

CHAPTER 14D**DETERMINATION OF ENVIRONMENTAL BENEFIT
OF THE REUSE OF FURTHER TREATED
EFFLUENT IN INDUSTRIAL FACILITIES****Authority**

N.J.S.A. 54:10A-5.31 and 5.32 and 54:32B-8.36.

Source and Effective Date

R.2008 d.202, effective June 23, 2008.
See: 40 N.J.R. 533(a), 40 N.J.R. 4319(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 14D, Determination of Environmental Benefit of the Reuse of Further Treated Effluent in Industrial Facilities, expires on June 23, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 14D, Determination of Environmental Benefit of the Reuse of Further Treated Effluent in Industrial Facilities, was adopted as Special New Rules by R.2002 d.304, effective August 16, 2002 (to expire January 4, 2003). See: 34 N.J.R. 3290(a).

Chapter 14D, Determination of Environmental Benefit of the Reuse of Further Treated Effluent in Industrial Facilities, was readopted as R.2003 d.46, effective December 26, 2002. See: 34 N.J.R. 3290(a), 35 N.J.R. 426(a).

Chapter 14D, Determination of Environmental Benefit of the Reuse of Further Treated Effluent in Industrial Facilities, was readopted as R.2008 d.202, effective June 23, 2008. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**7:14D-1.1 Purpose and applicability**

(a) This chapter establishes the requirements and procedures by which the Department will determine whether treatment equipment or conveyance equipment purchased for an industrial facility for purposes of reusing further treated effluent in an industrial process will, in its operation, and considered in conjunction with the reuse of the further treated

effluent that results from that operation, result in an environmental benefit to the water resources of the State.

(b) This chapter applies to treatment equipment or conveyance equipment that is or will be operated exclusively within the State.

(c) An applicant who is issued a determination of environmental benefit (DEB) under this chapter may submit the DEB to the Director of the Division of Taxation, N.J. Department of Treasury, for purposes of claiming a corporate tax credit pursuant to N.J.S.A. 54:10A-5.31 and/or of obtaining a sales tax refund pursuant to N.J.S.A. 54:32B-8.36.

7:14D-1.2 Definitions

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

“Applicant” means the person who purchases treatment equipment or conveyance equipment on behalf of an industrial facility and who submits an application to the Department for a determination of environmental benefit under this chapter.

“Conveyance equipment” means any equipment, including, but not limited to, pipes, pumps and/or other appurtenances, that is used exclusively to transport effluent to the facility in which the treatment equipment has been or is to be installed and any equipment that is used exclusively to transport further treated effluent to an industrial facility for reuse in an industrial process. This does not include any conveyance equipment used to transport wastewater.

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

“DEB” means the determination of environmental benefit issued by the Department under this chapter.

“Effluent” means the liquid that results from treatment by either a domestic or an industrial wastewater treatment facility in accordance with a New Jersey Pollutant Discharge Elimination System (NJPDES) permit issued under N.J.A.C. 7:14A.

“Further treated effluent” means effluent that is subjected to additional treatment for the purpose of reusing the effluent in an industrial process.

“Industrial facility” means a facility where an industrial process takes place.

“Industrial process” means any manufacturing process including, but not limited to, such processes as power generation, paper production and oil refining. An industrial process does not include recreational activities, such as dust control at athletic fields.

“Person” means an individual, corporation, partnership or owner or operator of an industrial facility or an agent or employee thereof. “Person” shall also mean a responsible official.

“Pollutant” means pollutant as that term is defined in the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A-1.2.

“Responsible official” means one of the following:

1. For a corporation:
 - i. A president, secretary, treasurer or vice-president of the corporation, who is in charge of a principal business function;
 - ii. Any other person who performs similar policy or decision-making functions for the corporation; or
 - iii. A duly authorized representative of the person in 1i or 1ii above, if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for the determination of environmental benefit, and either:
 - (1) The facilities, for which the representative is responsible, employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - (2) The delegation of authority to the representative is approved in writing in advance by the Department; or
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

“Treatment equipment” means any equipment that is used exclusively to treat effluent from a wastewater treatment facility, which effluent would otherwise have been legally discharged into waters of the State, for purposes of reuse in an industrial process.

“Wastewater” means untreated liquid waste from either a domestic or an industrial source. For purposes of this chapter, wastewater also includes the wastewater that results from the reuse of further treated effluent in an industrial process.

“Wastewater treatment facility” means a facility that treats wastewater to reduce the levels of pollutants contained in the wastewater.

7:14D-1.3 Construction and severability

(a) This chapter shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 54:10A-5.31 and 5.32 and N.J.S.A. 54:32B-8.36.

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

SUBCHAPTER 2. APPLICATION PROCESS

7:14D-2.1 Application requirements

(a) An applicant should refer to the web page for the Division of Water Quality in the Department at www.state.nj.us/dep/dwq or write to the address at (b) below for guidance in applying for a DEB.

(b) An applicant seeking a determination of environmental benefit (DEB) shall submit to the Department a complete application, with original signature, as described in this section to:

Director's Office
 Division of Water Quality
 N.J. Department of Environmental Protection
 PO Box 29
 401 East State Street
 Trenton, NJ 08625-0029
 Attn: Reuse Tax Incentives Program

(c) A complete application shall consist of the following:

1. A DEB application form obtained from the Department at the address in (b) above or at the web page address at (a) above, certified in accordance with (d) below. The DEB application form shall include the following information:

- i. The name and mailing address of the applicant;
- ii. A brief description of the effluent reuse project;
- iii. The name and location of each wastewater treatment facility from which the effluent originates or will originate;
- iv. The name and location of each industrial facility to which the further treated effluent is or will be conveyed for reuse;
- v. A list of all applicable Federal, State, and local permits and/or approvals required for construction and/or operation of the treatment equipment or conveyance equipment, along with the issuance date of each permit; and
- vi. The date or anticipated date of purchase of the treatment equipment or conveyance equipment;

2. A report describing each specific industrial process for which the further treated effluent is or will be reused, including the following:

i. The physical and functional aspects of the treatment equipment or conveyance equipment;

ii. The location of any site at which the wastewater that results from the reuse of the further treated effluent is or will be discharged;

iii. The volume of the further treated effluent, including the daily average and maximum flow rates, that is or will be reused;

iv. The volume of further treated effluent that is or will be consumed in the reuse process; and

v. The volume of wastewater that is or will be discharged thereafter;

3. A line-item breakdown showing the cost of each component of the treatment equipment or conveyance equipment for which the DEB is sought;

4. If applicable, a copy of the agreements governing the wastewater treatment facility's supply and the industrial facility's use of the effluent;

5. A description of the impacts and benefits to the waters of the State resulting from the reuse of the further treated effluent in the industrial process. The description shall, at a minimum, demonstrate that:

i. The reuse will not cause a violation of any minimum passing flow restrictions applicable in the waterbody to which the effluent would otherwise have been discharged;

ii. If the reuse will result in an interbasin transfer (that is, if the ultimate discharge of the wastewater is to a watershed other than the one to which the effluent would have been discharged if it were not reused), then such interbasin transfer will not have an adverse impact on the water resources in the affected watersheds;

iii. The pollutant load to the receiving waterbody to which the effluent would have been discharged if it were not reused is or will not be increased as a result of the reuse; and

iv. The water resources of the State are or will be conserved as a result of the reuse; and

6. Any additional information determined by the Department to be necessary to determine if the treatment equipment or conveyance equipment meets the requirements of this chapter.

(d) A responsible official of the industrial facility shall sign and certify the application for a DEB and any attachments. The certification shall read as follows:

"I certify under penalty of law that this document and all attachments were prepared 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 the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

I certify that the treatment equipment is or will be used exclusively to treat effluent from a wastewater treatment facility, which effluent would otherwise have been legally discharged to the waters of the State, for purposes of reuse in an industrial process. I certify that the conveyance equipment is or will be used exclusively to transport effluent to the facility in which the treatment equipment has been or is to be installed and/or that the conveyance equipment is or will be used exclusively to transport the further treated effluent to an industrial facility for reuse in an industrial process.

I certify that all applicable Federal, State, and local permits and/or approvals for construction and/or operation of the treatment equipment or conveyance equipment have been obtained.

I certify that, to the best of my knowledge, the treatment equipment or conveyance equipment has not previously qualified for a tax credit pursuant to N.J.S.A. 54:10A-5.31 for the applicant or other owner or any previous owner of the equipment.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for purposely, knowingly, recklessly or negligently submitting false information."

(e) If an application is incomplete, the Department shall notify the applicant of the deficiency or deficiencies in writing.

(f) If an applicant does not submit the information necessary to complete the application within 30 calendar days after receipt of the Department's notification under (e) above, the Department shall inactivate and return the application, unless the applicant demonstrates good cause for a further extension of time to complete the application.

1. A previously inactivated application may be resubmitted within one year from the date of inactivation. After that date, a new application shall be submitted.

7:14D-2.2 Opportunity for public comment

(a) For any application for a DEB, an opportunity for public comment on the application shall be provided for the limited purpose of determining whether:

1. The treatment equipment is or will be used exclusively to treat effluent for purposes of reuse in an industrial process;

2. The conveyance equipment is or will be used exclusively to transport effluent to the facility in which treatment equipment has been or is to be installed and/or to transport further treated effluent to an industrial facility for reuse in an industrial process; and

3. The reuse of the further treated effluent in an industrial process has an environmental benefit to the water resources of the State.

(b) The Department shall publish in the DEP Bulletin a notice of each complete application for a DEB received under N.J.A.C. 7:14D-2.1.

(c) The Department shall accept written comments on an application for 30 days from the date of publication of the notice. Comments shall be submitted to the address listed at N.J.A.C. 7:14D-2.1(b).

(d) The application may be reviewed during the comment period, by appointment only, at the address listed at N.J.A.C. 7:14D-2.1(b).

7:14D-2.3 Action on application; standards for decision

(a) Based on its review of the complete application submitted in accordance with N.J.A.C. 7:14D-2.1, and any public comment received in accordance with N.J.A.C. 7:14D-2.2, the Department shall issue a DEB if it determines that the following standards are met:

1. The treatment equipment is or will be used exclusively to treat effluent from a wastewater treatment facility for the purposes of reuse in an industrial process, which effluent would otherwise have been legally discharged into waters of the State;

2. The conveyance equipment is or will be used exclusively to transport effluent to the facility in which treatment equipment has been or is to be installed and/or to transport further treated effluent to an industrial facility for reuse in an industrial process; and

3. The reuse of the further treated effluent is or will be beneficial to the water resources of the State. The following factors shall be considered in this determination:

i. That the reuse will not cause a violation of any minimum passing flow restrictions applicable in the waterbody to which the effluent would otherwise have been legally discharged;

ii. That, if the reuse results in an interbasin transfer (that is, if the ultimate discharge of the wastewater is to a watershed other than the one to which the effluent would have been legally discharged if it were not reused), then such interbasin transfer will not have an adverse impact on the water resources in the affected watersheds;

iii. That the pollutant load to the receiving waterbody to which the effluent would have been legally discharged if it were not reused is or will not be increased as a result of the reuse; and

iv. That water resources of the State are or will be conserved as a result of the reuse.

(b) A DEB issued under this section shall include:

1. The name of the industrial facility and the applicant to whom the DEB is issued;

2. A list of the treatment equipment or conveyance equipment that the Department has determined meets the requirements of this chapter;

3. The purchase cost of the treatment equipment or conveyance equipment that the Department has determined meets the requirements of this chapter;

4. The date of the DEB; and

5. A statement that, pursuant to this chapter, the Department has determined that the treatment or conveyance equipment will, in its operation, and considered in conjunction with the reuse of the further treated effluent that results from that operation, result in an environmental benefit.

(c) The DEB shall be accompanied by a summary prepared by the Department, which shall include the following:

1. A description of the relevant public comments received on the DEB application and the Department's responses to issues raised in the comments; and

2. An explanation of the basis of the Department's determination that the treatment equipment or conveyance equipment complies with the standards at (a) above and the requirements of this chapter.

(d) If the Department determines that the treatment equipment or conveyance equipment for which the DEB application was submitted does not meet the standards at (a) above, the Department shall deny the DEB in writing. The denial shall state the basis for the denial, including a description of relevant public comments received on the DEB application and the Department's responses to issues raised in the comments.

(e) The Department shall provide a copy of each DEB issued under this chapter to the Division of Taxation, New Jersey Department of Treasury, and to any person who submitted written comments on the application in accordance with N.J.A.C. 7:14D-2.2.

SUBCHAPTER 3. REQUESTS FOR ADJUDICATORY HEARINGS

7:14D-3.1 Requests for adjudicatory hearings

(a) Subject to the limitation on third-party hearing rights specified in (e) below, a person may request an adjudicatory hearing to contest the Department's decision under this chapter on an application for a determination of environmental benefit (DEB).

(b) A request for an adjudicatory hearing shall be submitted within 30 days of receipt of the Department's decision. The request shall be in writing, and shall include:

1. A copy of the decision on which the hearing is being requested; and
2. A detailed explanation of the requester's reasons for requesting the hearing, including the factual and legal basis for the appeal.

(c) The request for an adjudicatory hearing shall be submitted to the Office of Legal Affairs, New Jersey Department of Environmental Protection, PO Box 402, Tren-

ton, New Jersey 08625-0402, Attention: Adjudicatory Hearing Requests. A copy of the request shall also be submitted to the Division of Water Quality in the Department at the address provided in N.J.A.C. 7:14D-2.1(b).

(d) Any adjudicatory hearing granted under this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14B-3.1 through 3.3 (P.L. 1993, c.359).