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CHAPTER 9

WATER POLLUTION CONTROL

Authority

N.J.S.A. 13:1B-3, 13:1D-9, 58:4A-4.1 et seq., 58:10A-1 et seq. and 58:11A-1 et seq.

Source and Effective Date

R.1996 d.86, effective January 18, 1996.
See: 27 N.J.R. 3519(a), 28 N.J.R. 1201(c).

Executive Order No. 66(1978) Expiration Date

Chapter 9, Water Pollution Control, expires on January 18, 2001.

Chapter Historical Note

All provisions of Chapter 9 became effective prior to September 1, 1969.

1971 Revisions: Subchapter 10, Installation of Sewerage Facilities in Critical Areas, was adopted as new rules effective January 15, 1972 as R.1971 d.208. See: 3 N.J.R. 78(a), 3 N.J.R. 255(b).

1973 Revisions: Subchapter 9, Sealing of Abandoned Wells, was adopted as new rules effective October 23, 1973 as R.1973 d.299. See: 5 N.J.R. 185(b), 5 N.J.R. 370(b).

1974 Revisions: Subchapter 11, Allocation of Waste Lands or Point-Source Dischargers, was adopted as new rules effective June 18, 1974 as R.1974 d.151. See: 6 N.J.R. 132(c), 6 N.J.R. 263(b). Subchapter 4, Surface Water Quality Standards, was adopted as new rules and amendments were made to Subchapter 7 by R.1974 d.310, effective December 2, 1974. See: 6 N.J.R. 302(d), 6 N.J.R. 470(c).

1975 Revisions: Subchapter 13, Sewer Extension Ban, was adopted as new rules effective October 16, 1975 as R.1975 d.302. See: 7 N.J.R. 147(a), 7 N.J.R. 499(e).

1977 Revisions: Amendments became effective December 16, 1977 as R.1977 d.477. See: 9 N.J.R. 461(a), 10 N.J.R. 10(c).

1978 Revisions: Amendments to Chapter 9 became effective January 23, 1978 as R.1978 d.19 and R.1978 d.21. See: 9 N.J.R. 311(a), 10 N.J.R. 60(a), 9 N.J.R. 115(b), 10 N.J.R. 61(b). Subchapter 14 concerning ground water quality standards was originally adopted and codified by R.1978 d.20, effective January 23, 1978. See: 9 N.J.R. 68(b), 10 N.J.R. 61(a). Further revisions to Chapter 9 became effective June 1, 1978 as R.1978 d.102. See: 10 N.J.R. 146(d). Amendments were adopted as R.1978 d.161, effective June 1, 1978; R.1978 d.182, effective July 1, 1978, and R.1978 d.231, effective August 10, 1978. See: 10 N.J.R. 237(b); 10 N.J.R. 279(b); 10 N.J.R. 328(c).

1979 Revisions: Amendments became effective March 29, 1979 as R.1979 d.129. See: 11 N.J.R. 9(b), 11 N.J.R. 230(a). Further amendments became effective July 19, 1979 as R.1979 d.282. See: 10 N.J.R. 476(a), 11 N.J.R. 374(c).

1980 Revisions: Section 1.98 was repealed by R.1980 d.182, effective April 25, 1980. See: 12 N.J.R. 108(b), 12 N.J.R. 313(c). Subchapter 15, Grants for Restoring Publicly Owned Freshwater Lakes, was adopted as new rules effective August 22, 1980 as R.1980 d.374. See: 12 N.J.R. 310(a), 12 N.J.R. 575(c). The original text of Subchapter 3, Location of Factory within Watershed, was repealed by R.1980 d.433, effective October 7, 1980. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a).

1981 Revisions: Amendments which deleted Subchapter 4, Surface Water Quality Standards, Subchapter 5, and Subchapter 8, Treatment of Wastewaters Discharged into Waters of the State, (but recodified sections 8.4 through 8.43 as N.J.A.C. 7:9-5.11), Subchapter 11, Allocation of Waste Loads or Point-Source Dischargers, (but recodified

portions of the text at N.J.A.C. 7:9-5), and Subchapter 14, Ground Water Quality Standards, (but recodified portions of the text at 7:9-6), and substituted new text, were adopted as R.1981 d.80, effective March 4, 1981. See: 12 N.J.R. 108(c), 13 N.J.R. 194(b). Further amendments became effective July 9, 1981 as R.1981 d.224. See: 12 N.J.R. 639(b), 13 N.J.R. 402(a).

1982 Revisions: Amendments became effective September 7, 1982 as R.1982 d.298. See: 14 N.J.R. 504(a), 14 N.J.R. 979(a).

1983 Revisions: Subchapter 2 was readopted pursuant to Executive Order No. 66(1978), effective June 3, 1983 as R.1983 d.243. See: 15 N.J.R. 591(a), 15 N.J.R. 1042(a). Further amendments became effective October 3, 1983 as R.1983 d.423 and repealed the text of subchapter 10, Installation of Sewerage Facilities in Critical Areas, as duplicative of current review procedures conducted by local boards of health and the Pinelands Commission. See: 15 N.J.R. 1155(a), 15 N.J.R. 1654(b).

1984 Revisions: Subchapter 13, Sewer Extension Ban, was readopted effective July 23, 1984 with amendments effective August 6, 1984 as R.1984 d.336. See: 16 N.J.R. 660(a), 16 N.J.R. 2096(a).

1985 Revisions: Amendments which deleted the text of Subchapters 4 and 5 and adopted new text became effective May 20, 1985 as R.1985 d.249. See: 16 N.J.R. 3080(a), 17 N.J.R. 1270(a). Subchapter 15, Grants for Restoring Publicly Owned Freshwater Lakes, expired on August 22, 1985 and new rules were adopted pursuant to Executive Order No. 66(1987) effective January 21, 1986 as R.1985 d.717. See: 17 N.J.R. 2182(a), 18 N.J.R. 163(b). Amendments became effective September 3, 1985 as R.1985 d.466. See: 17 N.J.R. 1625(a), 17 N.J.R. 2109(a).

1987 Revisions: Subchapter 13, Sewer Extension Ban, was repealed effective November 2, 1987 as R.1987 d.445. See: 18 N.J.R. 2163(a), 19 N.J.R. 2000(b).

1988 Revisions: Subchapter 1 expired, pursuant to Executive Order No. 66(1978), on April 25, 1985 and was adopted as new rules effective May 2, 1988 as R.1988 d.205. See: 19 N.J.R. 2227(b), 20 N.J.R. 980(a).

1989 Revisions: Subchapter 2, Standards for Construction of Individual Subsurface Sewage Disposal Systems, was repealed by R.1989 d.450 and replaced by N.J.A.C. 7:9A, effective August 21, 1989, (operative January 1, 1990). See: 20 N.J.R. 1790(a), 21 N.J.R. 2534(a).

1991 Revisions: Pursuant to Executive Order No. 66(1978), Chapter 9, Water Pollution Control, was readopted as R.1991 d.68, effective January 18, 1991. See: 22 N.J.R. 3297(a), 23 N.J.R. 406(c). Notice of petition to amend New Jersey Pollution Discharge Elimination System permits. See: 23 N.J.R. 236(a), 23 N.J.R. 622(b).

1993 Revisions: Subchapter 6, Ground Water Quality Standards, was repealed and replaced by new rules by R.1993 d.73, effective February 1, 1993. See: 24 N.J.R. 181(a), 25 N.J.R. 464(a). Subchapter 4 was recodified to N.J.A.C. 7:9B-1 by R.1993 d.610, effective December 6, 1993. See: 24 N.J.R. 3983(a), 24 N.J.R. 4471(a), 25 N.J.R. 404(a), 25 N.J.R. 5569(a). Public Notice: Opportunity for interested party review for rule amendment. See: 25 N.J.R. 411(a).

1994 Revisions: Subchapter 1, Sewer Systems and Wastewater Treatment Plants, was repealed by R.1994 d.278, effective June 6, 1994. See: 25 N.J.R. 3282(a), 26 N.J.R. 2413(b). See, now, N.J.A.C. 7:14A-22 and 23.

1996 Revisions: Pursuant to Executive Order No. 66(1978), Chapter 9 was readopted as R.1996 d.86, effective January 18, 1996. See: Source and Effective Date.

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SUBCHAPTERS 1 THROUGH 4. (RESERVED)

SUBCHAPTER 5. WASTEWATER DISCHARGE REQUIREMENTS

7:9-5.1 Scope of rules

(a) Unless otherwise provided by rule or statute, the following shall constitute the rules of the Department of Environmental Protection concerning matters of policy with respect to the protection and enhancement of surface waters of the State pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

(b) This subchapter shall apply to effluent limitations and other requirements applicable to discharges into the surface waters of the State.

Petition for Rulemaking.

See: 23 N.J.R. 222(a).
 Amended by R.1997 d.107, effective May 5, 1997.
 See: 28 N.J.R. 380(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 28 N.J.R. 4697(a), 28 N.J.R. 5028(a), 29 N.J.R. 1704(a).
 In (a), deleted “, disinfection, and minimum treatment requirements” following “surface waters of the State” and made a nonsubstantive change.

Case Notes

Responsibilities of the Department of Environmental Protection in review of mausoleum construction plans; concurrent State and municipal jurisdiction over mausoleum construction. Cedar Park Cemetery v. Hayes, 132 N.J.Super. 572, 334 A.2d 386 (Law Div.1975).

Former regulation set forth the objective of the Water Resources Division to integrate and promote modern sanitary sewerage throughout the State. Cedar Park Cemetery v. Hayes, 132 N.J.Super. 572, 334 A.2d 386 (Law Div.1975).

7:9-5.2 (Reserved)

Repealed by R.1997 d.107, effective May 5, 1997.
 See: 28 N.J.R. 380(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 28 N.J.R. 4697(a), 28 N.J.R. 5028(a), 29 N.J.R. 1704(a).
 Section was “Construction”.

7:9-5.3 Definitions

The terms “discharge,” “discharger,” “LC₅₀,” “EC₅₀” and “lake, pond or reservoir” as used in this subchapter are defined in the New Jersey Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-1.

Repeal and New Rule, R.1997 d.107, effective May 5, 1997.
 See: 28 N.J.R. 380(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 28 N.J.R. 4697(a), 28 N.J.R. 5028(a), 29 N.J.R. 1704(a).
 Section was “Definitions”.

7:9-5.4 (Reserved)

Correction: N.J.A.C. 7:9-5.4(a)1i and ii should have been codified as N.J.A.C. 7:9-5.4(b)1i and ii.

See: 17 N.J.R. 1759(c).
 Repealed by R.1997 d.107, effective May 5, 1997.
 See: 28 N.J.R. 380(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 28 N.J.R. 4697(a), 28 N.J.R. 5028(a), 29 N.J.R. 1704(a).
 Section was “Statements of policy”.

7:9-5.5 (Reserved)

Repealed by R.1997 d.107, effective May 5, 1997.
 See: 28 N.J.R. 380(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 28 N.J.R. 4697(a), 28 N.J.R. 5028(a), 29 N.J.R. 1704(a).
 Section was “Use of indicators of pollution levels”.

7:9-5.6 (Reserved)

Repealed by R.1997 d.107, effective May 5, 1997.
 See: 28 N.J.R. 380(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 28 N.J.R. 4697(a), 28 N.J.R. 5028(a), 29 N.J.R. 1704(a).
 Section was “Dilute industrial process wastewater”.

Case Notes

Denial of discharge permit by Department of Environmental Protection was not precluded by department's failure to specify precise amount of pollutant that would be discharged. Matter of Vineland Chemical Co. (Vichem), 243 N.J.Super. 285, 579 A.2d 343 (A.D.1990) certification denied 127 N.J. 323, 604 A.2d 598.

7:9-5.7 Effluent standards

(a) The effluent standard for toxic discharges is that, at a minimum, no effluent shall be more toxic than an LC₅₀, or an EC₅₀ (based on daphnid immobilization) of 50 percent (by volume), as determined by acute definitive bioassay(s) conducted in conformance with N.J.A.C. 7:18, using the approved representative species considered to be the most sensitive to the discharge, as designated by the Department.

(b) The effluent standard for phosphorus discharged to freshwater lakes, ponds, reservoirs, or tributaries to these waterbodies is that, at a minimum, no effluent shall contain more than 1.0 mg/l total phosphorus (as P), as a monthly average, unless the dischargers to such a waterbody can demonstrate that a less stringent requirement will not result in a violation of the Surface Water Quality Standards (N.J.A.C. 7:9B) or that the control of point sources alone, in the absence of effective nonpoint source controls, shall not result in a significant reduction of phosphorus loadings to the waterbody. For the purpose of this subsection "lakes, ponds and reservoirs" is defined in N.J.A.C. 7:14A-1.2

Administrative Correction: Sentence omitted from (b).

See: 23 N.J.R. 2166(a).

Amended by R.1997 d.107, effective May 5, 1997.

See: 28 N.J.R. 380(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 28 N.J.R. 4697(a), 28 N.J.R. 5028(a), 29 N.J.R. 1704(a).

In (a), amended N.J.A.C. reference; in (b), amended N.J.A.C. reference, substituted "shall not result" for "will not result", and added the last sentence..

7:9-5.8 (Reserved)

Amended by R.1992 d.219, effective May 18, 1992.

See: 23 N.J.R. 1493(a), 24 N.J.R. 1884(a).

Deleted 4-hour requirement and replaced with a 30-day average; changed the BOD₅ minimum treatment requirements for the concentrations of 40 mg/L to 30 mg/L for consistency with Federal requirements.

Repealed by R.1997 d.107, effective May 5, 1997.

See: 28 N.J.R. 380(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 28 N.J.R. 4697(a), 28 N.J.R. 5028(a), 29 N.J.R. 1704(a).

Section was "Minimum treatment requirements".

SUBCHAPTER 6. GROUND WATER QUALITY STANDARDS

7:9-6.1 Scope of subchapter

(a) Unless otherwise provided by statute, the following shall constitute the rules of the Department of Environmental Protection and Energy concerning ground water classification, designated uses of ground water, and ground water quality criteria and constituent standards, pursuant to the

Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

(b) This subchapter shall provide the basis for protection of ambient ground water quality, through the establishment of constituent standards for ground water pollutants. These constituent standards are applicable to the development of: ground water protection standards pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES; N.J.A.C. 7:14A); ground water cleanup standards and compliance levels beyond the boundaries of a contaminated site pursuant to applicable regulatory programs; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State, including nonpoint and diffuse sources regulated by the Department. Other relevant laws through which the Ground Water Quality Standards may be applied include, but are not limited to, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Environmental Cleanup Responsibility Act (N.J.S.A. 13:1K-6 et seq.), the Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the Realty Improvement Sewerage and Facilities Act (N.J.S.A. 58:11-23 et seq.), and the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.).

(c) This subchapter shall be the Department's primary basis for setting numerical criteria for limits on discharges to ground water and standards for ground water cleanups.

Case Notes

Private home septic system installed in violation of regulation; violation does not give rise to private cause of action for damages. Jalowiecki v. Leuc, 182 N.J.Super. 22, 440 A.2d 21 (App.Div.1981).

7:9-6.2 Policies

(a) It is the policy of this State to restore, enhance and maintain the chemical, physical and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water.

(b) Discharges to ground water that subsequently discharges into surface waters shall not be permitted by the applicable regulatory program if such discharges would cause a contravention of surface water quality standards applicable to those surface waters. That is, those discharges must achieve compliance with both these standards and the surface water quality standards (N.J.A.C. 7:9-4).

(c) When existing ground water quality does not meet the constituent standards determined pursuant to N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b), due to human activities, the Department shall, after a review of relevant and available scientific and technical data, determine in the context of the applicable regulatory programs the management actions

necessary (including, but not limited to, the requirement of remedial actions) to restore or enhance ground water quality pursuant to the policies of this subchapter.

(d) The Department shall not approve discharges or activities posing a significant risk of discharges, within the jurisdiction of and subject to regulation by the Pinelands Commission, that would contravene the rules of the Pinelands Commission with regard to the protection of ground water or surface water quality.

Case Notes

Standards for Total Suspended Solids set by Federal and State regulations; fine assessed appropriate for permit level violations. *Lentine Aggregates v. Dept. of Environmental Protection*, 4 N.J.A.R. 117 (1981), affirmed per curiam Dkt. No. A-3424-80 (App.Div.1982).

7:9-6.3 Construction

This subchapter shall be liberally construed to permit the Department to implement its statutory functions.

7:9-6.4 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

“ACL” means alternative concentration limit.

“Agricultural water” means water used for crop production, livestock, horticulture and silviculture.

“Alternative concentration limit” (ACL) means a constituent standard or narrative description of actions, discharge controls and water quality requirements that is less stringent than the ground water quality requirements of N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b), due to a Departmental determination pursuant to NJPDES regulations (N.J.A.C. 7:14A-6.15(e)2). In order to approve an ACL, the Department must find that the relevant constituent standard(s) cannot be achieved through technologically practicable means.

“Antidegradation” means a policy to ensure that existing ground water quality (that currently is of higher quality than the water quality criteria in N.J.A.C. 7:9-6.7) is not degraded to the criteria by discharges, but rather remains at a better quality ranging from natural quality at the most stringent, to a limited allowance for degradation at the least stringent. “Nondegradation” is the most stringent case of the antidegradation policy. It prohibits any degradation of ground water quality below existing background water quality by a discharge.

“Antidegradation limit” is the numerical expression (in terms of a concentration or level of a constituent in ground water) of the antidegradation policy.

“Applicable regulatory program” means any of the Department’s programs which implement the regulations issued pursuant to the statutes cited in N.J.A.C. 7:9-6.1(b) or in any other regulations that specifically cite this subchapter.

“Aquifer” means a saturated geologic formation(s) or unit(s) which is sufficiently permeable to transmit water to a pumping well in usable and economic quantities. The upper level of an unconfined aquifer may vary over time; “aquifer” applies to the full saturated zone at any time.

“Aquitard” means a hydrogeologic confining unit(s) that exhibits limited permeability, bounding one or more aquifers, that does not readily yield water to wells or springs, but may serve as a storage unit for ground water and may release this water to adjacent ground water units or surface waters. Such confining units are further defined and listed in N.J.A.C. 7:9-6.5(f)1 or may be established through reclassification under N.J.A.C. 7:9-6.10.

“Background water quality” means the concentration of constituents in ground water which is determined to exist directly upgradient of a discharge but not influenced by the discharge, or is otherwise representative of such concentration of constituents as determined using methods and analyses consistent with the requirements of N.J.A.C. 7:14A-6.15(h)7.

“Classification area” means the geographic extent (lateral and vertical) of a geologic formation(s) or unit(s) wherein ground water is classified for designated uses, as described in N.J.A.C. 7:9-6.5.

“Classification exception area” means an area within which one or more constituent standards and designated uses are suspended in accordance with N.J.A.C. 7:9-6.6.

“Constituent” means a specific chemical substance (that is, element or compound) or water quality parameter (for example, temperature, odor, color).

“Constituent standard” means the required maximum level or concentration or the required range of levels or concentrations (as applicable) for a constituent in a classification area, as established in N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b). The constituent standards shall be the basis for the Department’s regulation of ground water quality effects of past, present or future discharges to ground water or the land surface, pursuant to applicable authorities as defined in N.J.A.C. 7:9-6.1.

“Conventional water supply treatment” means the chemical and physical treatment of ground water supplies for microbiological contaminants and undesirable naturally occurring substances resulting in treated water that meets all the primary and secondary standards for those constituents stipulated by the New Jersey Safe Drinking Water Act regulations (N.J.A.C. 7:10-12).

"Criteria" means ground water quality criteria.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Designated use" means a present or potential use of ground water which is to be maintained, restored and enhanced within a ground water classification area, as determined by N.J.A.C. 7:9-6.5. Designated uses may include any human withdrawal of ground water (for example, for potable, agricultural and industrial water), the discharge of ground water to surface waters of the State which support human use or ecological systems, or the direct support of ecological systems.

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant at any time into the waters of the State, onto land or into wells from which it might flow or drain into said waters, or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State. "Discharge" includes, without limitation, the release of any pollutant into a municipal treatment works.

"Discharger" means any person, corporation, municipality, government agency or authority or other legal entity, who causes or allows a discharge, either through action or omission.