

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“one newspaper” for “two newspapers” twice; rewrote the introductory paragraph of (g)9; in (g)10, inserted “or her”; repealed (h); in (i), deleted “in accordance with N.J.A.C. 7:15-3.1” following “established” and updated the first N.J.A.C. reference; rewrote (j); in (k), deleted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).

#### 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 dis-

charge. 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

findings of a Conservation Plan developed by the Natural Resources Conservation Service; or

5. Provide for any modification in an adopted regional stormwater management plan that does not require an amendment under N.J.A.C. 7:15-3.4(b)5.

(c) The documents that are automatically adopted into the Statewide or areawide WQM Plans under N.J.A.C. 7:15-3.4(b)1 through 4, and 7:15-3.4(i) shall not be revised under this section.

(d) An application for a revision under (b)4 above shall include a detailed basis for the revision, including any documentation supporting the assertion that the project or activity qualifies as a revision, all applicable information listed in N.J.A.C. 7:15-3.2(a) and other documentation as determined by the Department to be necessary to determine compliance with the criteria established at N.J.A.C. 7:15-5.24 and 5.25. The Department will notify the applicant of any additional information it needs to determine if the proposal qualifies as a revision. If the Department is unable to determine that a proposed project or activity qualifies to be processed as a revision based on information in the revision application or submitted by the applicant after notification, the Department will review the proposal as a potential amendment pursuant to N.J.A.C. 7:15-3.4. Once the Department determines that a project or activity qualifies as a revision, the Department shall provide a copy of the proposed revision to the agencies identified in N.J.A.C. 7:15-5.22 and provide 21 days for these entities to comment on the proposed revision.

(e) The procedure for revision of Statewide and areawide WQM plans is as follows:

1. The Governor or his or her designee shall adopt revisions to areawide WQM plans and the Commissioner shall adopt revisions to the Statewide WQM Plan. Such revisions shall take effect immediately, unless the adoption notice specifies otherwise.

2. The Department shall, on an annual basis, make publicly available a list of adopted revisions to WQM plans. Under N.J.A.C. 7:15-3.4, interested persons may submit petitions to amend WQM plans to repeal or modify such revisions.

(f) Designated planning agencies shall revise areawide WQM Plans in accordance with procedures established by such agencies and approved by the Department. All revisions to areawide WQM plans are valid only upon their adoption by the Governor or his or her designee.

(g) The Governor or his or her designee shall certify adopted WQM Plans in accordance with United States Environmental Protection Agency regulations.

Administrative Correction to (b)3: Changed 5.24(g) to 5.23(g).

See: 22 N.J.R. 2001(b).

Amended by 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).

Added (b)1i and ii; added (b)4; and in (c), amended N.J.A.C. references.

Amended by R.2004 d.48, effective February 2, 2004.

See: 35 N.J.R. 119(a), 35 N.J.R. 1328(a), 36 N.J.R. 670(a).

In (b), added 5.

Public Notice: Revisions to the Water Quality Management Plans for Calendar Year 2004.

See: 37 N.J.R. 795(a).

Public Notice: Revisions to the Water Quality Management Plans for calendar year 2005.

See: 38 N.J.R. 1231(a).

Public Notice: Revisions to the Water Quality Management Plans for calendar year 2007.

See: 40 N.J.R. 2291(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).

In the introductory paragraph of (b), inserted the first sentence; in (b)3, updated the N.J.A.C. reference; in the introductory paragraph of (b)4, substituted "Plans" for "plans", inserted "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" and updated the N.J.A.C. references; rewrote (b)4i; in (b)4ii, inserted "all affected wastewater management plans are current in accordance with the schedule at N.J.A.C. 7:15-5.23"; in (b)4iii, substituted "8,000" for "20,000", "planning" for "planned wastewater" and "an existing public" for "a" preceding "school" and deleted "NJPDES-permitted" following "on-site"; rewrote (b)4iv; in (b)4v, substituted a period for "; or" following the second occurrence of "development" and inserted the last sentence; added (b)vi through (b)x; added new (d); recodified former (d) through (f) as (e) through (g); and in (e)1, (f) and (g), inserted "or her".

### 7:15-3.6 Coordination with Coastal Zone and Hackensack Meadowlands programs

(a) In accordance with N.J.A.C. 7:7E-1.2(h), the Department's Rules on Coastal Zone Management, including, but not limited to, provisions concerning the New Jersey Meadowlands Commission at N.J.A.C. 7:7E-3.45, shall provide the basic policy direction for WQM planning in the New Jersey Coastal Zone defined at N.J.A.C. 7:7E-1.2(b), including, but not limited to, the Hackensack Meadowlands District described in N.J.S.A. 13:17-4.

(b) In accordance with N.J.A.C. 7:15-3.4(b)1, the water quality related provisions of N.J.A.C. 7:7E, including but not limited to N.J.A.C. 7:7E-8.4, are part of the Statewide WQM Plan.

(c) Under N.J.A.C. 7:7E-8.4 and Section 307(f) of the Coastal Zone Management Act, 33 U.S.C. §§ 1451 et seq., the Department's Coastal Management Program incorporates by reference all requirements established by or pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 et seq., including all requirements contained in this chapter and in WQM plans.

(d) For WQM plan amendments relating to the Hackensack Meadowlands District, the consultation requirement in N.J.S.A. 13:17-9(c) shall be met as follows:

1. For amendments processed under N.J.A.C. 7:15-3.4(b)5, (b)6 or (c), the New Jersey Meadowlands Commission shall be requested to issue written statements of consent for such amendments under N.J.A.C. 7:15-3.4(g)3 and 4 or N.J.A.C. 7:15-3.4(d)3, as appropriate.

2. For other amendments to WQM plans under N.J.A.C. 7:15-3.4(b)1 through (b)4, (i), or (k) that automatically incorporate into Statewide or areawide WQM Plans any Department or USEPA actions taken through rulemaking or other proceedings the consultation requirement in N.J.S.A. 13:17-9(c) shall be addressed, as necessary, through those proceedings and shall not be independently addressed under this section.

Administrative Correction to (d)2: Corrected spelling of pollution.

See: 22 N.J.R. 2001(b).

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

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

In (a), corrected cross-references. In (d)1, "issue written statement of consent" was "endorse".

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).

In (a) and (d)1, substituted "New Jersey Meadowlands Commission" for "Hackensack Meadowlands Development Commission"; in (a), updated the second N.J.A.C. reference; in (d)1, updated the first N.J.A.C. reference; and rewrote (d)2.

#### 7:15-3.7 Coordination with Pinelands program

(a) In accordance with N.J.S.A. 13:18A-8, 16 U.S.C. § 471i(f), and the "Water Resources Planning" element (page 221) of the "Surface and Groundwater Resources Program" contained in Chapter Seven of the Comprehensive Management Plan adopted by the Pinelands Commission on November 21, 1980, comments shall be sought from the Pinelands Commission on proposed WQM plan amendments pertaining to the Pinelands Area defined at N.J.S.A. 13:18A-11 or the Pinelands National Reserve defined at 16 U.S.C. § 471i(c), to ensure that such amendments are consistent with the intent and programs of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 471i.

(b) The Department shall seek comments from the Pinelands Commission on proposed WQM plan amendments and revisions pertaining to the Pinelands Area and Pinelands National Reserve before making the decision required by N.J.A.C. 7:15-3.4(g)2 or 7:15-3.5(e), as appropriate.

(c) For other amendments to WQM plans under N.J.A.C. 7:15-3.4(b)1 through (b)4, (i), or (k) that automatically incorporate into Statewide or areawide WQM Plans any Department or USEPA actions taken through rulemaking or other proceedings, any need to seek comments from the Pinelands Commission shall be addressed, as necessary, through those proceedings and shall not be independently addressed under this section.

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) and (c).

#### 7:15-3.8 Validity of site specific water quality management plan amendments and revisions

(a) No WQM plan amendment or revision hereafter adopted by the Governor or his or her designee is valid unless adopted in substantial compliance with this chapter.

(b) Proposed site specific WQM plan amendments for which notice has been filed for publication or published in the New Jersey Register pursuant to N.J.A.C. 7:15-3.4(g)3 or 3.4(g)5 as of July 7, 2008 shall be subject to the rules in effect on July 6, 2008. Where the Department disapproves or returns the proposed amendment pursuant to N.J.A.C. 7:15-3.4(g)8, and the applicant submits a new or modified site specific plan amendment, the new or modified proposed plan amendment shall be subject to the rules in effect at the time of the subsequent submittal.

(c) Proposed WQM plan revisions that have been submitted to the Department but not adopted pursuant to N.J.A.C. 7:15-3.5(e)1 as of July 6, 2008 shall be subject to the rules in effect as of July 7, 2008.

(d) Site specific amendments and revisions adopted prior to July 7, 2008 shall be valid for six years from the date of adoption or until the sewer service or wastewater service area is revoked under N.J.A.C. 7:15-8.1, whichever is later.

(e) Site specific amendments or revisions adopted after July 7, 2008 shall be valid for six years from the date of adoption, unless a wastewater management plan updated in accordance with N.J.A.C. 7:15-5.23 includes the site specific amendments or revision.

Administrative Correction to (b).

See: 22 N.J.R. 2001(b).

Administrative Correction to (b): incorporated omitted correction made at 22 N.J.R. 2001(b).

See: 25 N.J.R. 547(a).

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).

Section was "Validity of water quality management plan amendments". In (a), inserted "or revision" and "or her"; rewrote (b); and added (c) through (e).

#### 7:15-3.9 Appeals of Department decisions

(a) Except as provided in (g) below, within 30 calendar days from receipt by the applicant of a written notification from the Department of the decision of the Department made pursuant to N.J.A.C. 7:15-3.1 or 3.2, 3.4(g)2i or ii or 3.4(g)8ii through iv, the applicant may request an adjudicatory hearing to contest the Department decision by submitting a written request to the Department, addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, 401 East State Street, 4th Floor, Trenton, New Jersey 08625-0402. A copy of the request shall be submitted to Division of Watershed Management, Department of Environmental Protection, P.O. Box 418, 401 East State Street, 7th Floor, Trenton, N.J. 08625. The request shall include the following information: