

In (b), substituted “(b)6” for “(b)5” in 1 through 4, added a new 5, and recodified former 5 as 6 and substituted “5” for “4” preceding “above”; in (g), added the third sentence in 3.

Public Notice: Amendments to county and regional water quality management plans.

See: 36 N.J.R. 1611(b), 1611(c), 2085(a), 2940(a), 2940(b), 3436(a), 3436(b), 3437(a), 3591(a), 3591(b), 4178(a), 4542(b), 4846(a), 4846(b), 4848(b), 5165(a), 5168(a), 5170(a), 5171(a), 5458(b), 5458(c).

Public Notice: Amendment to county and regional water quality management plans.

See: 37 N.J.R. 141(b), 907(b), 1235(a), 1888(a), 1888(b), 2704(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 38 N.J.R. 3324(a), 3324(b), 3672(b), 3672(c), 3673(a), 4252(a), 4509(a), 4756(a), 4756(b), 4757(a), 5414(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 39 N.J.R. 109(b), 260(a), 699(a), 699(b), 799(a), 1318(a), 1318(b), 1524(a), 1813(b), 2280(a), 2280(b), 2371(a), 3412(b), 3560(b), 3561(a), 3787(b), 3998(a), 4959(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 40 N.J.R. 215(a), 757(b), 812(a), 2138(a), 2139(a), 2574(b), 3754(a), 4237(b), 4237(c), 4835(b), 5072(a), 5288(a), 5848(a), 5849(a), 6232(c), 6233(a), 6486(b).

Amended by R.2008 d.163, effective July 7, 2008.

See: 39 N.J.R. 1870(a), 39 N.J.R. 2583(b), 40 N.J.R. 4000(a).

Rewrote (b)4; in the introductory paragraph of (c), deleted “and (j)” following “(i)” and substituted “plan” for “Plan” following the fourth occurrence of “WQM”; in (d)3, substituted “BPU-regulated” for “BRC-regulated” twice; rewrote (e); in (f), substituted “DWM” for “ORP” and inserted “or her”; in the introductory paragraph of (g), substituted “The” for “Except as provided in (h) below the”; in (g)1, substituted “Applications” for “Requests”, “Division of Watershed Management” for “Office of Regulatory Policy” and “418, 401 East State Street, 7th Floor” for “029”, and deleted “in writing” following “submitted”; rewrote the introductory paragraph of (g)2; in (g)2i through (g)3, substituted “application” for “request” throughout; in (g)3, inserted “, the Department of Transportation.”; in (g)4i, substituted “BPU-regulated” for “BRC-regulated”; in (g)4iii, (g)6 and (g)7, substituted “DWM” for “ORP” throughout; in (g)7, substituted “one newspaper” for “two newspapers” twice; rewrote the introductory paragraph of (g)9; in (g)10, inserted “or her”; repealed (h); in (i), deleted “in accordance with N.J.A.C. 7:15-3.1” following “established” and updated the first N.J.A.C. reference; rewrote (j); in (k), deleted “present and future” preceding “201”, deleted “that are” following the first occurrence of “Plans” and substituted “Watershed Management” for “Water Resources”; and rewrote (l).

Public Notice: Amendments to county and regional water quality management plans.

See: 41 N.J.R. 315(a), 671(a), 677(a), 677(b), 679(a), 815(b), 896(a), 1107(b), 1108(a), 1271(a), 1898(b), 2345(b), 3967(a).

Case Notes

Where Department of Environmental Protection failed to act within 60 days upon county’s petition to amend water quality management plan, builder had continuing right to seek legal recourse so long as Department failed to act. *Toll Bros., Inc. v. State, Dept. of Environmental Protection*, 242 N.J.Super. 519, 577 A.2d 845 (A.D.1990).

Failure to timely act on application to amend does not require automatic approval. *Toll Bros., Inc. v. State, Dept. of Environmental Protection*, 242 N.J.Super. 519, 577 A.2d 845 (A.D.1990).

Interested party may bring action to compel Department of Environmental Protection to act. *Toll Bros., Inc. v. State, Dept. of Environmental Protection*, 242 N.J.Super. 519, 577 A.2d 845 (A.D.1990).

7:15-3.5 Water quality management plan review, revision, and certification

(a) The Department and the designated planning agencies shall periodically review Statewide and areawide WQM Plans

in order to propose appropriate amendments under N.J.A.C. 7:15-3.4, and to prepare appropriate revisions under this section.

(b) An application for a revision shall be submitted in writing to the Department in accordance with (d) below. The Department and the designated planning agencies shall prepare revisions to Statewide and areawide WQM Plans under this section whenever such revisions are necessary to:

1. Correct, clarify, or update erroneous, unclear, or outdated statements in Statewide and areawide WQM Plans regarding:

- i. Development and wastewater treatment facilities existing at the time of the most recently adopted areawide WQM plan or amendment affecting the site; or

- ii. Proposed projects, provided that all other Department approvals were received, in full compliance with applicable regulations, at the time of the most recently adopted areawide WQM plan or amendment affecting the site;

2. Transfer or assign wastewater management plan responsibility under N.J.A.C. 7:15-5.13;

3. Revise schedules for submission of wastewater management plans under N.J.A.C. 7:15-5.23(f);

4. Provide for the following substantive changes in Statewide and areawide WQM Plans where the Department determines, based on its assessment that the project for which the revision is proposed complies with the environmental standards established at N.J.A.C. 7:15-5.24 and 5.25, as applicable, that no significant individual or cumulative impacts will occur to environmentally sensitive areas or other natural resources (such as water supplies) due to the proposed revision (individually or in combination with past revisions in the area), that the changes are consistent with N.J.A.C. 7:15-3.6, 3.7, and 3.10 and that certain directly affected municipal and county agencies and other interests as identified by the Department have been provided an opportunity to review and comment on the proposed revision:

- i. Any increase in flow (including both increased loadings and no increased loadings) from industrial treatment works where no change in wastewater service area or discharge type (for example, discharge to surface water or ground water) is proposed, the discharge is not to an impaired waterbody segment for which a TMDL has been proposed or adopted under N.J.A.C. 7:15-6.3 and where the applicant demonstrates there is adequate water supply in accordance with the most recent New Jersey State Water Supply Plan for the proposed additional flow. If the discharge is to an impaired waterbody and the discharge contains any of the parameters that are the basis for the impaired listing, the expansion may be allowed if the expansion is consistent with the WLAs set forth in an adopted TMDL developed for the

affected waterbody for the listed parameters in the discharge. The Department may process such revisions prior to or simultaneously with a NJPDES permit for the same change in flow;

ii. The transfer of sewer service area from one domestic treatment works to another, provided that all affected wastewater management plans are current in accordance with the schedule at N.J.A.C. 7:15-5.23, the approved sewer service areas in the areawide WQM plan are currently contiguous in the area to be transferred, neither domestic treatment works is subject to a sewer connection ban, the proposed revision includes only areas currently designated for sewer service, both the sending and receiving wastewater management planning agencies concur with the proposed revision, and no new or expanded treatment works other than sewer line extensions is proposed as part of the revision;

iii. Any increase of 8,000 gpd or less in planning flow to an on-site discharge to ground water for an existing public school or public institution, using the same general type of treatment works (for example, direct discharge to ground water, spray irrigation);

iv. Any change in the estimated planning flow (see N.J.A.C. 7:15-5.16(b)8) or permitted flow (see N.J.A.C. 7:15-5.16(b)9) of less than 8,000 gallons per day to an existing NJPDES-regulated discharge to ground water, provided (b)4v below is satisfied unless the sewer service area is not changing and the same general type of treatment works is proposed;

v. Expansion of a future sewer service area to contiguous lots, where the expansion involves less than 100 acres, contributes less than 8,000 gallons per day of additional wastewater flow, and does not create a significantly new pattern of sewered development such that a significant potential or incentive is created for additional revisions or amendments to open new areas to sewered development. A revision under this subparagraph shall be processed only if the applicant demonstrates that the receiving domestic treatment works has sufficient capacity under the projected build-out to serve the proposed development in addition to its existing approved sewer service area, and any affected wastewater management plan is current in accordance with the schedule at N.J.A.C. 7:15-5.23;

vi. The utilization of individual subsurface sewage disposal systems where the project for which the revision is requested involves less than 100 acres and generates less than 8,000 gallons per day of wastewater flow (or a total of fewer than 23 residential dwelling units), only where the WMP is not in compliance with the schedule at N.J.A.C. 7:15-5.23 and the applicant demonstrates that the project for which the revision is proposed meets the nitrate planning standard at N.J.A.C. 7:15-5.25(h)2;

vii. The utilization of a RWBR project to reduce either existing or proposed wastewater discharges to surface waters below the head of tide or ground water discharges located within HUC 14 drainage areas which are wholly below the head of tide;

viii. The utilization of a RWBR project to reduce existing wastewater discharges to surface waters above the head of tide or ground water discharges located within HUC 14 drainage areas any part of which is above the head of tide, provided the following are met:

(1) The utilization of RWBR will not increase or create an exceedance of the water availability in any HUC 11 in accordance with the assessment of water availability identified in the New Jersey State Water Supply Plan; and

(2) The utilization of RWBR does not cause an adverse effect on any downstream designated use, including without limitation, water supply, sewage treatment plant discharges, or aquatic life support;

ix. Connection of an existing structure with a malfunctioning subsurface sewage disposal system that is not currently within an approved sewer service area to an identified sewage treatment plant, provided the applicant demonstrates that it is not feasible to repair or replace the malfunctioning subsurface sewage disposal system under N.J.A.C. 7:9A-3.4 and the property where the existing structure is located is contiguous to the existing sewer line; or

x. The utilization of individual subsurface sewage disposal systems or a NJPDES-regulated discharge to ground water for a clustered residential development, where the applicant ensures that a minimum of 70 percent of the property is permanently restricted from development, subject to a conservation restriction prepared in accordance with N.J.A.C. 7:15-1.7, and provided that the following conditions are met:

(1) Where individual subsurface sewage disposal systems will be utilized, the density necessary to achieve the two mg/L nitrate planning standard in N.J.A.C. 7:15-5.25(e) and (h)2 is met for the overall project site and the ground water quality criteria of 10 mg/L is met at the edge of the developed portion of the clustered residential development;

(2) Except to account for unique site conditions, the development shall be located to maximize continuity of the preserved area and in areas that do not contain Natural Heritage Priority Sites or habitat patches identified as Rank 3, 4, or 5 on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife; and

(3) Existing agricultural land uses allowed to continue on the restricted portion are required to implement Best Management Practices by implementing the

Water Quality Management Plan, provide an opportunity for public comment and adopt the amendment in accordance with N.J.A.C. 7:15-6.4.

7:15-6.3 Total maximum daily loads

(a) Pursuant to the process set forth in (b) and (c) below, the Department shall develop total maximum daily loads (TMDLs) for water quality limited segments in accordance with:

1. The Federal requirements at 40 CFR 130.7(c) and (e), incorporated herein by reference, including all future amendments and supplements; and

2. The following USEPA guidance documents, incorporated herein by reference, including all future amendments and supplements available at available at www.nj.gov/dep/watershedmgt/tmdl.htm:

i. USEPA. 2002. EPA Review of 2002 Section 303(d) Lists and Guidelines for Reviewing TMDLs under Existing Regulations issues in 1992. Office of Wetlands, Oceans and Watersheds Memorandum from: C.H. Sutfin, dated October 2002;

ii. USEPA. 2002. Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs. Office of Wetlands, Oceans and Watersheds Memorandum from: R.H. Wayland, III, dated November 22, 2002; and

iii. USEPA. 2006. Establishing TMDL "Daily" Loads in Light of the Decision by the U.S. Court of Appeals for the D.C. Circuit in *Friends of the Earth, Inc. v. EPA, et al.*, No.05-5015, (April 25, 2006) and Implications for NPDES Permits. Office of Water Memorandum from: B. H. Grumbles, dated November 15, 2006.

(b) A TMDL document shall include the following components:

1. An identification of segment(s), pollutant(s) of concern, pollutant sources and the priority for the subject TMDL as identified in the 303(d) list;

2. A description of applicable water quality standards and the water quality target(s) selected for the pollutant(s) of concern;

3. Identification of critical conditions considering seasonal variation;

4. The loading capacity of the segment with respect to the pollutant(s) of concern under the identified critical conditions and identification of the means used to relate actual and predicted water quality to pollutant loads;

5. Allocation of the loading capacity among the following:

i. Load allocations for nonpoint sources of pollutant load;

ii. Wasteload allocations for point sources of pollutant load;

iii. A margin of safety required to included the overall load reductions required to account for uncertainties in the data used in the analysis, the model or other tool use to link water quality and pollutant loads, or the effectiveness of controls available to reduce pollutant loads; and

iv. An optional reserve capacity to allow for future growth;

6. An implementation plan that shall include the strategies designed to achieve attainment of the Surface Water Quality Standards or other more stringent target, a proposed schedule for implementation, and the methods to measure the effectiveness of the strategies; and

7. A summary of the opportunities provided and outcomes of public participation in the development of the TMDL.

(c) In addition to the public participation opportunities identified at N.J.A.C. 7:15-6.4, the Department may provide opportunities for public participation in the TMDL development process, based upon anticipated interest, which may include the following:

1. The Department may hold one or more informational meetings, at any point during the development of a TMDL and solicit comments on the components of the TMDL; and

2. The Department may inform or consult with the public through web postings or electronic communication with groups or individuals that have an interest in the affected watershed, regarding components of the TMDL.

7:15-6.4 Amendment procedures

(a) The Department shall propose an amendment to the Statewide Water Quality Management Plan for a revised List of Water Quality Limited Segments or to the applicable areawide Water Quality Management plan(s) for a TMDL document(s) as follows:

1. The Department shall publish a notice of proposed amendment to the Statewide or applicable areawide WQM Plan in the New Jersey Register, on the Department's website at www.state.nj.us/dep and in a newspaper(s) of general circulation in the affected area(s). The public notice shall specify the means to access the subject document electronically or by hard copy and the procedure for submitting comments. The Department may determine to hold a nonadversarial public hearing in anticipation of sufficient public interest. If so, the location, time and place of the hearing will be identified in the notice. A minimum comment period of 30 days will be provided. If a public

hearing is to be held, at least 30 days notice of the hearing will be provided and the comment period will remain open until 15 days after the public hearing;

2. The Department may alternatively determine to hold a nonadversarial public hearing in response to expression of sufficient public interest, as defined under N.J.A.C. 7:1D-5.2, received within 30 days of the publication of the notice in (a)1 above. If the Department determines to hold a nonadversarial public hearing in response to a request, notice of the public hearing shall be provided on the Department's website at www.state.nj.us/dep and in a newspaper(s) of general circulation in the affected area. The Department shall additionally provide notice of the public hearing to those requesting the hearing. The Department shall provide a 30-day notice period prior to the public hearing and a 15-day public comment period after the hearing;

3. At the conclusion of the public comment period, the Department will make any appropriate revisions to the document(s) and for TMDLs, prepare a response document to the comments. The Department shall either:

- i. Establish the List of Water Quality Limited Segments or the TMDL as proposed;
- ii. Establish all or portions of the List of Water Quality Limited Segments or the TMDL with changes which do not effectively destroy the value of the public notice regarding the proposed List of Water Quality Limited Segments or TMDL, as applicable; or
- iii. Re-propose in accordance with (a)1 above, all or portions of the List of Water Quality Limited Segments or the TMDL with substantive changes; and

4. The Department shall submit the established List of Water Quality Limited Segments or the established TMDL, including the response to comments received, to the U.S. Environmental Protection Agency (EPA) for approval.

(b) Upon receipt of a response from EPA, the Department shall:

1. Amend the document in accordance with EPA comments and repropose the amendment if EPA requests substantive changes that effectively destroy the value of the original public notice; or

2. Adopt the document(s) as an amendment to the Statewide Water Quality Management Plan or areawide Water Quality Management plan(s), as applicable, by placing a notice in the New Jersey Register and the Department's website at www.state.nj.us/dep/wms/bwqsa for the List of Water Quality Limited Segments and www.nj.gov/dep/watershedmgt/tmdl.htm for TMDLs. This step constitutes final agency action.

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. WITHDRAWAL AND REDESIGNATION OF WASTEWATER SERVICE AREAS

7:15-8.1 Withdrawal of wastewater service area designations

(a) Except as provided in (b) and (d) below, wastewater service area designations shall be withdrawn in areas which fail to adopt and maintain a wastewater management plan in accordance with the requirements of N.J.A.C. 7:15-5.2(b), 5.13 and 5.23. Withdrawal of wastewater service area designations under this subsection shall not impact areas where sewers are physically installed and wastewater generating structures are lawfully connected to the collection and treatment system at the time of withdrawal.

(b) Wastewater service area designations for the following are not withdrawn under (a) above:

1. Projects involving the lateral connection of an infill area to an existing public sewer line, where sanitary or combined sewer infrastructure lawfully exists in the right-of-way adjoining the lot or lots such that a connection can be made without crossing any property lines other than that of the lot to be served and where such connection does not require the extension of a collection system. The sewer line, lots, and improvements on the lots must exist on the date that wastewater service area was withdrawn;

2. Except as provided in (d) below, projects that have received, prior to the effective date of the wastewater service area withdrawal, both a local preliminary or final site plan approval or subdivision approval where subsequent site plan approval is not required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (MLUL) or a municipal construction permit; and a Department TWA or NJPDES permit, if one is required, until such time as one of those qualifying approvals expires;

3. Projects that have received a site specific WQM plan amendment or revision adopted prior to the date of wastewater service area withdrawal remain valid for a period of six years from the date of adoption of the amendment or revision; and

4. Projects that require an industrial treatment works that does not handle process wastewater or sanitary sewage.

(c) Areas for which wastewater service area designations are withdrawn under this section are re-designated as ground water general wastewater service area designation for planning flows of 2,000 gallons per day or less. The following wastewater facilities with discharges to ground water are deemed to be consistent with this new designation:

1. Wastewater facilities serving non-residential development that discharge to ground water with a daily maximum planning flow of 2,000 gallons per day or less when calculated in accordance with the expected volume of