose of complying with N.J.A.C. 7:26-9.8, when closure is completed the owner or operator shall submit to the Department certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the land treatment unit has been closed in accordance with the specifications in the approved closure plan;

3. During the post-closure care period the owner or operator shall:

i. Continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents and other groundwater pollutants in the treatment zone to the extent that such measures are consistent with other postclosure care activities;

ii. Maintain a vegetative cover over closed portions of the land treatment unit;

iii. Maintain the run-on control system required by (f)3, above;

iv. Maintain the run-off management system required by (f)4, above;

v. Control wind dispersal of hazardous waste if required by (f)6, above;

vi. Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under subsection (i) above;

vii. Continue unsaturated zone monitoring in compliance with (k), above, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

4. The owner or operator is not subject to regulation under (m)1viii and (m)3, above, if the Department finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in (m)4iii, below. The owner or operator may submit such a demonstration to the Department at any time during the closure or post-closure care periods. For the purpose of this paragraph:

i. The owner or operator shall establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous

constituents specified in the facility permit under (d)3, above.

(1) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(2) The owner or operator shall express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under (m)4iii, below;

ii. In taking samples used in the determination of background and treatment zone values, the owner or operator shall take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively; and

iii. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator shall use a statistical procedure that:

(1) Is appropriate for the distribution of the data used to establish background values; and

(2) Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(n) The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless:

1. The waste is immediately incorporated into the soil so that:

i. The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under N.J.A.C. 7:26-8.9 or 8.11; and

ii. The requirements of N.J.A.C. 7:26-9.4(e) are met; or

2. The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

(o) The owner or operator shall not place incompatible wastes, or incompatible wastes and materials (see 40 CFR Part 264 Appendix V for examples), in or on the same treatment zone, unless N.J.A.C. 7:26-9.4(e) is complied with.

R.1984 d.198, effective May 21, 1984.

See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a).

Amended by R.1986 d.387, effective September 22, 1986.

See: 18 N.J.R. 879(a), 18 N.J.R. 1933(a).

(a)3 and 4 added.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

"Closure period" corrected and referenced; minor recodification.

Amended by R.1993 d.300, effective June 21, 1993.

See: 25 N.J.R. 753(a), 25 N.J.R. 2718(a).

SUBCHAPTER 5. ADDITIONAL REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL PROGRAM (UIC)

7:14A-5.1 Policy and scope

(a) Policy: The purpose of the State Underground Injection Control (UIC) program is to establish a system of controls which will insure that underground injection practices do not endanger underground sources of drinking water (USDWs). The aim of this subchapter is clearly preventative. The Department's policy is to liberally interpret and enforce this subchapter to prevent the contamination of the State's ground water resources. Water, therefore, is not a prerequisite for the enforcement of this subchapter.

(b) Scope: "Underground injection" means the subsurface emplacement of fluids by well injection. Accordingly, the UIC program regulates not only the disposal of wastes by well injection, but also the underground storage of fluids (which includes gases) which have been emplaced by means of an injection well, and the injection of water. Paragraph (b)1 below contains further examples of underground injection activities regulated under this subchapter. The regulatory scheme divides all injection wells into five classifications, which are set forth at N.J.A.C. 7:14A-5.2. The types of regulatory controls imposed on the different classes are contained in subsequent sections.

1. Specific inclusions: The following wells are included among those types of injection activities which are regulated under this subchapter. (This list is not intended to be exclusive but is for clarification only.)

i. Any injection well located on a drilling platform inside the State's territorial waters;

ii. Any well, including any dug hole, that is deeper than its largest surface dimension, where the principal function of the well is emplacement of fluids;

iii. Any septic tank, seepage pit, or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste; and

iv. Any septic tank, seepage pit, cesspool, or other well used by a multiple dwelling, community, or regional system for the injection of wastes.

2. Specific exclusions: The following are not covered by this subchapter:

i. Injection wells located on a drilling platform or other site that is beyond the State's territorial waters;

ii. Single family residential waste disposal system: Individual subsurface sewage disposal systems, however, must be installed and operated in compliance with "The Realty Improvement Sewerage and Facilities Act", N.J.S.A. 58:11-23 et seq., and the Department's regulations entitled "Standards for the Construction of Individual Subsurface Sewage Disposal Systems", N.J.A.C. 7:9-2 where applicable;

iii. Any hole which is not used for emplacement of fluids underground;

iv. Injection into pre-constructed tanks for the purpose of storage of fluids. Owners or operators of these injection wells should review the regulations at N.J.A.C. 7:1E-4.

Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).
Minor technical changes.

7:14A-5.2 Classification of injection wells

(a) Injection wells are classified as follows:

1. Class I:

i. Wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities, or by any other person, to inject hazardous waste or radioactive waste, other than Class IV wells; or

ii. Wells used to inject municipal and industrial wastes, other than Class IV wells.

2. Class II: Wells which inject fluids:

i. Which are brought to the surface in connection with conventional oil or natural gas production;

ii. For enhanced recovery of oil or natural gas; or

iii. For storage of hydrocarbons which are liquid at standard temperature and pressure.

3. Class III: Wells which inject for extraction of minerals or energy, including:

i. Mining of sulfur by the Frasch process;

ii. Solution mining of minerals, including sodium chloride, potash, phosphate, copper, uranium and any other minerals which can be mined by this process;

iii. In-situ combustion of fossil fuel, with the term "fossil fuel" including coal, tar sands, oil shale and any

other fossil fuel which can be mined by this process; and

iv. Wells used in the recovery of geothermal energy to produce electric power, but not including wells used in heating or aquaculture, which fall under Class V.

4. Class IV: Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, by owners or operators of radioactive waste disposal sites, or by any other person:

i. To dispose of hazardous wastes or radioactive wastes into or above a formation which, within two miles of the well bore, contains an underground source of drinking water (USDW);

ii. To dispose of other municipal and industrial wastes into or above a formation which, within two miles of the well bore, contains an underground source of drinking water (USDW), and the injection fluid quality does not meet the primary drinking water standards under N.J.A.C. 7:10-5 or 7:10-16, or applicable ground water quality standards (including anti-degradation or non-degradation policies, where applicable), whichever are more stringent. Excluded from Class IV are disposal systems regulated under "Standards for the Construction of Individual Subsurface Sewerage Disposal Systems", N.J.A.C. 7:9-2; these are regulated as Class V wells.

5. Class V: Injection wells not included in Class I, II, III, or IV. Some examples of Class V wells include:

i. Air conditioning return flow wells used to return the water used for heating or cooling in a heat pump;

ii. Cooling water return flow wells used to inject water previously used for cooling;

iii. Drainage wells used to drain storm runoff into a subsurface formation, except as regulated under Class IV;

iv. Recharge wells used to replenish the water in an aquifer;

v. Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

vi. Sand backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined-out portions of subsurface mines;

vii. All septic tank systems or other subsurface sewage disposal systems (other than single family residential waste disposal systems) which are regulated under the Standards for the Construction of Individual Subsurface Sewerage Disposal Systems, N.J.A.C. 7:9-2.

viii. Subsidence control wells (not used for the purpose of oil or natural gas production) used to inject

fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

ix. Geothermal wells and ground water heat pumps used in heating and aquaculture.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (a)4ii, reference to 7:10-16 added.

7:14A-5.3 Prohibition of unauthorized injection

Any underground injection is prohibited, except as excluded under N.J.A.C. 5.1, or authorized by permit or by rule. The construction of any well required to have a permit (including, where applicable, a well drilling permit) under this subchapter is also prohibited until the permit has been issued.

7:14A-5.4 Prohibition of movement of fluid into underground sources of drinking water

(a) No UIC authorization by permit or by rule shall be allowed in the following circumstances:

1. Where a Class I, II, or III well may cause or allow movement of any contaminant into underground sources of drinking water; or

2. Where a Class IV or V well causes or allows movement of fluid containing any contaminant into underground sources of drinking water, and the presence of that contaminant may cause a violation of any primary drinking water rule under N.J.A.C. 7:10-5 or 7:10-16, any ground water quality standards under N.J.A.C. 7:9-6, or which may adversely affect the health of persons.

(b) For Class I, II, and III wells, and any Class IV wells allowed under N.J.A.C. 7:14A-5.7(a)5i or (b), if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Department shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. These additional requirements shall be imposed by modifying the permit in accordance with N.J.A.C. 7:14A-2.12, or the permit may be terminated under N.J.A.C. 7:14A-2.13 if cause exists, or appropriate enforcement action may be taken if the permit has been violated.

(c) For Class V wells, if at any time the Department learns that a Class V well may cause a violation of primary drinking water rules under N.J.A.C. 7:10-5 or 7:10-16, or any ground water quality standards under N.J.A.C. 7:9-6, it shall:

1. Require the injector to obtain an individual permit;
2. Order the injector to take such actions (including, where required, closure of the injection well) as may be necessary to prevent the violation; and/or

3. Take enforcement action.

(d) Whenever the Department finds that a Class V well may be otherwise adversely affecting the health of persons, it may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under (c) above.

(e) Notwithstanding any other provision of this section, the Department may take emergency action upon receipt of information that a contaminant which is present in or is likely to enter an underground source of drinking water may present an imminent and substantial endangerment to the health of persons.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Minor stylistic changes; cite to 7:10-16 added.

7:14A-5.5 Authorization of injection into Class V wells

(a) All Class V injection wells which comply with the applicable requirements of N.J.A.C. 7:14A-5.17 are hereby permitted by rule. However this authorization may be revoked at any time if required by Federal regulation or by subsequent modification of this subchapter.

(b) Requiring a permit:

1. The Department may require any Class V injection well authorized by rule to apply for and obtain an individual UIC permit. Cases where individual UIC permits may be required include:

i. The injection well is not in compliance with a particular requirement of the rule;

ii. The injection well is no longer a Class V well;

iii. The protection of underground sources of drinking water (USDW) requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule;

iv. The well may adversely affect the existing or potential use of the aquifer.

2. The Department may require the owner or operator authorized by rule to apply for an individual UIC permit under this paragraph only if the owner or operator has been notified in writing that a permit application is required. The notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that upon the effective date of the UIC permit the rule no longer applies to the activities regulated under the UIC program.

3. Any owner or operator authorized by rule may request to be excluded from the coverage of the rule by applying for an individual UIC permit. The owner or operator shall submit an application under N.J.A.C. 7:14A-5.8, with reasons supporting the request, to the Department. The Department may not authorize an injection well which is in violation of any other applicable statutes or regulations.

7:14A-5.6 Identification of underground sources of drinking water

The Department may identify (by narrative description, illustrations, maps, or other means) and shall protect as an underground source of drinking water, all aquifers or parts of aquifers which meet the definition of an "underground source of drinking water" in N.J.A.C. 7:14A-1.9. Even if an aquifer has not been specifically identified by the Department as such, it is an underground source of drinking water if it meets the definition in N.J.A.C. 7:14A-1.9.

7:14A-5.7 Prohibition and elimination of Class IV wells

(a) The UIC program prohibits:

1. The construction of any Class IV well for the injection of waste directly into or above a formation which contains an underground source of drinking water (USDW) within two miles of the well bore;

2. Class IV wells which inject waste directly into or above a formation which within two miles of the well bore, contains a USDW, by means of a well that was not in operation prior to June 24, 1980 (the effective date of the final federal regulations for the UIC program);

3. Any increase in the amount of waste or change in the type of waste injected, by means of a Class IV well, into or above a formation which contains a USDW within two miles of the well bore;

4. The operation of any Class IV well injecting waste directly into a formation which within two miles of the well bore contains a USDW, six months after promulgation of this chapter;

5. The operation of any Class IV wells injecting waste above a formation which within two miles of the well bore contains a USDW, six months after promulgation of this chapter.

i. In exceptional circumstances the Department may, in its discretion, authorize by permit the continued operation of a Class IV well injecting above a formation when the Department has determined that, where the well may cause or allow movement of any contaminant into a USDW, the presence of that contaminant shall not adversely affect the health of persons or cause a violation of either primary drinking water standards or applicable ground water quality standards. "Exceptional circumstances" may include situations where the

injection is necessitated by public health or environmental considerations.

ii. The owner or operator of a Class IV well must petition the Department for a consideration by the Department within two months after the effective date of this chapter, and the burden of proof is on the owner or operator.

iii. Class IV wells permitted to operate under (a)5 of this section must meet the requirements of Class I wells, and the Department may impose other requirements as required to protect USDWs.

(b) The Department may, in its discretion, authorize the construction of a Class IV well for the injection of waste above a formation which contains a USDW within two miles of the well bore, only when such injection would be an acceptable method, as determined by the Department, to alleviate a situation posing an imminent and substantial danger to public health or safety. Such authorization may only be given when the Department has determined that, where such a Class IV well may cause or allow movement of contaminants into a USDW, the presence of that contaminant shall not adversely affect the health of persons or cause a violation of either primary drinking water standards or applicable ground water quality standards. The owner or operator of such a proposed Class IV well must petition the Department for a consideration by the Department, and the burden of proof is on the owner or operator. Class IV wells permitted to operate under this subparagraph must meet the requirements of Class I wells, and the Department may impose other requirements as required to protect USDWs.

7:14A-5.8 Application for a permit; authorization by permit

(a) Permit application: All underground injections into Class I, II, or III wells, and into Class V wells not authorized by rule, are prohibited unless authorized by permit.

(b) Time to apply: Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Department in accordance with the State UIC program as follows:

1. For existing injection wells, as soon as possible, but no later than six months after the effective date of this chapter.

2. For new injection wells, in accordance with the schedule in N.J.A.C. 7:14A-2.1(f)(2). An application for a well-drilling permit, in accordance with N.J.S.A. 58:4A-14, must be submitted along with the application for a UIC permit.

(c) The information required by the Department for a UIC application is listed in N.J.A.C. 7:14A-10.13.

7:14A-5.9 Additional conditions applicable to all UIC permits

(a) The following conditions, in addition to those set forth in N.J.A.C. 7:14A-2.5, apply to all UIC permits and shall be incorporated into all permits either expressly or by reference. If incorporated by reference, a specific citation to this subchapter must be given in the permit.

1. In addition to N.J.A.C. 7:14A-2.5(a)1 (duty to comply): The permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in a temporary emergency permit under N.J.A.C. 7:14A-2.2.

2. In addition to N.J.A.C. 7:14A-2.5(a)10 (monitoring and records): The permittee shall retain all monitoring records and all records concerning the nature and composition of injected fluids until five years after completion of any plugging and abandonment procedures specified under N.J.A.C. 7:14A-5.10(f). The Department may require the owner or operator to deliver the records to the Department at the conclusion of the retention period. The Department may require a permittee to monitor and submit reports for a period of time after the well is plugged and abandoned. Records shall be retained for that monitoring period. The Department may require the owner or operator to deliver the records to the Department at the conclusion of the monitoring period.

3. In addition to N.J.A.C. 7:14A-2.5(a)12i (notice of planned changes): A new injection well may not commence injection until construction is complete; and

i. The permittee has submitted the well completion report as required under N.J.S.A. 58:4A-14, where applicable, or has submitted notice of completion of construction to the Department; and

ii. The Department has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or

iii. The permittee has not received notice from the Department of its intent to inspect or otherwise review the new injection well within 20 days of the date of the notice in (a)3i, in which case prior inspection or review is waived and the permittee may commence injection.

4. The following shall be included as information which must be reported within two hours under N.J.A.C. 7:14A-2.5(a)12vi:

i. Any monitoring or other information which indicates that any contaminant may cause an endangerment to a potable supply well;

ii. Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into a potable supply well.

5. The following information must be reported within 24 hours under N.J.A.C. 7:14A-2.5(a)12vi:

i. Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW, other than the situation in (a)4i above.

ii. Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs, other than the situation in (a)4ii above.

6. The permittee shall notify the Department at least 180 days before conversion or abandonment of the well. With the notice, the permittee shall submit a revised plugging and abandonment plan updated as appropriate in compliance with N.J.A.C. 7:14A-5.10(a)6 and 5.13(d).

7:14A-5.10 Establishing UIC permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each UIC permit shall include conditions meeting the following requirements, when applicable:

1. Construction requirements as set forth in N.J.A.C. 7:14A-5.14, 5.15, or 5.16. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. No construction may commence until a permit has been issued containing construction requirements (see N.J.A.C. 7:14A-5.3 and N.J.S.A. 58:4A-14). New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Department as minor modifications (N.J.A.C. 7:14A-2.14). No such changes may be physically incorporated into construction of the well prior to written approval of the modification by the Department.

2. Corrective or preventative action as set forth in N.J.A.C. 7:14A-5.11 and 5.13(b).

3. Operation requirements as set forth in N.J.A.C. 7:14A-5.14, 5.15, or 5.16. The permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with the operating requirements in N.J.A.C. 7:14A-5.14, 5.15, or 5.16.

4. Requirements for wells managing hazardous waste, as set forth in N.J.A.C. 7:14A-5.12.

5. Monitoring and reporting requirements as set forth in N.J.A.C. 7:14A-5.14, 5.15, or 5.16. The permittee shall be required to identify types of tests and methods used to generate the monitoring data.

6. **Plugging and abandonment:** A permit for any Class I, II, III, or V well, or any Class IV well allowed under N.J.A.C. 7:14A-5.7(a)5i or (b) above, shall include conditions to ensure that plugging and abandonment of the well will not allow the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another. Any applicant for a UIC permit shall be required to submit a plan for plugging and abandonment, taking into account the requirements of N.J.A.C. 7:14A-10.13(a)3, 10.13(b)3, or 10.13(c)3. The plan must meet, at a minimum, the requirements of N.J.A.C. 7:9-9 (sealing of abandoned wells), where these requirements are applicable. Where the plan meets the requirements of (a)6 of this section the Department shall incorporate it into the permit as a condition. Where the Department's review of an application indicates that the permittee's plan is inadequate, the Department shall require the applicant to revise the plan, prescribe conditions meeting the requirements of (a)6 of this section, or deny the application. For purposes of (a)6 of this section, temporary intermittent cessation of injection operations is not abandonment. Cessation of injection operations for a period of three years or more, however, shall constitute an abandonment; the improper maintenance of a well may constitute an abandonment of that well in accordance with N.J.S.A. 58:4A-4.1.

7. **Financial responsibility:** The permit shall require the permittee to maintain financial responsibility and resources, in the form of performance bonds or other equivalent form of financial assurance approved by the Department, to guarantee the closing, plugging, and abandonment of the underground injection operation in a manner prescribed by the Department. In lieu of individual performance bonds, an operator may furnish a bond or other equivalent form of financial guarantee approved by the Department covering all of the operator's injection wells in the State.

8. **Mechanical integrity:** A permit for any Class I, II, or III well, or for any Class IV well allowed under N.J.A.C. 7:14A-5.7(a)5i or (b), or injection project which lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Department under N.J.A.C. 7:14A-5.14(d) that the well has mechanical integrity.

9. **Additional conditions:** The Department shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.

7:14A-5.11 Corrective or preventive action

(a) **Coverage:** Applicants for Class I, II or III injection well permits, or for any Class IV well allowed under 7:14A-7(a)5i or (b), shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone. For such wells which are improv-

erly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water ("corrective or preventive action"). Where the plan is adequate, the Department shall incorporate it into the permit as a condition. Where the Department's review of an application indicates that the permittee's plan is inadequate (based on the factors in N.J.A.C. 7:14A-5.13(b)) the Department shall:

1. Require the applicant to revise the plan; or
2. Prescribe a plan for corrective or preventive action as a condition of the permit; or
3. Deny the application.

(b) Requirements:

1. **Existing injection wells:** Any permit issued for an existing injection well requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under (a) above to be completed as soon as possible.

2. **New injection wells:** No permit for a new injection well may authorize injection until all required corrective or preventive action has been taken pursuant to (a) above.

3. Where the Department determines that a more stringent corrective or preventive alternative is not feasible, it may require as a permit condition that injection pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly sealed, completed, or abandoned well within the area of review. Alternatively, an injection pressure limitation may be included as part of a compliance schedule and last until all other required corrective or preventive action has been taken. The Department shall only approve an injection pressure limitation in satisfaction of the corrective action requirement where the Department finds that this alternative is satisfactory and appropriate, and will not endanger ground water resources. The Department reserves the right to deny the application where it determines that the corrective or preventive plan is inadequate.

4. **Class III wells only:** When setting corrective action requirements, the Department shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determination above, the monitoring program required in N.J.A.C. 7:14A-5.16(c)2 shall be designed to verify the validity of such determinations.

As amended, R.1983 d.9, effective February 7, 1983.
See: 14 N.J.R. 1136(a), 15 N.J.R. 145(a).
(b)4 added.

7:14A-5.12 Requirements for wells injecting hazardous waste

(a) **Applicability:** The regulations in this section apply to all generators of hazardous waste, and to the owners or operators of all hazardous waste management facilities, or industrial waste management facilities as defined in N.J.A.C. 7:14A-1.9, using any class of well to inject hazardous wastes accompanied by a manifest. (Note N.J.A.C. 7:14A-5.7, prohibiting Class IV wells).

(b) **Authorization:** The owner or operator of any well that is used to inject hazardous waste accompanied by a manifest or delivery document shall apply for authorization to inject as specified in N.J.A.C. 7:14A-5.8 within six months after the effective date of this chapter.

(c) **Requirements:** In addition to requiring compliance with the applicable requirements of this subchapter, the Department shall, for each facility meeting the requirements of (b) above, require that the owner or operator comply with N.J.A.C. 7:26, and at a minimum, the following:

1. **Notification:** The owner or operator shall comply with the notification requirements of 40 CFR Part 261.

2. **Identification number:** The owner or operator shall comply with the requirements of 40 CFR Section 264.11.

3. **Manifest system:** The owner or operator shall comply with the applicable recordkeeping and reporting requirements for manifested wastes in accordance with N.J.A.C. 7:26-7.

4. **Manifest discrepancies:** The owner or operator shall comply with 40 CFR Section 264.72.

5. **Operating record:** The owner or operator shall comply with 40 CFR Section 264.73(a), (b)(1), and (b)(2).

6. **Annual report:** The owner or operator shall comply with 40 CFR Section 264.75.

7. **Unmanifested waste report:** The owner or operator shall comply with N.J.A.C. 7:26.

8. **Personnel training:** The owner or operator shall comply with the applicable personnel training requirements of 40 CFR Section 264.16.

9. **Certification of closure:** Abandonment of any well injecting hazardous waste (including Class IV wells) must be completed by a New Jersey licensed Master well driller. When the filing and sealing is completed, the owner or operator must submit to the Department certification by the owner or operator and certification by signature and seal by an independent New Jersey licensed professional engineer whose qualifications and experience has been approved in writing in accordance with N.J.A.C. 7:9-9.1, or by a New Jersey licensed Master well driller, that the facility has been closed in accordance with the specifications in N.J.A.C. 7:14A-5.10(a)6.

(d) When used in this section, "plugging and abandonment plan" shall mean the plan for plugging and abandonment prepared in accordance with the requirements of N.J.A.C. 7:14A-5.10(a)6.

(e) A cost estimate for plugging and abandonment shall be prepared as follows:

1. The owner or operator shall prepare a written cost estimate, in current dollars, of the cost of plugging the injection well in accordance with the plugging and abandonment plan as specified in N.J.A.C. 7:14A-5.10(a)6. The plugging and abandonment cost estimate shall equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive as indicated by the facility's plugging and abandonment plan.

2. The owner or operator shall adjust the plugging and abandonment cost estimate for inflation within 30 days after each anniversary of the date on which the first plugging and abandonment cost estimate was prepared. The adjustment shall be made as specified in (e)2i and ii below, using an inflation factor derived from the annual Oil and Gas Field Equipment Cost Index, which appears in the Survey of Current Business, issued monthly by the United States Department of Commerce, Bureau of Economic Analysis. The inflation factor is the result of dividing the latest published annual Index by the Index for the previous year.

i. The first adjustment is made by multiplying the plugging and abandonment cost estimate by the current inflation factor. The result is the adjusted plugging and abandonment cost estimate.

ii. Subsequent adjustments are made by multiplying the latest adjusted plugging and abandonment cost estimate by the latest inflation factor.

3. The owner or operator shall revise the plugging and abandonment plan when the cost of plugging and abandonment increases as a result of inflation or because of other factors. If the increase is because of other factors, the revised plugging and abandonment cost estimate shall be adjusted for inflation as specified in (e)2 above.

4. During the operating life of the facility, the owner or operator shall keep at the facility the latest plugging and abandonment cost estimate prepared in accordance with (e)1 and 3 above, and, when this estimate has been adjusted in accordance with (e)2 above, the latest adjusted plugging and abandonment cost estimate.

Amended by R.1989 d.206, effective April 17, 1989.

See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).

Added (d), defined "plugging and abandonment plan" and added (e) requiring cost estimate.

7:14A-5.13 General criteria and standards

(a) Area of review: The area of review for each injection well or each field, project or area of the State shall be determined according to either (a)1 or 2 below. The Department strongly encourages owners and operators of injection wells to give the Department input as to which method is most appropriate for each geographic area or field.

1. Zone of endangering influence ("r"): The zone of endangering influence shall be that area, the radius of which is the lateral distance from an injection well, field or project in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water. Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The modified Theis equation in Appendix G illustrates one form which the mathematical model may take. This equation is based on the following assumptions:

- i. The injection zone is homogenous and isotropic;
- ii. The injection zone has infinite areal extent;
- iii. The injection well penetrates the entire thickness of the injection zone;
- iv. The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and
- v. The emplacement of fluid into the injection zone creates instantaneous increase in pressure. Other models, such as those mentioned in the EPA publication Radius of Pressure Influence of Injection Wells (EPA-600/279-170), may be used for different situations encountered in the field or where the model assumptions match those situations more closely, if the Department approves of the model and determines that the model is appropriate.

2. Fixed radius: A fixed radius around the well, field or project of not less than two miles may be used. In determining the fixed radius, the following factors shall be taken into consideration:

- i. Chemistry of injected and formation fluids;
- ii. Hydrogeology;
- iii. Population and ground-water use and dependence; and
- iv. Historical practices in the area.

3. If the area of review is determined by a mathematical model pursuant to (a)1 above, the permissible radius may be the result of such calculation even if it is less than two miles. Where the radius calculated is significantly less than two miles, however, the Department reserves the right to require the applicant to submit additional infor-

mation as needed to assess the possible impact of the proposed injection.

(b) Corrective or preventive action: In determining the adequacy of corrective action proposed by the applicant under N.J.A.C. 7:14A-5.11 and in determining the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the Department:

1. Nature and volume of the injected fluids;
2. Nature and native fluids or by-products of injection;
3. Potentially affected population;
4. Geology;
5. Hydrology;
6. History of the injection operation;
7. Completion and plugging records;
8. Abandonment procedures in effect at the time the well was abandoned; and
9. Hydraulic connections with underground sources of drinking water.

(c) Mechanical integrity:

1. An injection well has mechanical integrity if:
 - i. There is no significant leak in the casing, tubing or packer; and
 - ii. There is no fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.
2. One of the following tests must be used to evaluate the absence of significant leaks under (c)1i above:
 - i. Monitoring of annulus pressure between the casing and the injection tubing; or
 - ii. Pressure test with liquid or gas.
3. One of the following methods must be used to determine the absence of fluid movement under (c)1ii above:
 - i. For Class II only, well records demonstrating the presence of adequate cement to prevent such migration; or
 - ii. The results of a temperature or noise log.
4. The Department may allow the use of a test to demonstrate mechanical integrity other than those listed in (c)2 and 3ii with the written approval of the EPA. Any other alternate method approved by the EPA and published in the Federal Register may be used by the Department unless its use is restricted at the time of approval by the EPA.

5. In conducting and evaluating the tests enumerated in this section or other tests to be allowed by the Department, the owner or operator and the Department shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Department, he or she shall include a description of the test(s) and the method(s) used. In making its evaluation, the Department shall review monitoring and other test data submitted since the previous evaluations.

(d) Plugging and abandoning Class I-V wells:

1. Prior to abandoning Class I-V wells the well shall be plugged with cement or with other EPA-approved material in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. The abandoned well shall, at a minimum, be filled and sealed in conformance with the requirements of N.J.S.A. 58:4A-4.1 et seq., and N.J.A.C. 7:9-9 (sealing of abandoned wells), where these requirements are applicable.

2. Placement of the cement plugs shall be accomplished by one of the following:

- i. The Balance Method;
- ii. The Dump Bailer Method;
- iii. The Two-Plug Method; or
- iv. Any other method acceptable to both the Department and the EPA that is at least as protective of the ground waters as the methods listed in (d)2i through iii.

3. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Department, prior to the placement of the cement plug(s).

4. The plugging and abandonment plan required under N.J.A.C. 7:14A-5.9(a)6 and N.J.A.C. 7:14A-5.10(a)6 shall in the case of a Class III well field also demonstrate that no movement of contaminants from the mined zone into an underground source of drinking water will occur. The Department shall prescribe aquifer cleanup and monitoring where it deems it necessary and feasible to insure that no migration of contaminants from the mined zone into an underground source of drinking water will occur.

5. The Department may require a permittee to monitor and submit reports for a period of time after the well has been plugged and abandoned.

As amended, R.1983 d.9, effective February 7, 1983.

See: 14 N.J.R. 1136(a), 15 N.J.R. 145(a).

(b): Cross-reference corrected; (b)1 and 2, "Nature" was "Toxicity".

7:14A-5.14 Criteria and standards applicable to Class I wells

(a) Applicability: This section establishes criteria and standards for the regulation of Class I wells.

(b) This section establishes the criteria and standards for Class I wells disposing of municipal and/or industrial wastes (other than hazardous wastes or radioactive wastes), where the injection stream quality meets primary drinking water standards or applicable ground water quality standards (including anti-degradation or non-degradation policies, where applicable), whichever are more stringent.

1. Construction requirements: The Class I wells regulated under (b) of this section shall be constructed in accordance with the requirements and specifications set forth in N.J.A.C. 7:10-12. The construction requirements in (c) below may be imposed, based on an evaluation of the nature of the original wastewater effluent prior to treatment, and/or geological conditions, or when the Department otherwise determines that it is appropriate.

2. Operating, monitoring, and reporting requirements: The Class I wells regulated under (b) of this section shall comply with the operating, monitoring and reporting requirements set forth in (d) below.

(c) Construction requirements are as follows:

1. Where applicable, Class I wells shall, at a minimum, be constructed in accordance with the requirements and specifications set forth in N.J.A.C. 7:10-12. More stringent requirements may be imposed, based on an evaluation of the nature of the injection fluid and/or of geological conditions, or where the Department otherwise determines that it is appropriate.

2. All Class I wells shall be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- i. Depth to the injection zone;
- ii. Injection pressure, external pressure, internal pressure, and axial loading;
- iii. Hole size;
- iv. Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specifications, and construction material);
- v. Corrosiveness of injected fluid, formation fluids, and temperatures;
- vi. Lithology of injection and confining intervals; and
- vii. Type and grade of cement.

3. All Class I injection wells shall inject fluids through tubing with a packer set immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected service.

i. The use of other alternatives to a packer may be allowed with the written approval of the Department. To obtain approval, the operator shall submit a written request to the Department, which shall set forth the proposed alternative and all technical data supporting its use. The Department shall approve the request if the alternative method will reliably provide a comparable level of protection to underground sources of drinking water. The Department may approve an alternative method solely for an individual well or for general use.

ii. In determining and specifying requirements for tubing, packer, or alternatives the following factors shall be considered:

- (1) Depth of setting;
- (2) Characteristics of injection fluid (chemical content, corrosiveness, and density);
- (3) Injection pressure;
- (4) Annular pressure;
- (5) Rate, temperature and volume of injected fluids; and
- (6) Size of casing.

4. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Department. At a minimum, such logs and tests shall include:

i. Deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues or fluid migration in the form of diverging holes are not created during drilling.

ii. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information, that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required, the following logs shall be considered for use in the following situations:

- (1) For surface casing intended to protect underground sources of drinking water;

(A) Resistivity, spontaneous potential, gamma ray, and caliper logs before the casing is installed; and

(B) A cement bond, temperature, or density log after the casing is set and cemented.

(2) For intermediate and long strings of casing intended to facilitate injection:

(A) Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;

(B) Fracture finder logs; and

(C) A cement bond, temperature, or density log after the casing is set and cemented.

5. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class I wells:

- i. Fluid pressure;
- ii. Temperature;
- iii. Fracture pressure;
- iv. Other physical and chemical characteristics of the injection matrix; and
- v. Physical and chemical characteristics of the formation fluids.

(d) Operating, monitoring and reporting requirements area as follows:

1. Operating requirements: Operating requirements shall, at a minimum, specify that:

i. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water.

ii. Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

iii. Unless an alternative to a packer has been approved under (c)3 above, the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Department, shall be maintained on the annulus.

2. Monitoring requirements: Monitoring requirements shall, at a minimum, include:

i. The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

ii. Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;

iii. A demonstration of mechanical integrity pursuant to N.J.A.C. 7:14A-5.13(c) at least once every five years during the life of the well; and

iv. The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the underground sources of drinking water, the parameters to be measured and the frequency of monitoring.

3. Reporting requirements: Reporting requirements shall, at a minimum, include:

i. Quarterly reports to the Department on:

(1) The physical, chemical and other relevant characteristics of injection fluids;

(2) Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

(3) The results of monitoring prescribed under (c)2iv above.

ii. Reporting the results, with the first quarterly report after the completion, of:

(1) Periodic tests of mechanical integrity;

(2) Any other test of the injection well conducted by the permittee if required by the Department; and

(3) Any well work over.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Minor stylistic changes.

7:14A-5.15 Criteria and standards applicable to Class II wells

(a) Applicability: This section establishes criteria and standards for the regulation of Class II wells.

(b) Construction requirements:

1. Where applicable, Class II wells shall, at a minimum, be constructed in accordance with the requirements and specifications set forth in N.J.A.C. 7:10-12. More stringent requirements may be imposed, based on an evaluation of the nature of the injection fluid and/or of geological conditions, or where the Department otherwise determines that it is appropriate.

2. All new Class II wells shall be sited in such a fashion that they inject into a formation which has confining zones that are free of open faults or fractures within the area of review.

3. All Class II injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

i. Depth to the injection zone;

ii. Injection pressure, external pressure, internal pressure, and axial loading;

iii. Hole size;

iv. Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

v. Corrosiveness of injected fluid and formation fluids;

vi. Lithology of injection and confining zones; and

vii. Type and grade of cement.

4. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of these logs and tests shall be prepared by a qualified log analyst and submitted to the Department. At a minimum, these logs and tests shall include:

i. Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.

ii. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Department in setting logging and test requirements:

(1) For surface casing intended to protect underground sources of drinking water:

(A) Resistivity, spontaneous potential, gamma ray and caliper logs before the casing is installed; and

(B) A cement bond, temperature, or density log after the casing is set and cemented.

(2) For intermediate and long strings of casing intended to facilitate injection:

(A) Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;

(B) Fracture finder logs; and

- (C) A cement bond, temperature, or density log after the casing is set and cemented.
5. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells:
 - i. Fluid pressure;
 - ii. Temperature;
 - iii. Fracture pressure;
 - iv. Other physical and chemical characteristics of the injection zone; and
 - v. Physical and chemical characteristics of the formation fluids.

(c) Operating, monitoring, and reporting requirements:

1. Operating requirements: Operating requirements shall, at a minimum, specify that:

i. Injection pressure at the well head shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water.

ii. Injection between the outermost casing protecting underground sources of drinking water and the well bore shall be prohibited.

2. Monitoring requirements: Monitoring requirements shall, at a minimum, include:

i. Monitoring of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics;

ii. Monitoring of injection pressure, flow rate, and cumulative volume at least with the following frequencies:

- (1) Weekly for produced fluid disposal operations;
- (2) Monthly for enhanced recovery operations;
- (3) Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and

(4) Daily during the injection phase of cyclic steam operations.

iii. A demonstration of mechanical integrity pursuant to N.J.A.C. 7:14A-5.13(c) at least once every five years during the life of the injection well;

iv. Maintenance of the results of all monitoring until the next permit review (see N.J.A.C. 7:14A-5.10(a)5); and

v. Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well may not be required provided the owner or operator demonstrates that manifold monitoring is comparable to individual well monitoring.

3. Reporting requirements:

i. Reporting requirements shall, at a minimum, include an annual report to the Department summarizing the results of the monitoring required under (c)2 above. Previously submitted information may be included by reference.

ii. Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used.

As amended, R.1983 d.9, effective February 7, 1983.

See: 14 N.J.R. 1136(a), 15 N.J.R. 145(a).

(c)1i: "Except during well stimulation for enhanced recovery wells" deleted.

7:14A-5.16 Criteria and standards applicable to Class III wells

(a) Applicability: This section establishes criteria and standards for the regulation of Class III wells.

(b) Construction requirements:

1. Where applicable, Class III wells shall, at a minimum, be constructed in accordance with the requirements and specifications set forth in N.J.A.C. 7:10-12. More stringent requirements may be imposed, based on an evaluation of the nature of the injection fluid and/or of geological conditions, or where the Department otherwise determines that it is appropriate.

2. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- i. Depth to the injection zone;
- ii. Injection pressure, external pressure, internal pressure, axial loading, etc.;
- iii. Hole size;
- iv. Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specifications, and construction material);
- v. Corrosiveness of injected fluids and formation fluids;

- vi. Lithology of injection and confining zones; and
- vii. Type and grade of cement.

3. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Department. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. At a minimum, such logs and tests shall include deviation checks conducted on all holes where pilot holes and reaming are used, at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

4. Where the injection zone is a water-bearing formation, the following information concerning the injection zone shall be determined or calculated for new Class III wells:

- i. Fluid pressure;
- ii. Temperature;
- iii. Fracture pressure;
- iv. Other physical and chemical characteristics of the injection zone;
- v. Physical and chemical characteristics of the formation fluids; and
- vi. Compatibility of injected fluids with formation fluids.

5. Where the injection formation is not a waterbearing formation, the information in (6)4iii above must be submitted.

6. Where injection is into a formation which contains water with less than 10,000 mg/1 TDS, monitoring wells shall be completed into the injection zone and into any underground sources of drinking water above the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

7. Where injection is into a formation which does not contain water with less than 10,000 mg/1 TDS, monitoring requirements may be less stringent.

8. Where the injection wells penetrate an underground source of drinking water (USDW) in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

9. In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:

- i. The population relying on the USDW affected or potentially affected by the injection operation;
- ii. The proximity of the injection operation to points of withdrawal of drinking water;
- iii. The local geology and hydrology;
- iv. The operating pressures and whether a negative pressure gradient is being maintained;
- v. The nature and volume of the injected fluid, the formation water, and the process by-products; and
- vi. The injection well density.

(c) Operating, monitoring, and reporting requirements:

1. Operating requirements: Operating requirements prescribed shall, at a minimum, specify that:

- i. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during the injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate fractures in the confining zone, or cause the migration of injection or formation fluids into an underground source of drinking water; and
- ii. Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

2. Monitoring requirements: Monitoring requirements shall, at a minimum, specify:

- i. Analyses of the injected fluid with sufficient frequency to yield representative data on its characteristics;
- ii. Installation and use of continuous recording devices to monitor the injection pressure, flow rate and volume;
- iii. Demonstration of mechanical integrity pursuant to N.J.A.C. 7:14A-5.13(c) at least once every five years during the life of the well;
- iv. Weekly monitoring of fluid level and the parameters chosen to measure water quality in the injection zone; and

v. Quarterly monitoring of wells adjacent to the injection site to detect any migration from the injection zone into a USDW.

vi. Where appropriate, Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner or operator demonstrates that manifold monitoring is comparable to individual well monitoring.

3. Reporting requirements: Reporting requirements shall, at a minimum include:

- i. Quarterly reporting to the Department on required monitoring;
- ii. Results of mechanical integrity, and any other periodic test required by the Department, reported with the first regular report after completion of the test; and
- iii. Monitoring may be reported on a project or field basis rather than on an individual well basis where manifold monitoring is used.

As amended, R.1983 d.9, effective February 7, 1983.
See: 14 N.J.R. 1136(a), 15 N.J.R. 145(a).
(b)9v: "nature" was "toxicity".

7:14A-5.17 Criteria and standards applicable to Class V injection wells

(a) Applicability: This section sets forth criteria and standards for the regulation of Class V wells. Class V includes all wells listed in N.J.A.C. 7:14A-5.2(a)5 but is not limited to those types of injection wells.

(b) Inventory requirements: All Class V injection wells covered by rule shall submit inventory information to the Department. The authorization by rule for any Class V well which fails to comply within the time specified in (b)3 below shall be automatically terminated.

1. Contents: As part of the inventory, the following information is required:

- i. Well drilling permit number, where applicable;
- ii. Facility name and location, if different than the information on the well permit;
- iii. Name and address of legal contact, if different than the information on the well permit;
- iv. Ownership of facility, if different than the information on the well permit;
- v. Nature and type of injection well(s); and
- vi. Operating status of injection well(s).

2. Notice: Upon the promulgation of this chapter, the Department shall notify owners or operators of existing

injection wells of their duty to submit inventory information.

3. Deadlines:

i. Owners or operators of existing injection wells must submit inventory information no later than one year after the authorization by rule.

ii. Owners or operators of new injection wells must submit inventory information when an application is made for a well drilling permit, or, if the well drilling permit requirement is not applicable, in accordance with the schedule in N.J.A.C. 7:14A-2.1(g)2.

4. Exceptions: The requirements of this subsection do not apply to underground injection of stormwater runoff from the roofs of buildings, so long as the roofs are devoid of pollutant point sources and devices (for example, motors, tanks, pipelines, drums) that contain pollutants.

(c) Construction requirements: Where applicable, all new Class V wells, other than the type of wells listed in (f)1 below, shall, at a minimum, be constructed in accordance with the requirements and specifications set forth in N.J.A.C. 7:10-12. The UIC authorization by rule for any Class V well which fails to comply with the requirements of (c) of this section shall be automatically terminated.

(d) Well drilling permit requirement:

1. Where applicable, all new Class V wells must obtain a well drilling permit before the commencement of any construction, in accordance with the Well Drillers and Pump Installers Act, N.J.S.A. 58:4A-5 et seq., particularly N.J.S.A. 58:4A-14. Information and applications for a well drilling permit may be obtained from:

Division of Water Resources
Well Permit Section
CN-209
Trenton, New Jersey 08625

2. The UIC authorization by rule for any Class V well which fails to comply with the requirements of (d)1 of this section shall be automatically terminated.

(e) Plugging and abandonment requirements: The plugging and abandonment of Class V wells shall be done in accordance with the requirements of N.J.S.A. 58:4A-4.1 et seq., and of N.J.A.C. 7:9-9 (sealing of abandoned wells), where applicable. Cessation of injection operations for a period of three years or more shall constitute an abandonment; the improper maintenance of a well may constitute an abandonment of that well in accordance with N.J.S.A. 58:4A-4.1.

(f) Additional requirements:

1. All septic tank systems or other subsurface sewage disposal systems (other than individual or single family

residential waste disposal systems) which are installed and operating in conformance with the "Realty Improvement Sewerage and Facilities Act" N.J.S.A. 58:11-23 et seq., and the Standards for the Construction of Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9-2, and which are installed and operated in conformance with N.J.S.A. 58:11-43 et seq. where these restrictions are applicable, are hereby authorized by rule.

2. This provision shall not authorize spills, leaks, overflows, or other unapproved or uncontrolled releases or dumping and therein the discharge shall require a NJPDES permit. Disposal systems regulated under the "Realty Improvement Sewerage and Facilities Act", but which are not in conformance with, or are prohibited by this statute or its regulations, accordingly are not authorized under the UIC program. To illustrate: the construction of new cesspools, which is prohibited after July 1, 1978 under N.J.A.C. 7:9-2.94, is, accordingly, prohibited under the UIC program.

3. The UIC authorization by rule for any Class V well described in (f)1 above, which fails to comply with the requirements of (f)1 above, shall be automatically terminated.

(g) Additional requirements for recharge wells, salt water barrier wells, geothermal wells, non-contact air conditioning return wells, heat pumps: (Reserved).

Amended by R.1987 d.458, effective November 16, 1987.
See: 19 N.J.R. 2085(a), 19 N.J.R. 2152(a).

Cross reference in (b)3ii changed from (f) to (g).
Amended by R.1993 d.59, effective February 1, 1993.
See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

At (b)4, exempted drainage from certain roof tops from the inventory requirements applicable to Class V wells.

SUBCHAPTER 6. ADDITIONAL REQUIREMENTS FOR DISCHARGES TO GROUND WATER (DGW)

7:14A-6.1 General requirements

(a) The scope of this subchapter is as follows:

1. This subchapter describes the requirements for ground water monitoring programs for all discharges, past or present, actual or potential, of pollutants, including hazardous and non-hazardous waste as defined at N.J.A.C. 7:14A-1.9, to ground water or onto land which might flow or drain into the waters of the State. A new source shall not discharge to ground water prior to installing a ground water monitoring system which satisfies the requirements of this subchapter and has been approved by the Department. All permits for a DGW shall include requirements for ground water monitoring programs.

2. The procedures and requirements in this subchapter include design for the ground water monitoring system, sampling, parameters and frequency for analyses, evaluation of data, recordkeeping and reporting.

3. Initial ground water monitoring may be expanded or narrowed in scope by the Department. A DGW may request in writing that monitoring requirements be relaxed at any time after the first year of permit issuance.

4. N.J.A.C. 7:14-6.3 through 6.6 shall be applicable to:

i. Hazardous waste facilities (as defined in N.J.A.C. 7:26-1.4) prior to a final disposition of a permit application pursuant to N.J.A.C. 7:26-12 which have an actual or potential DGW;

ii. IWMMFs which are existing facilities under N.J.A.C. 7:14A-4.3; and

iii. Any other activity, process or operation which has an actual or potential DGW, based on the criteria set forth at N.J.A.C. 7:14A-6.15(d)2.

5. N.J.A.C. 7:14A-6.15 shall be applicable to:

i. Hazardous waste facilities (as defined in N.J.A.C. 7:26-1.4) which have been issued a permit pursuant to N.J.A.C. 7:26-12; and

ii. IWMMFs which have been issued a permit pursuant to N.J.A.C. 7:14-4.4(a).

iii. Any actual or potential discharges from an existing waste pile or any other accumulation of hazardous or non-hazardous materials, notwithstanding the prohibition of waste piles in N.J.A.C. 7:26-9.2 and 7:26-9.3 in order to determine the extent of environmental or human health impact and the necessary degree of corrective action. Based on the criteria in N.J.A.C. 7:14A-6.15(d)2 the Department may require the institution of a detection monitoring program, compliance monitoring program, or corrective action program.

6. N.J.A.C. 7:14A-6.15 may also be applicable to any activity, process or operation where current or past practices have resulted in an actual or potential discharge of hazardous waste, hazardous waste constituents or other ground water pollutants onto the land or into the ground water as determined by the Department based on the criteria set forth in N.J.A.C. 7:14-6.15(d)2. The Department may require a discharger to obtain a NJPDES permit in order to satisfy the requirements of this section.

7. The owner or operator of an infiltration-percolation lagoon which accepts or has accepted hazardous wastes, in addition to complying with N.J.A.C. 7:14-1 et seq., must comply with closure and post-closure requirements of N.J.A.C. 7:26-9.1 et seq. and N.J.A.C. 7:26-10.6(h).

(b) Purpose: The Department finds that it is essential that the monitoring program provide adequate data over a sufficient period of time to accurately represent conditions and variations of background ground water quality and the hydrologic characteristic of the site area. Moreover, it is essential that the monitoring program be sufficient to ensure protection of ground water resources.

As amended, R.1984 d.198, effective May 21, 1984.

See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a).

(a)1: "past or present, actual or potential" added to first sentence.

(a)4-7 added.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Stylistic changes only.

7:14A-6.2 Hazardous waste monitoring

(a) As specified in N.J.A.C. 7:14A-6.1(a)4, the owner or operator of a surface impoundment, landfill, overland flow disposal system or infiltration-percolation system, land treatment facility or other means of land disposal or solid or liquid hazardous waste must implement a ground water monitoring program approved by the Department which is capable of determining the facility's impact on the quality of ground water. The owner or operator must install, operate and maintain a ground water monitoring system which meets the requirements of N.J.A.C. 7:14A-6.3, and must comply with N.J.A.C. 7:14A-6.4 through 6.6. This monitoring program must be carried out during the active life of the facility, and, for disposal facilities, during the post-closure care period. An owner or operator may install, operate and maintain an alternate ground water monitoring system other than the one described in N.J.A.C. 7:14A-6.3 and 6.4. If the owner or operator decides to use an alternate ground water monitoring system, the owner or operator must:

1. Submit to the Department a specific plan certified by a qualified geologist or geohydrologist which satisfies the requirements of N.J.A.C. 7:14A-6.5(d)3 for an alternate ground water monitoring system and initiate the determinations specified in N.J.A.C. 7:14A-6.5(d)4.

2. Prepare and submit a written report in accordance with N.J.A.C. 7:14A-6.5(d)4 and continue to make the determinations specified in N.J.A.C. 7:14A-6.5(d)4 on a monthly basis until final closure of the facility as well as comply with the recording and reporting requirements in N.J.A.C. 7:14A-6.6(b).

As amended, R.1984 d.198, effective May 21, 1984.

See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a).

(a): N.J.A.C. 7:14A-6.1(a)4 and 6.6 references inserted.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Stylistic changes only.

7:14A-6.3 Ground water monitoring system for DGW of hazardous waste

(a) A ground water monitoring system must be capable of yielding ground water samples for analysis and must consist of:

1. Monitoring wells installed hydraulically upgradient (i.e. in the direction of increasing static head) from the limit of the waste management area. Their number, location and depth must ensure that samples are representative of background ground water quality near the facility and that the samples are not affected by the facility. Data should be provided to show that these wells would be located such that they would sample ground water which subsequently flows beneath the facility.

2. In addition, there should be at least three monitoring wells installed hydraulically downgradient (i.e. in the direction of decreasing static head) at the limit of the waste management. Their number, location and depth must ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to ground water. The design, location, depth and number of all monitoring wells are to be approved by the Department prior to construction.

(b) Separate monitoring systems for each waste management component of a facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

1. Where a waste facility consists of only one surface impoundment, landfill or treatment area, the waste management area is described by the waste boundary (perimeter).

2. Where a facility consists of more than one surface impoundment, landfill or treatment area, the waste management area is described by an imaginary line which circumscribes the several waste management components.

7:14A-6.4 Sampling and analysis concerning DGW of hazardous waste

(a) The owner or operator, by methods approved by the Department, must obtain and analyze samples from the approved ground water monitoring system. The owner or operator must develop and follow a ground water sampling and analysis plan which must be kept at the facility. The plan must include procedures and techniques for:

1. Sample collection;
2. Sample preservation and shipment;
3. Analytical procedures; and
4. Chain of custody control.

(b) The owner or operator shall determine the concentrations or values of the following parameters in ground water samples:

1. Parameters establishing ground water quality and characterizing suitability of the ground water as a drinking water supply as specified but not limited to those in Table 1 (Monitoring parameters for hazardous waste facilities).

If the parameters exceed the maximum levels in Table 1, the owner or operator shall comply with the reporting requirements at N.J.A.C. 7:14A-6.6(a)2i.

Table 1. Monitoring parameters for Hazardous Waste Facilities.

Parameter	Maximum Level (mg/l) unless otherwise noted
As	0.05
Ba	1.0
Cd	0.01
Cr	0.05
F	1.4-2.4
Pb	0.05
Hg	0.002
NO ₃ -N	10
Se	0.01
Ag	0.05
Lindane	0.004
Methoxychlor	0.1
Toxaphene	0.005
2,4-D	0.1
2,4,5-TP Silvex	0.01
Endrin	0.0002
Radium	5 picocuries per liter
Gross Alpha	15 picocuries per liter
Gross Beta	4 millirem/yr
Turbidity	1 Turbidity Units
Coliform Bacteria	1/100 ml
NH ₄ -N	—
Iron	—
Manganese	—
Sodium	—
Sulfate	—
Chloride	—
Phenols	—

(Note: Turbidity is applicable only to surface water supplies.)

2. Parameters used as indicators of ground water contamination:

- i. pH;
- ii. Total organic carbon;
- iii. Total organic halogen;
- iv. Total dissolved solids.

3. The Department shall determine, based on the type of facility and discharge, type of waste and site specific characteristics whether to expand the list of parameters to be monitored. In addition, the Department may require that annually a gas chromatograph or a gas chromatograph/mass spectrometer (GC/MS) scan for volatile organics, acid extractables, base-neutral extractables and pesticides/PCBs be performed.

4. The Department may, on a case by case basis, waive requirement to analyze for any substance listed in Table 1. It should be noted that hazardous waste management facilities will also have to conduct ground water monitoring for the appropriate parameters specified for the appropriate non-hazardous waste management facility specified in N.J.A.C. 7:14A-6.7 through 6.11.

(c) The owner or operator must establish initial background concentrations or values of all parameters specified in (b) above for all monitoring wells. He must do this monthly for one year. For each of the indicator parameters specified in (b)2, 3 and 4 above, at least four replicate measurements must be obtained for each sample monthly and the initial background, arithmetic mean and variance must be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year of operation.

(d) After the first year, all monitoring wells must be sampled and the samples analyzed with the following frequencies:

1. Samples collected to establish ground water quality must be collected and analyzed for the parameters specified in (b)1 above at least monthly.
2. Samples collected to indicate ground water contamination must be obtained and analyzed for the parameters specified in (b)2, 3, and 4 above at least monthly.

(e) Static Elevation (MSL) of the ground water surface at each monitoring well must be determined prior to each time a sample is obtained.

Amended by R.1988 d.529, effective November 7, 1988.

See: 19 N.J.R. 1863(b), 20 N.J.R. 2755(a).

(b) "shall" substituted for "must"; Table 1 deleted and new Table 1 inserted.

7:14A-6.5 Preparation, evaluation, and response for DGW of hazardous waste

(a) Within one year after the date of Department approval of the initial ground water quality assessment program described in N.J.A.C. 7:14A-6.3 and 6.4, the owner or operator must prepare an outline of a contingency ground water quality assessment program that is more comprehensive than that described in N.J.A.C. 7:14A-6.3 and 6.4. This more comprehensive program must be capable of determining:

1. Whether hazardous waste or hazardous waste constituents have entered the ground water;
2. The rate and extent of migration of hazardous waste or hazardous waste constituents in the ground water;
3. The concentrations of hazardous waste or hazardous waste constituents in the ground water.

(b) For each indicator parameter specified in N.J.A.C. 7:14A-6.4(b)2, the owner or operator must calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with N.J.A.C. 7:14A-6.4(d) and compare these results with its initial background arithmetic mean. The comparison must consider individually each of the wells in the monitoring system, and must use the Student's t-test at the 0.01 level of significance to determine statistically significant increases (and decreases, in the case of pH) over initial background.

(c) If the comparisons for the upgradient wells made under (b) above show a significant increase (or pH decrease), the owner or operator must submit this information in accordance with N.J.A.C. 7:14A-6.6(a)2ii. If the comparisons for downgradient wells made under (b) above show a significant increase (or pH decrease), the owner or operator must immediately obtain additional water samples from those downgradient wells where the significant difference was detected, split the samples in two, and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(d) If the analyses performed under (c) above (downgradient wells) confirm the significant increase (or pH decrease), the owner or operator must provide written notice to the Department—within seven days of the date of confirmation—that the facility may be affecting ground water quality. Within 15 days of such notification, the owner or operator must develop and submit to the Department a specific plan, based on the outline required under (a) above and certified by a qualified geologist or geohydrologist for a ground water quality assessment program at the facility. The plan to be submitted under N.J.A.C. 7:14A-6.1 or (d) of this section must specify:

1. The number, location and depth of wells;
2. Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;
3. Evaluation procedures, including any use of previously gathered ground water quality information; and
4. A schedule of implementation.

(e) The owner or operator must implement the ground water quality assessment plan which satisfies the requirements of (d) above, and, at a minimum, determine:

- i. The rate and extent of migration of the hazardous waste or hazardous waste constituents in the ground water; and
- ii. The concentrations of the hazardous waste or hazardous waste constituents in the ground water.

(f) The owner or operator must make his first determination under (e) above as soon as technically feasible, and, within 15 days after that determination, submit to the Department a written report containing an assessment of the ground water quality.

(g) If the owner or operator determines, based on the results of the first determination under (e) above, that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, he may then reinstate the indicator evaluation program described in N.J.A.C. 7:14A-6.4 and (b) above. If the owner or operator reinstates the indicator evaluation program, he must notify the Department in the report submitted under (f) above.

(h) If the owner or operator determines, based on the first determination under paragraph (f) above, that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he must continue to make the determinations required under (e) above on a monthly basis until final closure of the facility, or cleanup of ground water if the ground water assessment plan was implemented prior to final closure of the facility. If the ground water quality assessment plan was implemented during the post-closure period, he may cease to make the determinations required under (e) above.

(i) Notwithstanding any other provisions of this subchapter, any ground water quality assessment to satisfy the requirements of (e) above which is initiated prior to final closure of the facility must be completed and reported in accordance with N.J.A.C. 7:14A-6.5(f).

(j) Unless the ground water is monitored to satisfy the requirements of N.J.A.C. 7:14A-6.5(e), the owner or operator, at least annually, must evaluate the data on ground water surface elevations obtained under N.J.A.C. 7:14A-6.4(e) to determine whether the requirements under N.J.A.C. 7:14A-6.3(a) for locating the monitoring wells continue to be satisfied. If the evaluation shows that N.J.A.C. 7:14A-6.3(a) is no longer satisfied, the owner or operator must immediately modify the number, location or depth of the monitoring wells to bring the ground water monitoring system into compliance with this requirement.

7:14A-6.6 Recordkeeping and reporting for DGW of hazardous waste

(a) Unless the ground water is monitored to satisfy the requirements of N.J.A.C. 7:14A-6.5(e), the owner or operator must:

1. Keep records of the analyses required in N.J.A.C. 7:14A-6.4(c) and (d), the associated ground water surface elevations required in N.J.A.C. 7:14A-6.4(e), and the evaluations required in N.J.A.C. 7:14A-6.5(b) throughout the active life of the facility, and for disposal facilities, throughout the post-closure care period as well; and
2. Report the following ground water monitoring information to the Department:

- i. During the first year when initial background concentrations are being established for the facility, concentrations or values of the parameters listed in N.J.A.C. 7:14A-6.4(b)1 for each ground-water monitoring well must be reported within 15 days after completing each monthly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Table 1 of N.J.A.C. 7:14A-6.4.

- ii. Annually, concentrations or values of the parameters listed in N.J.A.C. 7:14A-6.4(b)2, 3 and 4 for each ground water monitoring well, along with the required

evaluations for these parameters under N.J.A.C. 7:14A-6.5(b) must be reported. The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with N.J.A.C. 7:14A-6.5(c). During the active life of the facility, this information must be submitted as part of the annual report submitted to the Department as required under 40 CFR Section 265.7 or N.J.A.C. 7:26-7, whichever is more stringent. This annual report must include results of the evaluations of ground water surface elevations under N.J.A.C. 7:14A-6.5(j), and a description of the response to that evaluation where applicable.

(b) If the ground water is monitored to satisfy the requirements of N.J.A.C. 7:14A-6.5(e), the owner or operator must keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of N.J.A.C. 7:14A-6.5(d), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well. In addition, until the final closure of the facility, he must annually submit to the Department a report containing the results of his ground water quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water during the reporting period. This report must be submitted as part of the annual report submitted to the Department as required under 40 CFR Section 265.7 or N.J.A.C. 7:26-7, whichever is more stringent.

7:14A-6.7 Applicability of non-hazardous waste monitoring

The owner or operator of a surface impoundment, land-fill, overland flow disposal system, infiltration-percolation system or other land treatment facility that is used to manage non-hazardous waste must implement a ground water monitoring program capable of determining the facility's impact on the quality of ground water in the site vicinity. This ground water monitoring program must be carried out during the active life of the facility, and for disposal facilities, during the active life of the facility, and for disposal facilities, during the post-closure care period as well. N.J.A.C. 7:14A-10.7 through 10.12 present filing requirements for applications or NJPDES permits for land disposal and treatment facilities. These include requirements as to any ground water monitoring plans and proposals which must be submitted as part of the application. The application and the ground water monitoring program subsequently implemented must conform with these requirements and the following requirements of this subchapter.

Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).
Minor style changes only.

7:14A-6.8 Ground water monitoring system for DGW of non-hazardous waste

Design aspects of the ground water monitoring system presented for hazardous waste management facilities in N.J.A.C. 7:14A-6.3 are applicable to non-hazardous waste management facilities as well.

Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).
Minor style changes only.

7:14A-6.9 Sampling and analysis for DGW of non-hazardous waste

(a) The owner or operator must obtain and analyze samples from the installed ground water monitoring system. The owner or operator must develop and follow a ground water sampling and analysis plan approved by the Department. He must keep this plan at the facility. The plan must include procedures and techniques for:

1. Sample collection;
2. Sample preservation and shipment;
3. Analytical procedures;
4. Chain of custody control.

(b) In addition to ground water sampling and analysis of parameters specified in N.J.A.C. 7:14A-10.7 through 10.12 and approved by the Department, elevations of the ground water surface at each monitoring well must be determined each time a sample is obtained. The Department shall determine, based on the type of facility, type of waste and site specific characteristics whether to expand the list of parameters to be monitored. In addition, the Department may require that annually a gas chromatograph or a gas chromatograph/mass spectrometer (GC/MS) scan for volatile organics, acid extractables, base-neutral extractables and pesticides/PCBs be performed.

(c) For each of the values or concentrations of parameters monitored for the ground water, the owner or operator must determine initial background arithmetic mean and variance by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained monthly from upgradient wells during the first year. In addition, sampling and analysis must be conducted for the parameters specified in (b) above for the downgradient wells on a monthly basis. Following the first year, the frequency of sampling and analysis may be decreased depending on Department approval.

Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).
Minor style changes only.

7:14A-6.10 Preparation, evaluation and response for non-hazardous waste

(a) For each parameter or value as specified in (a)1 and 2, and N.J.A.C. 7:14A-6.9(b), following the first year, the owner or operator must calculate the arithmetic mean and variance, based on at least four replicate measurements on samples obtained monthly and compare these results with its initial background arithmetic mean. This comparison must consider individually each of the wells in the monitoring system and must use the Student's t-test at the 0.01 level of significance to determine statistically significant increases (or pH decrease) over initial background.

1. If the comparisons for the upgradient wells made under (a) above show a significant increase (or pH decrease) for concentrations or values of parameters required under N.J.A.C. 7:14A-6.9(b), the owner or operator must report this information to the Department annually for each ground water monitoring well along with the required evaluations for these parameters under (a) above.

2. If the comparisons for downgradient wells made under (a) above show a significant increase (or pH decrease), the owner or operator must then immediately obtain additional ground water samples from those downgradient wells where a significant difference was detected, split the samples in two, and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(b) If the analyses conducted under (a)2 above confirm the significant increase (or pH decrease), the owner or operator must provide written notice to the Department—within seven days of this confirmation—that the facility may be affecting ground water quality.

(c) Within 15 days after the notification under (b) above, if any of the parameters have increased (or pH decreased) such that they do not conform with allowable levels under the specific terms and conditions of the facility's NJPDES permit, the owner or operator must develop and submit to the Department a specific plan certified by a geologist or geohydrologist for a ground water quality monitoring program that is more comprehensive than that described in N.J.A.C. 7:14A-6.8 and 6.9 for the initial ground water monitoring program employed prior to any occurrence of significant increase (or pH decrease) for concentrations or values of parameters required under N.J.A.C. 7:14A-6.9(b). This more comprehensive plan must be capable of determining:

1. Whether contamination has entered the ground water;
2. The rate and extent of migration of contamination in the ground water; and
3. The concentrations or values of parameters corresponding to or indicating contamination.
4. The number, location and depth of wells;

5. Sampling and analytical methods for the parameters to be determined;

6. Evaluation procedures, including any use of previously gathered ground water quality information; and

7. A schedule of implementation.

(d) The owner or operator must implement the ground water quality assessment plan which satisfies the requirements of (c) and, at a minimum, make the determinations related to ground water impact and specified in (c)2 and 3 above. The owner or operator must make his or her first determination under this paragraph as soon as technically feasible, and within 15 days after that determination, submit to the Department a written report containing an assessment of the ground water quality.

(e) If the owner or operator demonstrates and the Department concurs that the facility has not contaminated ground water, he or she may reinstate the initial ground water monitoring program described in N.J.A.C. 7:14A-6.7 through 6.9 and (a) above. He or she must so notify the Department in the report submitted under (d) above.

(f) If the owner or operator determines, based on the first determination under (d) above, that the facility has contaminated ground water he must continue to make the determinations required under (d) above on a monthly basis until final closure of the facility or remedial action has reduced the contamination to levels specified in the permit; or he may cease to make the determinations of (d) above if the ground water quality assessment program specified in (c) and (d) above was implemented in the post-closure care period. Notwithstanding any other provision of this section, any ground water quality assessment to satisfy the requirements of (d) above which is initiated prior to final closure of the facility must be completed and reported in accordance with (d) above.

(g) Unless the ground water is monitored to satisfy the requirements of (d) above, the owner or operator must, at least annually, evaluate the data on ground water surface elevations obtained under N.J.A.C. 7:14A-6.9(b) to determine whether the number, location and depth of upgradient monitoring wells continues to be sufficient to yield ground water samples that are:

1. Representative of background ground water quality near the facility; and
2. Not affected by the facility.

(h) The evaluation must also determine whether downgradient monitoring wells continue to be sufficient in number, location and depth that they are able to immediately detect any statistically significant amount of ground water contamination migrating from the facility to the ground water. If the evaluation shows that monitoring wells are no longer adequate to fulfill the requirements of this subsection, the owner or operator must immediately modify the number, location and depth of the ground water monitoring wells to bring the ground water monitoring system into conformance with these requirements.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Minor technical changes only.

7:14A-6.11 Recordkeeping and reporting for DGW of non-hazardous waste

(a) Unless the ground water is monitored to satisfy the requirements of N.J.A.C. 7:14A-6.10(d), the owner or operator must keep records of the analyses and ground water surface elevations required in N.J.A.C. 7:14A-6.9(b) for all monitoring wells and the evaluations required in N.J.A.C. 7:14A-6.10(g) and (h) throughout the active life of the facility, and for disposal facilities, throughout the post-closure care period as well; and report the following ground water monitoring information to the Department:

1. During the first year, when initial background concentrations are being established for the facility, concentrations or values of the parameters specified in N.J.A.C. 7:14A-6.9(b) for each ground water monitoring well within 15 days after completing the analyses. The owner or operator must separately identify for each monitoring well any parameters whose concentrations or values have been found to exceed the maximum contaminant levels as specified in the terms and conditions of the facility's NJPDES permit.

2. Annually, concentrations or values of the parameters specified in N.J.A.C. 7:14A-6.9(b) for each ground water monitoring well, along with the required evaluations under N.J.A.C. 7:14A-6.10(a) and (g). Results of the evaluations of ground water surface elevations under N.J.A.C. 7:14A-6.10(g) and (h) and a description of the response to that evaluation, where applicable must be reported annually.

(b) If the ground water is monitored to satisfy the requirements of N.J.A.C. 7:14A-6.10(d), the owner or operator must keep records of the analyses and evaluations specified in the plan which satisfies the requirements of N.J.A.C. 7:14A-6.10(d), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well. Annually, until final closure of the facility, he must submit to the Department a report containing the results of his ground water quality assessment program which includes, but is not limited to contamination in the ground water during the reporting period.

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Minor stylistic changes only.

7:14A-6.12 Ground water sampling procedures

(a) To ensure a representative sample from a monitor well or a potable well, flushing or pumping is almost always required. In general, the ground water standing in the well casing at the time of sample collection will be similar in quality to that in the surrounding aquifer or local ground water, but it may not be representative. Accordingly, the well should be pumped (or bailed) prior to collecting a sample whenever possible.

(b) For pump samples, a volume of water equal to three times that standing in the casing should be pumped from the well before taking the sample. Overpumping, which can result in dilution of the samples should be avoided. Depending on the geology, well design and other factors, some monitor wells will have a low yield. In such cases, the standing water should be evacuated and a sample collected upon recovery. Wells with relatively high yield can be sampled immediately after evacuation or bailing.

(c) A pumping well will yield samples which incorporate water drawn from a volume adjacent to the well bore at the depth of the sampling tube orifice if the well is screened at that depth. Otherwise, the sample will represent water entering the well bore at the bottom of the casing or at the nearest screened interval. Therefore, these sampling configurations can preclude water quality information with depth and, since the pumped samples are obtained from a volume adjacent to the well bore, dilution or concentration of the samples can occur as the well continues to be pumped. In these instances, grab samples are preferred over pumped samples.

(d) If a monitoring well is sampled using a bailer, the standing water in the well should be bailed repeatedly until at least one (and preferably three) times the water volume standing in the well casing have been exchanged prior to sample collection.

(e) Depth-to-water should be measured prior to sampling using a calibrated steel tape.

(f) If surface pumps or hoses are used, the end of the hose must be at a sufficient depth that suction will not be broken as the level of water in the monitoring well is drawn down. However, the hose must be kept above the bottom so that sediments or solids will not be entrained and sample turbidity increased. Poorly-developed monitor wells may also promote increased turbidity. Bedrock wells are less likely to present problems of induced turbidity upon sampling than are wells screened in unconsolidated materials.

(g) For those water quality parameters not subject to chemical change within a well casing in contact with the atmosphere, a pump sample may not be necessary (e.g. nitrate (NO_3)). However, in the case of volatile organics (e.g. benzene, trichlorethylene, toluene), concentrations can decrease for water standing in the well. Therefore, samples for volatile organics should be collected from depths several feet below the water level. If grab samples are taken for volatile organic analyses, methyl alcohol and distilled water should be used to thoroughly clean the sampler prior to reuse. The sampler should be washed first with the alcohol, then rinsed with distilled water; the alcohol must be allowed to volatilize before resuming sampling.

(h) When sampling is done from a pump discharge, the flow rate should be reduced to a trickle to minimize agitation of the water and resulting loss of volatile compounds. When sampling for low levels of volatiles, care must be taken as to the source of water used in priming a centrifugal pump.

(i) If several wells are to be sampled for volatiles, the least contaminated wells should be sampled first and the remaining wells sampled in order of increasing contamination. If the relative levels of contamination are unknown, clean water should be used to purge the pump following each well sampled in order to minimize cross-contamination of samples.

Amended by R.1989 d.339, effective July 3, 1989.
See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).
Minor stylistic changes only.

7:14A-6.13 Monitoring well installation and design

(a) A well drillers permit, as required by N.J.S.A. 58:4A-1 et seq., shall be obtained prior to the installation of any ground water monitoring well. A clear and accurate record or base map providing the monitoring well locations, depths, elevations and achievable pumping rates must be kept at the facility by the owner or operator and be available to the Department.

(b) Wells must be capped to prevent precipitation from entering the well bore hole or introduction of extraneous material and substances into the well which can invalidate analytical results. All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. Wells must be screened and packed with gravel or sand where necessary to enable sample collection at depths where appropriate. The annular space (i.e. the space between the bore hole and well casing) above the sampling depth must be sealed with a suitable material (e.g. cement grout or bentonite slurry) to prevent contamination of samples and ground water.

(c) The elevation of the top of the well casing for each ground water monitoring well shall be established and said elevation shall be permanently marked on the well casing. The elevation established shall be in relation to the New Jersey Geodetic Control Survey datum. Each monitor well casing shall be permanently marked with a number to be assigned or approved by the Department.

7:14A-6.14 Exemptions

(a) The following discharges do not require a DGW permit:

1. Discharges from single family septage tank systems or other single family subsurface sewage disposal systems which are installed and operating in conformance with the "Realty Improvement Sewerage and Facilities Act", N.J.S.A. 58:11-23 through 42 (commonly known as Chapter 199), and which are not regulated under N.J.S.A.

58:11-43 et seq., except as required by subchapter 5 of this chapter (this provision shall not exempt spills, leaks, overflows, or other unapproved or uncontrolled releases or dumping and therein the discharge shall require a NJPDES permit);

2. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands but not discharges from concentrated animal feeding operations as defined in N.J.A.C. 7:14A-3.4, discharges from concentrated aquatic animal production facilities as defined in N.J.A.C. 7:14A-3.5, discharges to aquaculture projects as defined in N.J.A.C. 7:14A-3.6, and discharges from silvicultural point sources as defined in N.J.A.C. 7:14A-3.7;

3. Return flows from irrigated agriculture; and

4. Any discharge not exceeding 60 days and in compliance with the instructions of a Department on-scene coordinator or remedial project manager pursuant to 40 CFR 300 (the National Oil and Hazardous Substances Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances), and the State Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.

(b) Except as specified in (c) below, an owner or operator is exempted from the requirement of obtaining a DGW permit for discharges from contaminated sites as defined at N.J.A.C. 7:26C-1.3 when the owner or operator is conducting the following programs required by N.J.A.C. 7:14A-6.15(b):

1. Detection monitoring performed pursuant to N.J.A.C. 7:14A-6.15(i);

2. Compliance monitoring performed pursuant to N.J.A.C. 7:14A-6.15(j); or

3. Corrective action performed pursuant to N.J.A.C. 7:14A-6.15(k).

(c) The exemption in (b) above does not apply to any of the following:

1. Hazardous waste land disposal units and operational hazardous waste underground storage tanks;

2. Site operational activities or discharges;

3. Discharges resulting from the extraction and treatment of ground water;

4. Non-operational landfills subject to the provisions of N.J.A.C. 7:26-2A.9; and

5. Facilities where monitoring or remediation under a NJPDES-DGW permit was required as a condition of approval issued pursuant to the Industrial Site Recovery Act or by an oversight document including, but not limited to, an Administrative Consent Order or an Administrative Order.

Amended by R.1994 d.448, effective September 6, 1994.
See: 26 N.J.R. 158(a), 26 N.J.R. 3709(a).

7:14A-6.15 Criteria for ground water protection and response

(a) The following apply to this section:

1. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

“Closure period” means the period described in N.J.A.C. 7:26-9.8(i).

“Compliance period” means the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting and the closure period).

“Ground water pollutant” means a hazardous waste or hazardous waste constituent as defined at N.J.A.C. 7:26-8.16, those pollutants identified in N.J.A.C. 7:9-6, pollutants that may adversely affect ground water quality or pose a threat to human health or safety, or pollutants that may be limited in a NJPDES permit.

“Point of compliance” means a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer, uppermost zone of ground water or any other ground water or aquifer that may be impacted by the discharge underlying the regulated units.

“Regulated unit” means any surface impoundment, waste pile, land treatment unit or landfill, or part thereof, that receives hazardous waste or other potential ground water pollutants after January 26, 1983.

“Waste management area” is the limit projected in the horizontal plane of the area on which hazardous waste will be placed during the active life of a regulated unit. It includes the horizontal space taken up by any liner, dike, or other barrier designed to contain hazardous waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

2. The owner or operator is not subject to regulation under this section if the owner or operator is exempted under N.J.A.C. 7:26-9.1 (except 7:26-9.1(c)2) and N.J.A.C. 7:26-12.1 (except N.J.A.C. 7:26-12.1(a)1, (b)3 and (b)6). The Department may, however require that an application for a NJPDES permit be submitted to the Department if the Department determines that there is an actual or potential discharge.

3. This section applies during the active life of the regulated unit (including the closure period).

4. After closure of the regulated unit, this section:

i. Does not apply if all ground water pollutants, waste, waste residues, contaminated containment system components, contaminated ground water and contaminated soils and subsoils are removed or decontaminated at closure;

ii. Applies during the post-closure care period if the owner or operator is conducting a detection monitoring program under (i), below; or

iii. Applies during the compliance period under (g) below, if the owner or operator is conducting a compliance monitoring program under (j), below, or a corrective action program under (k), below.

(b) The required programs are as follows:

1. Owners and operators subject to this section shall conduct a monitoring and response program as follows:

i. Whenever hazardous constituents under (d), below, from a regulated unit are detected at the compliance point under (f) below, the owner or operator shall institute a compliance monitoring program under (j) below. Further, the Department may require the compliance program to be implemented when the ground water quality standards, N.J.A.C. 7:9-6, or a permit-specified limitation is exceeded.

ii. Whenever the ground water protection standard for a hazardous constituent under (c) below, is exceeded, the owner or operator shall institute a corrective action program under (k) below. For non-hazardous constituents the Department may require the owner or operator to institute either a compliance monitoring program or a corrective action program based on the criteria identified in (d)2, below.

iii. Whenever hazardous constituents under (d) below, from a regulated unit exceed concentration limits under (e) below, in ground water between the point of compliance under (f) below, and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under (k) below. For non-hazardous constituents the Department may require the owner or operator to institute either a compliance monitoring program or a corrective action program based on the criteria identified in (d)2 below.

iv. In all other cases, the owner or operator shall institute a detection monitoring program under (i) below.

v. The Department may require additional monitoring wells to be installed within 30 days of the notification to the Department that the ground water protection standard in (c) below, is exceeded in order to make the determination under (b)liii above.

vi. Any ground water pollutants migrating beyond the waste management area are assumed to originate from a regulated unit unless the owner or operator can prove to the satisfaction of the Department that such waste, waste constituent or other ground water pollutant originated from another source.

2. The Department will specify in the permit the specific elements of the monitoring and response program. The Department may include in the permit one or more of the programs, identified in (b)1, above, as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Department will consider the potential adverse effect on human health and the environment that might occur.

(c) The owner or operator shall comply with conditions specified in the permit that are designed to ensure that hazardous constituents or other ground water pollutants under (d) below, entering the ground water from a regulated unit do not exceed the concentration limits under (e) below, in the uppermost aquifer, uppermost zone of ground water or any other ground water or aquifer that may be impacted by the discharge underlying the waste management area beyond the point of compliance under (f) below, during the compliance period under (g) below. The Department will establish this ground water protection standard in the permit. When hazardous constituents or other ground water pollutants have entered the ground water from a regulated unit the Department will modify the permit to include a new ground water protection standard if it is necessary.

(d) The ground water pollutant identification is as follows:

1. The Department will specify in the permit the hazardous constituents or other ground water pollutants to which the ground water protection standard of (c) above applies.

2. The Department may exclude a hazardous waste constituent identified in N.J.A.C. 7:26-8.16 from the list of hazardous constituents specified in the permit if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption the Department will consider the following:

i. Potential adverse effects on ground water quality in an aquifer where the discharge is occurring or that may be hydraulically connected to the aquifer where the discharge is occurring, considering:

(1) The physical and chemical characteristics of the hazardous waste or other ground water pollutants in the regulated unit, including its potential for migration;

(2) The hydrogeological characteristics of the facility and surrounding land;

(3) The quantity of ground water and the rate and direction of ground water flow;

(4) The proximity and withdrawal rates of ground water users;

(5) The current and future uses of ground water in the area;

(6) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality insofar as this is consistent with the State ground water quality standards, N.J.A.C. 7:9-6;

(7) The potential for health risks caused by human exposure to hazardous waste constituents or other ground water pollutants.

(8) The potential damage to wildlife, domestic animals, aquatic life, crops, vegetation, and physical structures caused by exposure to hazardous waste constituents or other ground water pollutants.

(9) The persistence and permanence of the potential adverse effects; and

ii. Potential adverse effects on hydraulically connected surface water quality, considering:

(1) The volume and physical and chemical characteristics of the hazardous waste and other ground water pollutants in the regulated unit;

(2) The hydrogeological characteristics of the facility and surrounding land;

(3) The quantity and quality of ground water, and the rate and direction of ground water flow;

(4) The patterns of rainfall in the region;

(5) The proximity of the regulated unit to surface waters;

(6) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(7) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality insofar as it is consistent with the State surface water quality standards, N.J.A.C. 7:9-4;

(8) The potential for health risks caused by human exposure to hazardous waste constituents or other ground water pollutants;

(9) The potential damage to wildlife, domestic animals, aquatic life, crops, vegetation, and physical structures caused by exposure to hazardous waste constituents or other ground water pollutants; and

(10) The persistence and permanence of the potential adverse effects.

3. In making any determination under (d)2 above about the use of ground water in the area around the facility, the Department will consider any identification of underground sources of drinking water and State ground water quality standards, N.J.A.C. 7:9-6.

(e) The Department will specify in the permit the concentration limits in the ground water for hazardous constituents established under (d) above.

1. The concentration of a hazardous constituent:

i. Shall not exceed the natural background level for individual hazardous constituents as identified in N.J.A.C. 7:26-8.16 in the ground water;

ii. For parameters not included in (e)1i, above, shall not exceed the concentration limit specified in the State ground water quality standards, N.J.A.C. 7:9-6 or State surface water quality standards, N.J.A.C. 7:9-4;

iii. For any of the constituents listed in Table 1, shall not exceed the respective value given in that table if the background level of the constituent is below the value given in Table 1. Where the maximum concentrations specified in Table 1 conflict with the ground water quality criteria in N.J.A.C. 7:9-6, the more stringent concentration limit will be applied;

iv. Must not exceed an alternate limit established by the Department under (e)2, below.

2. The Department may establish a concentration limit as an alternative to the limit in (e)1, above, for a hazardous constituent if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the Department will consider the factors specified in (d)2, above.

TABLE 1: MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUND WATER PROTECTION

Concentration	Maximum Concentration in Milligrams per Liter Unless Otherwise Specified
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1, 2, 3, 4, 10, 10-hexachloro-1,7-epoxy-1, 4, 4a, 5, 6, 7, 8, 9a-octahydro-1,4-endo, endo-5, 8-dimethoano naphthalene)	0.004 ug/l
Lindane (1, 2, 3, 4, 5, 6-hexachlorocyclohexane, gamma isomer)	0.004

Concentration	Maximum Concentration in Milligrams per Liter Unless Otherwise Specified
Methoxychlor (1, 1, 1-Trichloro-2, 2-bis (p-methoxyphenylethane)	0.1
Toxaphene (C10H10C18, Technical chlorinated camphene, 67-69 percent chlorine)	0.005 ug/l
2, 4-(Dichlorophenoxyacetic acid)	0.1
2, 4, 5-TP Silvex (2, 4, 5-Trichlorophenoxy propionac acid)	0.01

3. In making any determination under (e)2 above about the use of ground water in the area around the facility the Department will consider any identification of underground sources of drinking water and State ground water quality standards.

(f) The Department will specify in the permit the point of compliance at which the ground water protection standard of (c) above applies and at which monitoring shall be conducted.

(g) The compliance period is as follows:

1. The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of (j), below.

2. If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in (g)1 above the compliance period is extended until the owner or operator can demonstrate that the ground water protection standard of (c) above has not been exceeded for a period of three consecutive years.

(h) The owner or operator shall comply with the following requirements for any ground water monitoring program developed to satisfy (i), (j), or (k) below:

1. The ground water monitoring system shall consist of a sufficient number of satisfactory wells installed at appropriate locations and depths to yield ground water samples that:

i. Represent the quality of background water that has not been affected by leakage or other discharges from a regulated unit; and

ii. Represent the quality of ground water passing under the regulated unit and through the point of compliance.

2. If a facility contains more than one regulated unit, separate ground water monitoring systems may not be required for each regulated unit provided that provisions for sampling the ground water in the uppermost aquifer, uppermost zone of ground water or any other ground water or aquifer that may be impacted by the discharge will enable detection and measurement at the compliance point of hazardous constituents or other ground water pollutants from the regulated units that have entered the ground water.

3. All ground water monitoring wells shall be constructed pursuant to N.J.A.C. 7:14A-6.13. In cases where the ground water monitoring wells do not meet the requirements of the Department they shall be replaced within 30 days of receipt of notification from the Department that they are not satisfactory. The replacement wells shall be subject to Departmental approval.

4. The ground water monitoring program shall also be consistent with N.J.A.C. 7:14A-6.12. Sampling and analysis procedures shall be designed to ensure monitoring results that provide a reliable indication of ground water quality below the waste management area. At a minimum, the program shall include procedures and techniques for:

- i. Sample collection;
- ii. Sample preservation and shipment;
- iii. Analytical procedures; and
- iv. Chain of custody control.

5. The ground water monitoring program shall include Department approved sampling and analytical methods that are appropriate for ground water sampling in order to accurately measure hazardous constituents or other ground water pollutants in ground water samples.

6. The ground water monitoring program shall include a determination of the ground water surface elevation made prior to flushing, pumping or evacuating the well or sampling each time ground water is sampled.

7. When required by the Department the ground water monitoring program shall establish background ground water quality for any or all of the hazardous constituents or other ground water pollutants specified in the permit.

- i. In the detection monitoring program under (i) below, background ground water quality shall be based on data from quarterly sampling of wells upgradient from the waste management area for one year.
- ii. In the compliance monitoring program under (j) below background ground water quality for a hazardous constituent shall be based on data from upgradient wells that:

(1) Is available before the permit to conduct the compliance monitoring program issued;

(2) Accounts for measurement errors in sampling and analysis; and

(3) Accounts, to the extent possible, for seasonal fluctuations in background ground water quality if such fluctuations are expected to affect the concentration of the hazardous constituent.

- iii. With Department approval, background quality may be based on sampling of wells that are not upgradient from the waste management area where:

(1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; or

(2) Sampling at other wells will provide an accurate indication of background ground water quality that is as representative or more representative than that provided by the upgradient wells.

iv. In developing the data base used to determine a background value for each ground water pollutant or hazardous waste constituent, the owner or operator shall take a minimum of one sample for each well and a minimum of four samples from the entire system used to determine background ground water quality, each time the ground water monitoring system is sampled.

8. The owner or operator shall use the following statistical procedure in determining whether background values or permit concentration limits have been exceeded:

i. If, in a detection monitoring program, the level of a constituent at the compliance point is to be compared to the constituent's background value and that background value has a sample coefficient of variation less than 1.00:

(1) The owner or operator shall take at least four portions for a sample at each well at the compliance point and determine whether the difference between the mean of the constituent at each well (using all portions taken) and the background value for the constituent is significant at the .05 level using the Cochran's Approximation to the Behrens-Fisher Student's t-test as set forth in Appendix IV of 40 C.F.R. 264. If the test indicates that the difference is significant, the owner or operator shall repeat the same procedure (with at least the same number of portions as used in the first test) with a fresh sample from the monitoring well. If this second round of analyses indicates that the difference is significant, the owner or operator shall conclude that a statistically significant change has occurred; or

(2) With Departmental approval, the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The Department will specify such a procedure in the permit if it finds that the alternative procedure reasonably balances the probability of failing to identify a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit in a manner that is comparable to that of the statistical procedure described in (h)8i(1), above.

ii. In all other situations in a detection monitoring program and in a compliance monitoring program, the owner or operator shall use a Department-approved statistical procedure providing reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be

indicated. The Department will specify a statistical procedure in the facility permit that it finds:

(1) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(2) Provides a reasonable balance between the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit.

(i) The owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor for indicator parameters (such as pH, specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in ground water. The Department shall specify the parameters or constituents to be monitored in the permit, after considering the following factors:

i. The type(s), quantities, and concentrations of constituents in wastes managed at the regulated unit;

ii. The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

iii. The detectability of indicator parameters, waste constituents, and reaction products in ground water; and

iv. The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the background ground water.

2. The owner or operator shall install a ground water monitoring system at the compliance point as specified in (f) above. The ground water monitoring system shall comply with (h)1ii, 2 and 3 above.

3. The owner or operator shall establish a background value for each monitoring parameter or constituent specified in the permit pursuant to (i)1 above. The permit shall specify the background values for each parameter or specify the procedures to be used to calculate the background values.

i. The owner or operator shall comply with (h)7 in developing the data base used to determine background values.

ii. The owner or operator shall express background values in a form necessary for the determination of statistically significant increases under (h)8, above.

iii. In taking samples used in the determination of background values, the owner or operator shall use a ground water monitoring system that complies with (h)1i, 2 and 3 above.

4. The owner or operator shall determine ground water quality at each ground water monitoring well at the compliance point as specified in the permit, but at least semi-annually during the active life of a regulated unit (including the closure period) and the post-closure care period. The owner or operator shall express the ground water quality at each ground water monitoring well in a form necessary for the determination of statistically significant increases under (h)8 above.

5. At least annually or on a more frequent basis as specified in the facility's NJPDES permit, the owner or operator shall determine the ground water flow gradients, rates, and directions for all geologic formations or zones monitored.

6. The owner or operator shall use procedures and methods for sampling and analysis that meet the requirements of (h)4 and 5, above.

7. The owner or operator shall determine whether there is a statistically significant increase over background values for any parameter or constituent specified in the permit pursuant to (i)1 above, each time he determines ground water quality at the compliance point under (i)4 above.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground water quality at each ground water monitoring well at the compliance point for each parameter or constituent, according to the statistical procedure specified in the permit under (h)8 above.

ii. The owner or operator shall determine whether there has been a statistically significant increase at each ground water monitoring well at the compliance point within a reasonable time period after completion of sampling. The Department will specify that time period in the permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground water samples.

8. If the owner or operator determines, pursuant to (i)7 above that there is a statistically significant increase for any parameters or any constituents specified pursuant to (i)1 above at any ground water monitoring well at the compliance point, the owner or operator shall:

i. Notify the Department of this finding in writing within seven days. The notification shall indicate what parameters or pollutants have shown statistically significant increases;

ii. Immediately sample the ground water in all monitoring wells and determine the concentration of all hazardous constituents identified in N.J.A.C. 7:26-8.21 and other permit-limited pollutants that are present in ground water;

iii. Establish a background value for each N.J.A.C. 7:26-8.21 hazardous constituent that has been found at the compliance point under (i)8ii above, as follows:

(1) The owner or operator shall comply with (h)7 in developing the data base used to determine background values;

(2) The owner or operator shall express background values in a form necessary for the determination of statistically significant increases under (h)8;

(3) In taking samples used in the determination of background values, the owner or operator shall use a ground water monitoring system that complies with (h)1i, 2 and 3 above;

iv. Within 45 days, submit to the Department an application for a permit modification to establish a compliance monitoring program meeting the requirements of (j) below. The application shall include the following information.

(1) An identification of the concentration of any N.J.A.C. 7:26-8.21 hazardous constituents found in the ground water at each ground water monitoring well at the compliance point;

(2) Any proposed changes to the ground water monitoring system at the facility necessary to meet the requirements of (j) below;

(3) Any proposed changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical procedures used at the facility necessary to meet the requirements of (j), below;

v. Within 90 days, submit to the Department an engineering feasibility plan for a corrective action program necessary to meet the requirements of (k), below.

9. If the owner or operator determines, pursuant to (i)7 above, that there is a statistically significant increase of parameters or constituents specified pursuant to (i)1, a violation of State ground water quality standards, N.J.A.C. 7:9-6 above, or a violation of permit conditions at any ground water monitoring well at the compliance point, the owner or operator may demonstrate to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under (i)8iv above, the owner or operator is not relieved of the requirement to submit a permit modification application within the same time specified in (i)8iv above unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

i. Notify the Department in writing within seven days of determining a statistically significant increase at the compliance point a violation of State ground water quality standards, N.J.A.C. 7:9-6, or a violation of

permit conditions that the owner or operator intends to make a demonstration under (i)9 above;

ii. Within 45 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation;

iii. Within 45 days, submit to the Department an application for a permit modification to make any appropriate changes to the detection monitoring program at the facility; and

iv. Continue to monitor in accordance with the detection monitoring program established under this subsection.

10. If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, the owner or operator shall, within 45 days, submit an application for a permit modification to make any appropriate changes to the program.

11. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the ground water protection standard under (c) above are taken during the term of the permit.

(j) An owner or operator required to establish a compliance monitoring program under this subsection shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor the ground water to determine whether regulated units are in compliance with the ground water protection standard under (c) above. The Department will specify the ground water protection standard in the permit, including:

i. A list of the hazardous constituents identified under (d) above and other ground water pollutants;

ii. Concentration limits under (e) above for each of the hazardous constituents. The Department may also set concentration limits for the other ground water pollutants;

iii. The compliance point under (f) above; and

iv. The compliance period under (g) above.

2. The owner or operator shall install a ground water monitoring system at the compliance point as required by (f) above. The ground water monitoring system shall comply with (h)1ii, 2 and 3 above.

3. Where a concentration limit established under (h)1ii above is based on background ground water quality, the Department will specify the concentration limit in the permit as follows:

i. If there is a high temporal correlation between upgradient and compliance point concentrations of the hazardous constituents, the Department may establish the concentration limit through sampling at upgradient wells each time ground water is sampled at the compli-

ance point. In all other cases, the concentration limit will be the mean of the pooled data on the concentration of the hazardous constituent.

ii. If a hazardous constituent is identified on Table 1 under (e) and the difference between the respective concentration limit in Table 1 and the background value of that constituent under (h)8 is not statistically significant, the owner or operator shall at the Department's discretion use the background value of the constituent as the concentration limit. In determining whether this difference is statistically significant, the owner or operator shall use a statistical procedure providing reasonable confidence that a real difference will be indicated. The statistical procedure shall:

(1) Be appropriate for the distribution of the data used to establish background values; and

(2) Provide a reasonable balance between the probability of falsely identifying a significant difference and the probability of failing to identify a significant difference.

iii. The owner or operator shall:

(1) Comply with (h)7 above in developing the data base used to determine background values;

(2) Express background values in a form necessary for the determination of statistically significant increases under (h)8 above; and

(3) Use a ground water monitoring system that complies with (h)1i, 2 and 3 above.

4. The owner or operator shall determine the concentration hazardous constituents in ground water at each monitoring well at the compliance point at least quarterly during the compliance period. The owner or operator shall express the concentration at each monitoring well in a form necessary for the determination of statistically significant increases under (h)8.

5. The owner or operator shall determine the ground water flow rate annually and determine the ground water flow direction in all affected geologic formations or zones at each sampling event specified in the permit but, in any case, at least quarterly.

6. The owner or operator shall analyze samples from all ground water monitoring wells at the compliance point for all hazardous constituents contained in N.J.A.C. 7:26-8.21 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer, uppermost zone of groundwater or any other ground water aquifer that may be impacted by the discharge. If the owner or operator finds N.J.A.C. 7:26-8.21 hazardous constituents in the groundwater that are not identified in the permit as hazardous constituents he monitored, then the owner or operator shall report the concentrations of these additional hazardous constituents to the Department within seven days after completion of the analysis.

7. The owner or operator shall use procedures and methods for sampling and analysis that meet the requirements of (h)4 and 5.

8. The owner or operator shall determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit pursuant to (j)1 above each time the owner or operator determines the concentration of hazardous constituents in ground water at the compliance point.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground water quality at each ground water monitoring well at the compliance point for each hazardous constituent as to the concentration limit for that constituent according to the statistical procedures specified in the permit under (h)8 above.

ii. The owner or operator shall determine whether there has been a statistically significant increase at each ground water monitoring well at the compliance point, within a reasonable time period after completion of sampling. The Department will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground water samples.

9. If the owner or operator determines, pursuant to (j)8 above, that the ground water protection standard in (j)1 above is being exceeded at any ground water monitoring well at the point of compliance, the owner or operator shall:

i. Notify the Department of this finding in writing within seven days. The notification shall include a copy of the laboratory analysis and indicate what concentration limits have been exceeded.

ii. Submit to the Department an application for a permit modification to establish a corrective action program meeting the requirements of (k) below within 60 days, or within 45 days if an engineering feasibility study previously has been submitted to the Department under (i)8v above. The application shall at a minimum include the following information:

(1) A detailed description of corrective actions that will achieve compliance with the ground water protection standard specified in the permit under (j)1 above; and

(2) A plan for a ground water monitoring program that will demonstrate the effectiveness of the corrective action. Such a ground water monitoring program may be based on a compliance monitoring program developed to meet the requirements of this subsection.

10. If the owner or operator determines, pursuant to (j)8 above, that the ground water protection standard is being exceeded at any ground water monitoring well at the point of compliance, the owner or operator may demonstrate to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under (j)9ii above, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in (j)9ii above unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

i. Notify the Department in writing within seven days that the owner or operator intends to make a demonstration under (j)10 above;

ii. Within 30 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis or evaluation;

iii. Within 45 days, submit to the Department an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

iv. Continue to monitor in accordance with the compliance monitoring program established under this subsection.

11. If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, the owner or operator shall, within 45 days, submit an application for a permit modification to make any appropriate changes to the program.

12. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the ground water protection standard under (c) above are taken during the term of the permit.

13. In those cases where the owner or operator demonstrates in accordance with (j)10, that the source is other than a regulated unit but the source is under the control of the owner or operator, the Department may require the owner or operator to undertake ground water monitoring which is equivalent to that specified in this subsection, and corrective action which is equivalent to that specified in (k) below.

(k) An owner or operator required to establish a corrective action program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall take corrective action to ensure that regulated units are in compliance with the ground water protection standard under (c) above. The Department will specify the ground water protection standard in the permit, including:

i. A list of the hazardous constituents identified under (d) above;

ii. Concentration limits under (e) above for each of those hazardous constituents;

iii. The compliance point under (f) above; and

iv. The compliance period under (g) above.

2. The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measure that will be taken.

3. The owner or operator shall begin corrective action within a reasonable time period after the ground water protection standard is exceeded. The Department will specify that time period in the permit. If a permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of (j)9ii above.

4. In conjunction with a corrective action program, the owner or operator shall establish and implement a ground water monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under (j) above, and shall be as effective as that program in determining compliance with the ground water protection standard under (c) above, and in determining the success of a corrective action program under (k)5 below, where appropriate.

5. In addition to the other requirements of this subsection, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under (d) above, that exceed concentration limits under (e) above, in ground water between the compliance point under (f) above, and the furthest extent of ground water contamination which is either statistically significant as defined in (h)8, or exceeds the State ground water quality standards in N.J.A.C. 7:9-6 or exceeds permit limits. The permit will specify the measures to be taken.

i. Corrective action measures under (k)5 of this section shall be initiated and completed within a reasonable time considering the extent of contamination.

ii. Corrective action measures under (k)5 of this section may be terminated once the concentration of hazardous constituents under (d) above is reduced to

levels below their respective concentration limits under (e) above.

6. The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the ground water protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, the owner or operator shall continue that corrective action for as long as necessary to achieve compliance with the ground water protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the water management area (including the closure period) if the owner or operator can demonstrate to the Department's satisfaction, based on data from the ground water monitoring program under (k)4 above, that the ground water protection standard of (c) above, has not been exceeded for a period of three consecutive years.

7. The owner or operator shall report in writing to the Department on the effectiveness of the corrective action program. The owner or operator shall submit these reports as specified by the Department, but no less frequent than semi-annually.

8. If the owner or operator determines that the corrective action program no longer satisfies the requirements of this subsection, the owner or operator shall, within 45 days, submit an application for a permit modification to make any appropriate changes to the program.

R.1984 d.198, effective May 21, 1984.

See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a), 16 N.J.R. 2433(a).

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

Ground water pollutant definition amended and grammatical and stylistic changes throughout.

Amended by R.1990 d.259, effective May 21, 1990.

See: 21 N.J.R. 3844(a), 22 N.J.R. 1558(a).

In (i)8. and (j)6., N.J.A.C. 7:26-8.21 was 7:26-8.16.

Amended by R.1993 d.59, effective February 1, 1993.

See: 24 N.J.R. 344(b), 25 N.J.R. 547(a).

Deleted (e)4 reference to Appendix F.

7:14A-6.16 Special ground water monitoring requirements for new non-hazardous waste sanitary landfills

(a) The ground water monitoring system shall be designed and constructed in accordance with the following:

1. A ground water flow model to predict the surface of the ground water level shall be utilized to locate and size the ground water monitoring well system. The ground water flow model shall be submitted for evaluation;

2. The location and number of detection wells or downgradient wells shall be sufficient to define and detect any potential migration;

3. The downgradient wells shall be capable of adequately monitoring the saturated zone and, where applicable, the unsaturated zone below the landfill and should be located in accordance with the following guidelines:

i. The location of the unsaturated zone lysimeters shall be directly beneath the landfilled area; and

ii. The location of the saturated zone wells should be in a staggered, phased or expanding ring design with at least half the wells at a maximum distance no greater than 150 feet from the toe of the slope of the landfill.

4. The location and number of background wells or upgradient wells, not biased by possible contamination, shall be sufficient to adequately define the background ground water quality.

New Rule, R.1987 d.235, effective June 1, 1987.

See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).

7:14A-6.17 General permits

(a) The Department may issue a general permit in accordance with the following:

1. The general permit shall be written to cover a category of discharges described in the permit under (a)2 below, except those otherwise eligible for authorization under the permit but authorized by individual permits or other general permits, within a geographic area. The area shall correspond to existing geographic, geologic or political boundaries, such as:

i. Designated planning areas under Section 5 of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.;

ii. City, county or state political boundaries; or

iii. Aquifer units or formations; or

iv. Any other appropriate division or combination of boundaries.

2. The general permit shall be written to regulate, within the area described in (a)1 above, categories of point-source discharges to ground water if the Department determines that the discharges all:

i. Involve the same or substantially similar types of treatment;

ii. Involve the same type or substantially similar types of pollutants;

iii. Require the same effluent limitations or operating conditions;

iv. Require the same or similar monitoring; and

v. In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits.

(b) The administration of general permits shall be as follows:

1. The Department may issue, modify, revoke and reissue, or terminate general permits in accordance with applicable requirements of N.J.A.C. 7:14A-2, 7 and 8.