

CHAPTER 15

WATER QUALITY MANAGEMENT PLANNING

Authority

N.J.S.A. 13:1D-1 et seq., 13:19-1 et seq., 13:20-1 et seq., 23:2A-1 et seq., 40:55D-93—99, 58:1A-1 et seq., 58:10A-1 et seq., 58:11-23 et seq., 58:11A-1 et seq., 58:16A-50 et seq., and 58:29-1 et seq.

Source and Effective Date

R.2008 d.163, effective May 21, 2008.
See: 39 N.J.R. 1870(a), 39 N.J.R. 2583(b), 40 N.J.R. 4000(a).

Chapter Expiration Date

Chapter 15, Water Quality Management Planning, expires on May 21, 2013.

Chapter Historical Note

The original text of this chapter (Industrial Pollution Control Financing Law) was adopted pursuant to N.J.S.A. 13:1B-3 and 13:1D-1 et seq. and was filed and became effective on September 25, 1974 as R.1974 d.268. See: 6 N.J.R. 394(b). The text was repealed by R.1980 d.433 on October 7, 1980. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a). Chapter 15, Water Quality Management Planning and Implementation Process, was adopted by R.1984 d.110, effective April 2, 1984. See: 15 N.J.R. 765(b), 16 N.J.R. 1988(a). Pursuant to Executive Order No. 66(1978), Chapter 15, Water Quality Management Planning and Implementation Process, expired April 2, 1989.

Chapter 15, Statewide Water Quality Management Plan was adopted as new rules by R.1989 d.517, effective October 2, 1989. See: 20 N.J.R. 2198(a), 20 N.J.R. 2478(a), 21 N.J.R. 3099(a).

Petition for Rulemaking: Requesting amendment to the process for review and amendment of Areawide Water Quality Management Plans and associated permits. See: 21 N.J.R. 3183(b).

Public Notice: Amendment to the Statewide Water Quality Management Program Plan. See: 21 N.J.R. 3184(a).

Public Notice: Opportunity for interested party review for rule amendments. See: 25 N.J.R. 411(a).

Pursuant to Executive Order No. 66(1978), Chapter 15, Water Quality Management Planning, was readopted as R.1994 d.525. See: 26 N.J.R. 3106(a), 26 N.J.R. 4182(c).

Subchapter 6, Water Quality Limited Surface Waters, and Subchapter 7, Total Maximum Daily Loads, were adopted as R.1997 d.108, effective May 5, 1997. See: 28 N.J.R. 729(a), 28 N.J.R. 2779(a), 28 N.J.R. 3494(a), 28 N.J.R. 3858(a), 29 N.J.R. 2142(a).

The Executive Order No. 66(1978) expiration date for Chapter 15, Water Quality Management Planning, was extended by gubernatorial directive from September 22, 1999 to September 22, 2000. See: 31 N.J.R. 3087(a).

The Executive Order No. 66(1978) expiration date for Chapter 15, Water Quality Management Planning, was extended by gubernatorial directive from September 22, 2000 to April 30, 2001. See: 32 N.J.R. 3830(a).

Subchapter 8, Discharges to Ground Water of Less Than 20,000 Gallons Per Day and Less Than 2,000 Gallons Per Day, was adopted as R.2001 d.72, effective February 20, 2001 (operative March 20, 2001). See: 32 N.J.R. 2285(a), 32 N.J.R. 3208(b), 33 N.J.R. 697(a).

The Executive Order No. 66(1978) expiration date for Chapter 15, Water Quality Management Planning, was extended by gubernatorial directive from April 30, 2001 to April 30, 2002. See: 33 N.J.R. 1588(a).

Subchapter 9, Watershed Management Grants, was adopted as R.2001 d.261, effective August 6, 2001. See: 32 N.J.R. 2285(a), 32 N.J.R. 3208(b), 33 N.J.R. 2641(b).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 15, Water Quality Management Planning, expiration date was extended by gubernatorial directive from April 30, 2002 to April 30, 2004. See: 34 N.J.R. 1021(a).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 15, Water Quality Management Planning, expiration date was extended by gubernatorial directive from April 30, 2004 to October 29, 2005. See: 36 N.J.R. 2762(a).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 15, Water Quality Management Planning, expiration date was extended by gubernatorial directive from October 29, 2005 to November 29, 2005. See: 37 N.J.R. 4535(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 15, Water Quality Management Planning, was extended by gubernatorial directive from November 29, 2005 to May 25, 2006. See: 38 N.J.R. 293(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 15, Water Quality Management Planning, was extended by gubernatorial directive from May 25, 2006 to January 31, 2007. See: 38 N.J.R. 2691(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 15, Water Quality Management Planning, was extended by gubernatorial directive from January 31, 2007 to April 1, 2007. See: 39 N.J.R. 767(c).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 15, Water Quality Management Planning, was extended by gubernatorial directive from April 1, 2007 to May 1, 2007. See: 39 N.J.R. 1710(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 15, Water Quality Management Planning, was scheduled to expire on October 28, 2007.. See: 39 N.J.R. 1870(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 15, Water Quality Management Planning, was extended by gubernatorial directive from October 28, 2007 to May 21, 2008. See: 39 N.J.R. 5081(a).

Chapter 15, Water Quality Management Planning, was readopted as R.2008 d.163, effective May 21, 2008. As a part of R.2008 d.163, Subchapter 6, Water Quality Limited Surface Waters, was repealed and Subchapter 6, Water Quality Limited Segments Lists and Total Maximum Daily Loads, was adopted as new rules; Subchapter 7, Total Maximum Daily Loads, was repealed; and Subchapter 8, Discharges to Ground Water of Less Than 20,000 Gallons Per Day and Less Than 2,000 Gallons Per Day, was repealed and Subchapter 8, Withdrawal and Redesignation of Wastewater Service Areas, was adopted as new rules, effective July 7, 2008. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**7:15-1.1 Scope**

(a) This chapter establishes water quality management policies and procedures pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Department's enabling legislation, N.J.S.A. 13:1D-1 et seq., the Watershed Protection and Management Act of 1997, N.J.S.A. 58:29-1 et seq., the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq., and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. Specifically, this chapter establishes policies and procedures concerning the following subjects:

1. The content of the continuing planning process ("CPP") and its relationship to this chapter and the Statewide Water Quality Management ("WQM") Plan;
2. The relationship between the Statewide, areawide, and county water quality management (WQM) plans and this chapter;
3. The role of the Department and designated planning agencies in WQM planning activities;
4. The review of projects and activities for consistency with WQM plans and this chapter, including the issuing of consistency determinations for specified kinds of projects;
5. The preparation, adoption, amendment, revision, and certification of WQM plans;

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), 4321(b), 4833(c).

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

See: 42 N.J.R. 598(a), 639(a), 640(a), 1087(b), 1252(c), 1630(a), 1633(a), 2276(c), 2498(a).

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

See: 43 N.J.R. 207(a), 1210(a), 1212(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 imple-